

HUMAN RIGHTS IN ISLAM WITH SPECIAL REFERENCE TO WOMEN'S RIGHTS

by

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Introduction

Human rights were typically called in the West the rights of man or natural rights. For example, the American "Declaration of Independence", proclaimed on 4 July 1776, declared that "all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness."¹ Similarly, the French Revolutionaries in July 1789 set forth in the historic "Declaration of Rights of Man and of the Citizen" that "Men are born and remain free and equal in rights"² and that "The aim of every political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security and resistance to oppression."³ Thus both the declarations referred to the rights of man and were not universally understood to include the rights of woman although woman is as much a human being as man. Therefore, the expression rights of man was considered to have sexist connotations. Thomas Paine may have been the first to use the term human rights in his English translation of the French Declaration of the Rights of Man and of the Citizen adopted by the National Assembly of France which prefaced the Constitution of 1791. Since the difference was more than terminological, the name change was suggested by Mrs Eleanor Roosevelt, the Chairperson of the Commission on Human Rights, in 1947 and used in English text of the Universal Declaration of Human Rights drafted by the Commission and adopted by the General

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1. The preambular paragraph of the "American Declaration of Independence".
 2. Art.1, the French "Declaration of Rights of Man and of the Citizen".
 3. Art.2, *ibid.*

Assembly of the UN on 10 December 1948.⁴ Thereafter, the term human rights has been used in all the relevant international and regional instruments to include both the rights of man and woman.

Human Rights are those rights which are inherent in human persons and without which they cannot live as human beings. They are the rights which come with birth and every person, irrespective of his or her race, colour, status, is entitled to them simply because he or she is human. Thus human rights are universally inherent, inalienable, and inviolable rights of all members of the human family which the states are to recognize and ensure for their citizens by providing a well defined procedure. They are indeed concerned with the dignity and worth of the individual and "represent minimal moral standards for human society."⁵

It may be mentioned here that the content of human rights-civil, political, economic, social and cultural rights-has broadly been defined at various stages of modern history. It is noticeable that the human rights mentioned in the English Petition of Rights (1628) and the Bill of Rights (1689) , as well in the Virginia Bill of Rights (1776) and the American Declaration of Independence (1776) and in the French Declaration of the Rights of Man are all civil and political rights. Therefore, the civil and political rights are primarily associated with the English, American and French "bourgeois" revolutions of the 17th and 18th centuries. On the other hand, economic, social and cultural rights find its origins primarily in the socialist and Marxist revolutions of the early 20th century. With the socialist October revolution, this new category of citizen's rights appeared in the former Soviet Union and gradually other parts of the world by revolutionary struggles and welfare movements ever since.

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4. Roenbaum, Alan S, "The Editor's Perspective on the Philosophy of Human Rights" in Alan S. Rosenbaum (ed). *The Philosophy of Human Rights, International Perspective*.
 5. Abram, Morris B, "Freedom of Thought, Conscience and Religion", *Journal of the International Commission of Jurists* (1967) 40.

However, the concept of human rights was for long entirely viewed as a matter entirely within the domestic jurisdiction of the states to grant or deny rights to their citizens and, as such, was not subject to interference from any outside pressure. But in course of time, as a result of the work of international, regional, governmental and non-governmental organizations around the globe, human rights transcend national boundaries and jurisdictions and thereby go beyond the limits of municipal public law, falling a matter of international concern to be promoted and protected within the framework of international law.

At first not the individual, but groups of individuals, minorities, within a state appeared to the conscience of civilized nations as in need of protection at the international level. All the pre-World War II concern for and efforts in the protection of religious freedom, protection for war prisoners and treatment of wounded, protection of minorities and labour cannot be described as universal as they were not general human rights to which all members of the human family were entitled. But during and after World War II it was the concern for man, for the human person which emerged at the centre of international affairs as a common denominator in the search for a better world of tomorrow.

In fact, the Second World War became a crusade against tyranny, a crusade for human rights. Political leaders and legal scholars looked to the international protection of human rights both as an end in itself and as a means of ensuring international peace. Their conviction was set out in a number of statements, declarations and proposals made while the war was still being fought. For example, President Roosevelt's "Four Freedoms" message to Congress of 6 January 1941, the Atlantic Charter of 14 August 1941, and the "Declaration by the United Nations" of January 1942.

At the end of World War II, the United Nations was established through the adoption of the Charter in June 1945. The UN Charter, which contains 111 Articles, is the first international instrument in

which the nations of the world community agreed to promote human rights and fundamental freedoms on an international level.⁷ Although the Charter contains no definition, or catalogue, of the human rights, it embodies nine direct references to the concept of human rights.⁸ In fact, human rights constitute a theme which recurs again and again throughout the Charter and are singular in its predominance. But it is the UN Charter which is the first international instrument to mention equal rights of men and women in specific terms. The Charter proclaims the determination of the peoples of the United Nations "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 "to employ international machinery for the promotion of the economic and social advancement of all peoples."⁹ One of the purposes of the United Nations is "to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."¹⁰ The Charter further states that "The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs."¹¹ Articles 13, 55 and 76 of the Charter call for the realization of human rights and fundamental freedoms "for all without distinction as to race, sex, language or religion."

The basic principle of equality of men and women affirmed in the UN Charter is reaffirmed and elaborated in the Universal Declaration of Human Rights adopted by the General Assembly on 10 December

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7. Art. 56. the UN Charter.
 8. Preamble, Arts 1(3), 8, 13(1) (b), 55 (c), 56, 62(2), 68 and and 76(c), *ibid.*
 9. The preambular paragraph, *ibid.*
 10. Art. 1, *ibid.*
 11. Art. 8, *ibid.*

1948 "as a common standard of achievement for all peoples and all nations".¹² The Declaration, which contains 19 civil and political rights¹³ and 6 economic, social and cultural rights¹⁴ to explain the contents of the human rights provisions of the Charter, proclaims that "all human beings are born free and equal in dignity and rights".¹⁵ The Declaration, with which began the real history of human rights at the level of international law, specifically provides that "Everyone is entitled to all the rights and freedoms set forth [therein] without distinction of any kind, such as sex."¹⁶

The principle of equality of men and women and the prohibition of discrimination against women are also set out in both 1966

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12. The preambular paragraph, the Universal Declaration of Human Rights.
 13. The civil and political rights recognized in articles 3 to 21 of the Declaration include : the right to life, liberty and security of person; freedom from slavery and servitude, freedom from torture or cruel, inhuman or degrading treatment or punishment; the right to recognition everywhere as a person before the law; the right to an effective judicial remedy; freedom from arbitrary arrest, detention or exile; the right to a fair and public hearing by an independent and impartial tribunal; the right to be presumed innocent until proved guilty; freedom from arbitrary interference with privacy, family, home or correspondence; freedom of movement and residence; the right of asylum; the right to a nationality; the right to marry and to found a family; the right to own property; freedom of thought, conscience and religion; freedom of opinion and expression; the right to peaceful assembly and association; the right of everyone to take part in the government of his country; and the right of everyone to equal access to public service in his country.
 14. The economic, social and cultural rights recognized in articles 22 to 27 include the right to social security; the right to work; the right to rest and leisure; the right to a standard of living adequate for health and well-being; the right to education; and the right to participate in the cultural life of the community.
 15. Art. 1, the Universal Declaration of Human Rights.
 16. Art. 2, *ibid.*

International Covenants on Human Rights. The State Parties to the International Covenant on Economic, Social and Cultural Rights undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights ..."¹⁷ Under the International Covenant on Civil and Political Rights, State Parties assume the same undertaking with respect to civil and political rights.¹⁸

Thus all the human rights codified in the Universal Declaration of Human Rights and the two International Covenants on Human Rights are applicable to women in the most fundamental sense. For, these rights shall be available to all irrespective of their sex. Thus women have been placed in the same position as men. In the context of public international law, women's rights are not therefore rights which are specific to women, but are rather universally recognized rights held by all people by virtue of their common humanity and regardless of their sex.¹⁹

It should be kept in mind that the international law of human rights is a phenomenon of the twentieth century and in fact the last half of this century may fairly be said to mark the birth of the international as well as the universal recognition of human rights. And the rights of women, along with those of men, have been recognized in major human rights instruments since the beginning of the United Nations. Prior to this, the world was essentially male dominated and it was men who have revolted against the injustices, indignities committed by despotic government to assert their dignity and common humanity. Attempts to define a body of civil and political rights, as mentioned earlier, were made in the 17th century in England, and in the 18th century in America and France which were organized by men and,

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17. Art. 3, the International Covenant on Economic, Social and Cultural Rights.
 18. Art. 3, the International Covenant on Civil and Political Rights.
 19. Burrows, Noreen, "International Law and Human Rights : The Case of Women's Rights" in Tom Campbell, David Goldberg, Sheila Mclean and Tom Mullen (ed) Human Rights : From Rhetoric to Reality. 82.

predominantly, for men to regulate the relations between men and the state. Women played an insignificant role in the determination of political, legal and institutional structures both in America and in Europe where much of the human rights debate was pursued. In some cases, the law did specifically exclude women from the exercise of human rights, but more generally they were excluded from holding rights due to the fact that the western society undervalued their importance and to some extent ignored their existence. The Virginia Bill of Rights (adopted on 12 June 1776), the American Declaration of Independence and the French Declaration of the Rights of Man reflected exactly that perspective. Women's groups and organizations in America and Europe struggled for the emancipation of women to allow them to escape their traditional domestic role and to enter more fully into society. In fact, the extension of the rights of men to include women came about by a gradual process of change in societies, as the part which women played in society changed and they increasingly entered into public life. Women's own struggle to extend the franchise led to a recognition of women's right to vote.²⁰ The right to vote was given to women in Germany in 1919, in the USA in 1920, in the UK in 1928, in France in 1944 and in Switzerland in 1971. When the United Nations was founded in 1945, women were able to vote on equal terms with men in only 30 of the original 51 Member States.²¹

The entrance of women into the work force led to demands for equal pay. The aim of the women's movement was mainly to achieve a place for women in a man's world, and in order successfully to accomplish this task there was a need to extend the legal recognition of rights to women. Thus the emphasis in international law came to be on the equality between men and women --- on the elimination of discrimination on the ground of sex.

20. Ibid, 81.

21. United Nations, *The United Nations and human Rights*, 115.

However, the inclusion of women's rights in the United Nations central document for the cause of human rights ---- the Universal Declaration of Human Rights ---- did not bring about equality. For, the Declaration is not a treaty and was not meant to have binding international force. Consequently, a number of other human rights instruments were adopted, both by the United Nations General Assembly and by UN specialized agencies, referring to various aspects of the role and status of women. For example, the *Convention on the Political Rights of Women (1952)*, the first world-wide treaty in which state parties undertook a legal obligation concerning the exercise of political rights by their women citizens and the first in which the Charter principle of equal rights of men and women was applied to a concrete problem, aims at ensuring the participation of women in public life : that they shall be entitled to vote in all elections, be eligible for election to all publicly elected bodies, and hold public office on equal terms with men. The *Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962)* reaffirms Article 16 of the Universal Declaration of Human Rights, which states that both men and women have "equal rights as to marriage, during marriage and at its dissolution" and that marriage may be entered into" only with the full and free consent of the intending spouses." The *Convention on the Nationality of Married Women (1957)* allows women, independently of their marital status, to retain or change their nationality. Parties to the Convention agree that the nationality of the wife will not automatically be affected by marriage, its dissolution, or the husband's change of nationality. An alien wife may, however, at her own request be granted the nationality of her husband through specially privileged naturalization procedures. In addition, the United Nations Educational Scientific and Cultural Organization (UNESCO) has adopted the *Convention against Discrimination in Education (1960)*, and the International

Labour Organization (ILO) the Convention on Equal Remuneration for Men and Women Workers for Work of Equal Value (1951) and Discrimination (Employment and Occupation) Convention (1958).

Despite the adoption of these international instruments and the accession of countries to them, the status of women continued to lag behind that of men. There existed widespread discrimination against women throughout the world. This led the UN to adopt further declaration and convention to ensure the universal recognition in law and in fact of the principle of equality of men and women. The Declaration on the Elimination of Discrimination Against Women, which was proclaimed by the General Assembly on 7 November 1967, and was non-binding, also described need for adopting such a Declaration thus :

"that, despite the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other instruments of the United Nations and of the specialized agencies, and despite the progress made in the matter of equality of rights, there continues to exist considerable discrimination against women."²²

The Convention on the Elimination of All Forms of Discrimination Against Women, which was adopted by the General Assembly of the UN on 18 December 1979 (and entered into force on 3 September 1981) and translated into legal form from the aforesaid declaration, also echoed the above views that despite the promulgation of various international instruments, extensive discrimination against women continues to exist."²³ Although the Convention treats the principle of equality both as a binding obligation and as a goal and provides

22. The preambular paragraph, the Declaration on the Elimination of Discrimination Against Women.

23. The preambular paragraph, the Convention on the Elimination of All Forms of Discrimination Against Women.

some indicators as to what might constitute a body of rights for women,²⁴ the situation has not improved a lot. In 1985, the representative of Panama, a State Party to the Convention, mentioned in a statement that "currently women's rights were

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24. The Convention does provide some indicators as to what might constitute a body of rights for women. It commits states to endeavoring to eliminate sex-role stereotyping (Article 5); to eliminating traffic in women and the exploitation of the prostitution of women (Article 6); to providing rights surrounding maternity such as protection from dismissal on the grounds of pregnancy, the right to maternity leave, and the right to special protection for women in types of work proved harmful to them (Article 11). For women in rural areas, the Convention encourages states to permit them to organize self-help groups and agricultural cooperatives in order to help them obtain access to paid employment and to have 'access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian freedoms' (Article 14). In family law, women are to be accorded equal rights with men to enter marriage, to divorce, in respect of matrimonial property, in respect of children and of personal rights (Article 16). However, the main thrust of the Convention is the elimination of discrimination and it is not intended to provide a list of rights for women. Rights exclusive to women are those centred on childbirth and would be accorded to women before, during and after the confinement. The Convention provides for some of these rights, for example the right to maternity leave with pay, or to special protection for women during pregnancy in types of work proved to be harmful to them. Other rights which might be said to be exclusive to woman are those which enable her to protect her person, such as the right to abortion, and to choose the time and spacing of her children. Other rights need not be sex-specific in their general formulation but could be particularized to situations in which women would be the main beneficiaries were such rights recognized by the state. Thus, the right to a minimum wage for child-care or for work performed in the home or in subsistence farming would acknowledge the protected status of such tasks, and the applicability of human rights standards to them and to the persons who predominantly perform them. The right to literacy would also benefit women who make up the bulk of the world's illiterates.

respected to about 50 percent"²⁵ in no other area is the disparity between the formal or proclaimed equality and the reality of discrimination at home, in society, and in the work place so great. This is true even of the developed and enlightened countries which are members of the Council of Europe (consisted of 21 Member States), whose legislation and practice do not always meet the goal of equality of women.²⁶ Although the first convention on women's rights in the history of the world was held at Seneca Falls, New York, where delegates drew up a declaration demanding equality with the male sex before the law, in educational and economic opportunities and in voting,²⁷ the equality of rights movement has suffered setbacks in the USA. The Equal Rights Amendment passed by the Congress was not eventually ratified by the required number of State Legislatures : and that in a country with a powerful feminist lobby. The proposed 27th Amendment to the USA Constitution, which provided that "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex," was first submitted to the States on 22 March 1972. In October 1978, the Congress extended the original seven years allotted for ratification to 30 June 1982. But the Amendment lacked on this date ratification by three of the required 38 states²⁸ and, as such, could not become a part of the US Constitution. Thus feminist claims have had to compete with conservative elements within states in order to achieve any kind of recognition and typically, it is the strongest claims which win out in the political process. This is also evident from the report of

25. UN Doc. CEDAW/C/1985/L.1/Add. 8., para 30 (1985)

26. Recommendation No. R. (85) 2 of the Committee of Ministers to Member States on Legal Protection Against Sex Discrimination (1985).

27. Olson, Keith W, *An Outline of American History*, 73.

28. Schmidhauser, John R., *Constitutional Law in American Politics*, 627.

the Permanent Representative of the Philippines to the Committee on the Elimination of Discrimination Against Women in which it was stated that

"women complemented men but were not equal to them and that men preferred their women to remain feminine and gentle."²⁹

The foregoing discussion may give the impression that the concept of human rights and the principle of equality between men and women are the imagination and formulation of the west. But this is not so. One thousand and four hundred years ago, several hundred ahead of the national and international efforts of the West in the field of human rights, Islam has laid down human rights for the members of the human family which are to be observed and respected in all circumstances. In this context, the observations of Professor Briffault are worth-quoting :

"The ideals of freedom for all human beings, of human brotherhood, of the equality of all men before the law, of democratic Government by consultation and universal suffrage, the ideals that inspired the French Revolution and the Declaration of Rights, that guided the framing of the American Constitution and inflamed the struggle for independence in the Latin American countries were not inventions of the West. They find their ultimate inspiration and source in the Holy Quran. They are the quintessence of what the intelligentsia of Mediaeval Europe acquired from Islam over a period of centuries through the various channels of Muslim Spain, Sicily, the Crusaders; and of the ideals propagated by the various societies that developed in Europe in the wake of the Crusades in imitation of the brotherhood associations of Islam".³⁰

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29. Galey M., "International Enforcement of Women's Rights" 6(1984) Human Rights Quarterly, 485.
30. Quoted in Pirzada, S. Sharifuddin, Fundamental Rights and Constitutional Remedies in Pakistan, 78.

Thus Professor Briffault claims that contemporary human rights doctrines merely give recognition to 1400- year - old Islamic ideas. Now an attempt will be made to examine the nature of human rights laid down by Islam. Furthermore, the special rights given to women by Islam will be discussed.

Human Rights and Islam

Human rights in Islam mean those rights which are granted by Allah and can neither be suspended nor abrogated, as there is no higher purpose to which they are subservient. They are an integral part of the Islamic faith. The Islamic attitude towards human rights is that it places their formulation and fulfillment entirely within the religious obligation, the duty to obey the dictates of the Holy Quran, and the practice of the Holy Prophet and the responsibility to answer for all actions on the day of Last Judgment. Hence they are to be accepted, recognized and enforced. It should be mentioned that, unlike the Universal Declaration of Human Rights or the International Covenants on Human Rights, no particular Sura of the Holy Quran is to be found to provide for the list of human rights in Islam. Since Allah revealed the Quran piece-meal to meet the requirements of the Islamic Movement (started by the Holy Prophet under His direct command) at its different stages, human rights are to be found scatteredly in various verses of different Suras of the Quran and the Prophet's Traditions. However, the following human rights can be traced from the Quran and Sunnah :

1. The Right to Life

The right to life is the first and foremost basic human right as it is essential to the enjoyment of all other rights. Islam gives this right to each and every human being irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin or other status. The Holy Quran, which declares human life as sacrosanct, lays down :

"Whosoever kills a person --- unless it be for murder, or for creating disorder in the land ---- it shall be as if he had killed all

mankind. And if any one saves a life, it shall be as if he had saved the lives of all mankind."³¹

"Nor take life which Allah has made sacred except for just cause".³²

"Do not take life which Allah has made sacred except through the due process of law."³³

Thus Islam has clearly laid down the situations in which a person's life can be taken. And in any event, this can only be taken in accordance with the decision of a competent court. The Prophet (PBUH) has also affirmed the inviolability of human life thus :

"The greatest sins are to associate something with Allah and to kill human beings."³⁴

"One who kills a man under covenant (a non-Muslim citizen of an Islamic State) will not smell even the fragrance of Paradise."³⁵

"O people, verily your life, your property and your honour are sacred and inviolable until you appear before your Lord."³⁶

2. Equality Before Law

The principle of equality before the law is of the essence of the rule of law and of human freedom. It implies the absence of any special privilege in favour of an individual by reason of birth, sex, creed or the like and also the equal subjection of all individuals and classes to the ordinary law of the land.

Islam extends the right of equality before law to all human beings and concedes no privilege on account of birth, race, colour or nationality.

31. Sura 5 : Verse 32, Quran.

32. Sura 17 : Verse 33, ibid.

33. Sura 6 : Verse 151, ibid.

34. Hadith.

35. Hadith, Bukhari, Kitab-ul-Zimma.

36. Declared by the Prophet (PBUH) in His sermon on the occasion of the Farewell Hajj.

It not only recognizes the principle of equality among men but also between men and women by declaring them descendants of common ancestors. As Almighty Allah has laid down in the Holy Quran :

"O mankind, We have created you from a single pair of male and female and we have made you into nations and tribes, so that you may recognize each other."³⁷

"O mankind, be careful for your duty to Lord who created you from a single being and from the same created your mate, and from them twain scattered (like seeds) countless men and women and be careful of your duty to Allah in whose name you demand your mutual rights and be mindful of your ties of kinship, For Allah is ever watchful over you."³⁸

"Mankind was one single nation."³⁹

The Prophet (PBUH) has also declared the principle of equality of the entire human race in his address on his farewell Hajj thus ;

"No Arab has any superiority over a non-Arab, nor does a non-Arab have any superiority over a black man, or the black man any superiority over the white man. You are all the children of Adam, and Adam was created from clay."⁴⁰

The Prophet further proclaimed, "People are all equal as the teeth of a comb." In fact, he translated the right of equality before law during his life time. Once, a woman, belonging to a high and noble family of Medina, was charged with the offence of theft. The Prophet, who was himself the Chief Justice, was requested to spare her from punishment. He replied,

"The nations that lived before you were destroyed by Allah because they punished the common men for their offences

37. Sura 49 : Verse 13, Quran.

38. Sura 4 : Verse 1, *ibid*.

39. Sura 2 : Verse 213, *ibid*.

40. Muslim, *Kitab-ul-Hajj*.

but let their dignitaries go unpunished for their crimes. I swear by Him (Allah) Who holds my life in His hand that even Fatima, the daughter of Muhammad (SAAS), had committed this crime then I would have amputated her hand."⁴¹

Quran recognizes, only one criterion for superiority of one man over another and that is on the basis of more righteous conduct and not colour, race, language or nationality. As it was declared :

"Verily, the most honourable among you in the sight of Allah is he who is the most righteous among you. Surely Allah is all knowing, all aware."⁴²

"And for all are ranks according to their deeds so that Allah may repay them for their works (and in this) they shall not be dealt with unjustly."^{42a}

Among the outstanding and striking features of the Quran, particularly in comparison with the scriptural texts of other monotheistic traditions, is that women are expressly addressed; the absolute moral, spiritual and intellectual equality of men and women have been overtly declared fourteen centuries ago. As the Quran says :

For Muslim men and women, -----
 For believing men and women,
 For devout men and women,
 For true- (truthful) men and women,
 For men and women who are patient
 and constant, for men and
 women who humble themselves, for
 men and women who give in
 charity, for men and women who
 fast (and deny themselves), for
 men and women who guard

41. Mishkat, Kitab-ul-Hudood.

42. Sura 49 : Verse 13, Quran.

42a. Sura 46 : Verse 19, ibid.

their chastity, and for
men and women, who engage
much in God's praise, – for
them has Allah prepared forgiveness
and a great reward.⁴³

Commenting on this verse, Professor Leila Ahmed said :

"Balancing virtues and ethical qualities, as well as concomitant rewards, in one sex with the precisely identical virtues and qualities in the other, the passage makes a clear statement about the absolute identity of the human moral condition and the common and identical spiritual and moral obligations placed on all individuals regardless of sex,"⁴⁴

There are other Quranic verses declaring similar emphasis and thrust:

The Believers, men and women, are protectors, one of another : they enjoin what is just, and forbid what is evil they observe regular prayers, practise regular charity, and obey Allah and His Apostle. On them will Allah pour His mercy : for Allah is exalted in power, Wise."⁴⁵

"I suffer not the good deeds of any to go to waste, be he a man or a woman : the one of you is of the other."⁴⁶

Further the Quran says : "The women are raiment for you (men) and you are raiment for them."⁴⁷ This verse has beautifully and aptly described the companionship between a man and a woman. Like a raiment, they are to give protection, security, charm, warmth and intimacy to each other.

Where a woman is equal to the customary heir in proximity to the deceased (for example if a daughter co-exists with the son, or sister

43. Sura 33 : Verse 35, *ibid*.

44. Ahmed, Leila, *Women and Gender in Islam*. 64-65.

45. Sura 9 : Verse 71, Quran.

46. Sura 3 : Verse 195, *ibid*.

47. Sura 2 : Verse 187, *ibid*.

with a brother), the Islamic law gives her half the share of the man. This is often cited as a discriminatory provision. In fact, this is not so. There are good reasons for the difference between men and women in respect of a share in inheritance. It is man who is solely responsible for the complete maintenance of his wife, children, mother, sister, daughter or a distant female relative. He is to give dower to his wife at the time of, or after, marriage and is also to make a payment to her upon divorce. In fact, all financial burdens are borne by him alone, whereas the wife retains full rights over her property and is not obliged to spend anything on her upkeep or to pay any dowry to her husband and thus always preserves her share and property. Hence, Islam has given the man a larger portion of the inherited property to help him to meet his family needs and social responsibilities. The views expressed by Allama Iqbal in this respect are worthy of note :

"The share of daughter is determined not by any inferiority inherent in her but in view of her economic opportunities and the place she occupies in the social structure of which she is a part and parcel while the daughter according to Mohammedan Law is left to be full owner of the property given to her both by father and husband at the time of her marriage; while further she absolutely owns her dower money which may be prompt or deffered according to her choice and in lieu of which she can hold possession of the whole of her husband's property till payment, the responsibility of maintaining her throughout her life is wholly thrown on the husband. If you judge the working of the rule of inheritance from this point of view you will find that there is no material difference between the economic possession of sons and daughters, and it is really by this apparent inequality of their legal shares the law secures the equality.⁴⁸

It should be kept in mind that before Islam, woman had not only been deprived of the right to inherit but also she had been an object or a property of inheritance. Fourteen hundreds year ago, Islam granted

48. Iqbal, the Reconstruction of Religious Thought in Islam, 169-170.

her a right to a certain share in the deceased kin's property as a wife, a mother, a sister or a daughter depending on her degree of relationship to the deceased and the number of heirs :

"From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large, --- a determinate share."⁴⁹

Of the newly created 12 Quranic heirs, 8 are females. It may be pertinent to mention here that in some of the European and Scandinavian countries and in China daughter did not inherit in days prior to the 'War of Crusades' and before Islam's influence penetrated in Europe.⁵⁰ Under the Dayabhaga School of Hindu Law, not all the daughters of a man are equally eligible to inherit. The unmarried daughters succeed first, then the married daughters having male issue. Daughters who are barren or are mothers of female issue only are excluded from inheritance.

In principle, both man and woman in Islam are equally entitled to inherit the property of the deceased relations but the proportions they get vary. The fact that in some instances a man gets two shares whereas a woman receives only one does not mean that this has been done to give preference or supremacy to man over woman but to enable him to carry out his extra responsibilities of protecting and maintaining women. The whole status of woman has been succinctly portrayed in the following verse of the Holy Quran :

"And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage) as in some cases of inheritance over them."⁵¹

5. The Right to Property

The right to property means the right to acquire, enjoy, hold and dispose of property. Islam confers the security of ownership of

49. Surah 4 : verse 7, Quran.

50. Sadr, Hasan, Rights of Rights of Woman in Islam, 310.

51. Sura 2 : verse 228, Quran.

property upon every human being without discrimination in respect of the property acquired by lawful means. The Holy Quran declares :

"And do not eat up your property among yourselves for vanities, nor use it as bait for the judges, with intent that you may eat up wrongfully and knowingly a little of (other) people's property."⁵²

"O you who believe, eat not up your property among yourselves in vanities : but let there be amongst you traffic and trade by mutual goodwill."⁵³

Similarly, the Prophet (PBUh) in his address delivered on 7 March 632 on the occasion of the Farewell Hajj said :

"Your properties are forbidden to one another till you meet your Lord on the Day of Resurrection."

Islam recognizes the right of every woman to acquire, hold, manage and dispose of her property independently of her father or husband. In this regard, the Holy Quran says :

"To men is allotted what they earn, and to women what they earn."⁵⁴

Thus in Islam, the income of women is her own property and she is its absolute owner. It may be mentioned here that "It was only in 1870 that English Common Law accepted the principle that married women had the right to have some control over her own property and that it could not be transferred without her permission to her husband on marriage. The same principle was only recognized by France in 1937."⁵⁵ It goes without saying that in Islam there is no such thing as a widow's estate as it is to be found in Hindu Law. If any Hindu dies leaving a widow and a brother, the widow succeeds to the property as his heir but she does not inherit the property absolutely. She is

52. Sura 2 : verse 188, *ibid.*

53. Sura 4 : verse 32, *ibid.*

54. Sura 4 : verse 29, *ibid.*

55. Sheriff, Sarah, *Women's Rights in Islam*, 12.

entitled only to the income of the property and cannot make a gift of the property nor can she dispose of it unless there is a legal necessity. On her death the property will pass not to her heirs, but to the next heir of her husband.

4. Freedom of Expression

Freedom of expression means that a person is entitled to express his views freely so long it does not transgress the limitations placed by law. Islam gives this right to all human beings for propagating virtue and not for spreading evil. The believer is under an obligation to speak out the truth without fear and without desire to show favour. As the Quran says :

"The believers, men and women, are protectors, one of another : they enjoin what is just, and forbid what is evil"⁵⁶

"Allah loveth not the utterance of harsh public speech except where injustice has been done."^{56a}

The Prophet has said, "Most honoured struggle (is of) one who speaks the truth in face of an oppressive ruler."⁵⁷ He also urged the people to stop evil :

"If any one of you comes across an evil, he should try to stop it with his hand (using force); if he is not in a position to stop it with his hand then he should try to stop it by means of his tongue (meaning he should speak against it). If he is not even able to use his tongue then he should at least condemn it in his heart. This is the weakest degree of faith."

5. Freedom of Association

Freedom of association, which is important for the maintenance of political liberty, presupposes organization and a relation of some permanence between many persons to freely meet and discuss their grievances and to work out in unison a plan of action to set things

56. Sura 9 : verse 71, Quran.

56a. Sura 4 : verse 148.

57. Tabrizi : Mishkat-at-al-Masabeeh, Vol. II, 325.

right. Islam has given the people the right to freedom of association and formation of parties or organization. As the Holy Quran declares :

"Let there arise out of you a band of people inviting to all that is good, enjoining what is right and forbidding what is wrong. They are ones to attain felicity."⁵⁸

"Be not like those who are divided amongst themselves and fall into disputation after receiving clear signs, for them is dreadful penalty."⁵⁹

Thus the right to freedom of association in Islam should be exercised for propagating virtue and righteousness and should be never used for spreading evil and mischief.

6. Freedom of Movement

Freedom of movement means the right of free movement within and outside the country. Islamic State cannot impose restriction on the right of any of its subjects from settling and residing in any particular part of the state. Similarly, no one can be restricted from going outside the state under the ordinary circumstances. The Holy Quran says :

"It is He who has made the earth manageable for you, so travel you through its tracts and enjoy of the sustenance which He furnishes; but unto Him is the Resurrection."^{59a}

7. The right to Justice

The right to justice is a very important and valuable right which Islam has given to all human beings. The first and foremost duty of an Islamic State is to administer justice impartially so that the weak may not despair of justice and the rich and the elite may not expect favours. The Holy Quran declares :

"And when you judge between man and man, that you judge with justice."⁶⁰

58. Sura 3 : verse 104.

59. Sura 3 : verse 105.

59a. Sura 67 : verse 15, *ibid.*

60. Sura 4 : verse 58, *ibid.*

"O you who believe stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just : that is next to piety."⁶¹

"And I (the Prophet) am commanded to judge justly between you."⁶²

"If any do fail to judge by (the light of) what Allah has revealed, they are (no better than) unbelievers."⁶³

Thus the Muslims have to establish justice; they are to be just not only to their friends but also to their enemies. The members of the Muslim community are enjoined to establish justice even if their own interests are in danger. As the Holy Quran declares :

"O you who believe! stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parent, or your kin, and whether it be (against) rich or poor : for Allah can best protect both. Follow not the lusts (of your hearts), lest you swerve, and if you distort (justice) or decline to do justice, verily Allah is well-acquainted with all that you do."⁶⁴

8. Security of Personal Freedom

Security of personal freedom means the freedom of the person or body from arbitrary imprisonment and physical coercion, Islam has laid down the principle that no citizen may be imprisoned unless his guilt has been proved in open court. To arrest a man only on the basis of suspicion and throw him into prison without proper court proceedings and without providing him with a reasonable opportunity to produce his defence is not permissible in Islam.⁶⁵ This is inferred

61. Sura 5 : verse 8-9, *ibid.*

62. Sura 42 : verse 15, *ibid.*

63. Sura 5 : verse 47, *ibid.*

64. Sura 4 : verse 135, *ibid.*

65. Mawdudi, Abul A'la, *Human Rights in Islam*, 25.

from the Sunnah : A tradition is reported by Abu Daud to the effect that some persons were arrested on suspicion in Medinah in the times of the Holy Prophet. Subsequently, while the Holy Prophet was delivering the Friday Sermon (Khutba), a Companion (their neighbours) enquired of him as to why and on what grounds had these persons been arrested. The Holy Prophet (PBUH) maintained silence while the question was repeated twice, thus giving an opportunity to the police officer, who had carried out the arrest and was present there, to explain the reasons for the arrest. When the question was put for the third time and the police officer did not give any reasons in open court, the Holy Prophet ordered that those persons should be released apparently on the belief that the police officer had no valid reasons to disclose for the arrest. On the basis of this tradition, it is argued that Islam recognizes only two kinds of detention : (a) under the orders of the court and (b) for the purposes of investigation.⁶⁶ Caliph Umar is reported to have said : "In Islam no one can be imprisoned without due course of justice.

9. The Right to Privacy or the Sanctity and Security of Private Life.

Privacy of life, which is essential for a refined life of goodness and purity, is the right of everyone. Islam forbids undue interference or encroachment on a person's private life. The Holy Quran has laid down the following injunctions in this respect :

"Do not spy on one another."⁶⁷

"O you who believe! enter not houses other than your own, until you have asked permission and saluted those in them; that is best for you in order that you may be heedful."⁶⁸

66. Malik, Moqbul Ilahi, "The Concept of Human Rights in Islamic Jurisprudence", (1981) 3. Human Rights Quarterly, 62.

67. Sura 49 : verse 12, Quran.

68. Sura 24 : verse 27, ibid.

"If you find no one in the house, enter not until permission is given to you : if you are asked to go back, go back : that makes for greater purity."⁶⁹

The Holy Quran further says,

"O you who believe! enter not the Prophet's houses—until leave is given you,— for a meal, (and then) not (so early as) to wait for its preparation : but when you are invited, enter; and when you have taken your meal, disperse, without seeking familiar talk. Such (behaviour) annoys the Prophet (PBUH) : he is ashamed to dismiss you, but Allah is not ashamed (to tell you) the truth."⁷⁰ This verse has also a social as well as a spiritual bearing : respect and delicate consideration for others are among the highest virtues.

The Prophet (PBUH) also went to the extent of instructing his followers that a man should not enter even his own house suddenly. He should somehow indicate to those inside that he is entering, so that he may not see his mother, sister or daughter in a condition in which they would not like to be seen, nor in which he himself would like to see them. Peering into the houses of other people has also been strictly prohibited-- so much so that there is the saying of the Prophet (PBUH) that if a man finds another person secretly peering into his house, and he puts out his eye or eyes as a punishment, he will not be liable to prosecution. The Prophet (PBUH) has even prohibited people from reading the letters of others; indeed, if a man is reading his letter and another man casts sidelong glances at it and tries to read it, his conduct becomes reprehensible.

Thus Islam grants sanctity of privacy to individuals for purity of life, conduct and motives

10. The Right to Protection of Honour and Good Name

Islam attaches great importance to the protection of honour and good name of the members of the human family. Allah seriously warns the

69. Sura 24 : verse 28, *ibid.*

70. Sura 33 : verse 53, *ibid.*

community against loose talk, making of reckless allegations and spreading of rumours. As the Holy Quran lays down :

"O you who believe! Let not some men among you laugh at others : it may be that the (latter) are better than the (former) ; nor let some women laugh at others ; it may be that the (latter) are better than the (former) : nor defame nor be sarcastic to each other, nor call each other by (offensive) nicknames."⁷¹

"Do not speak ill of each other, behind their backs (that is do not back bite one another). Would any of you like to eat the flesh of his brother who is dead?"⁷²

In address delivered on the occasion of the Farewell Hajj, the Prophet (PBUH) also prohibited the Muslims from encroaching the honour, respect and chastity of other Muslims.

It should be stressed that the Holy Quran contains certain verses specially for the protection of chastity, honour, and good name of women. They are :

"Those who slander chaste women, indiscreet but believing are cursed in this life and in the hereafter : for them is a grievous penalty."⁷³

"And those who malign believing men and believing women undeservedly, they bear the guilt of slander and manifest sin."⁷⁴

"Do not approach the (bounds) of adultery".⁷⁵

11. Freedom of Conscience and Conviction

Islam recognizes the right of freedom of conscience and conviction of all human beings. Muslim can invite non-Muslims to accept Islam

71. Sura 49 : verse 11, *ibid.*

72. Sura 49 : verse 12, *ibid.*

73. Sura 24 : verse 23, *ibid.*

74. Sura 33 : verse 58, *ibid.*

75. Sura 17 : verse 32, *ibid.*

but they cannot compel them to embrace Islam. For religion depends upon faith and will and these would be meaningless if induced by force. Hence the Holy Quran has laid the injunction :

"Let there be no compulsion in religion."⁷⁶

The freedom of conscience and conviction also includes the right to profess, practice and propagate one's religion. No Islamic Government can ban propagation of any other religion on its territory. The followers of other religions are also entitled to construct their places of worship and Muslims cannot interfere with them.⁷⁷

12. The Right to Participate in the Affairs of the State

In Islam, Governments are considered as the representatives (Khalifa) of the Created of the Universe. As the Holy Quran says :

"Allah has promised, to those among you who believe and work righteous deeds, that He will, of a surety, grant them in the land, inheritance (of power)."⁷⁸

The method recommended by the Holy Quran for running the affairs of the state is mutual consultation. The most direct verses on the point are :

"Their (believer) affairs are (decided) by mutual consultation."⁷⁹

"And consult them in the matters of administration."⁸⁰

The above principle was applied to its fullest extent by the Holy Prophet (PBUH) in his private and public life, and was fully acted upon by the early rulers of Islam. Modern representative government is an attempt to apply this principle in state affairs.

76. Sura 2 : verse 256, *ibid*.

77. Hussain, Shaikh Shaukat, *Human Rights in Islam*, 53.

78. Sura 24 : verse 55, *Quran*.

79. Sura 42 : verse 38, *ibid*.

80. Sura 3 : verse 159, *ibid*.

However, it is the right of every Muslim including woman either to have a direct say in the affairs of the state or to have a representative chosen by him and other Muslims to participate in the running of the affairs of the state. Western women, as mentioned earlier, won the right to vote only during the beginning of this century; in contrast, Muslim women had this right from the earliest years of Islam and regularly participated in the political process.

13. The Right to Education

Education improves one's life chances and gives one opportunities to seek new horizons and a better understanding of life and its potential. Hence Islam sanctions the right of every human being to educate himself. The seeking of knowledge is repeatedly encouraged in the Holy Quran by the words that one should 'see' 'look', 'think', 'judge', 'reflect' etc. The Prophet (PBUH) enjoined upon every Muslim to seek knowledge when He said : "knowledge is incumbent on every male and every female."

14. The Right to the Basic Necessities of Life

It is the duty of every Muslim to earn a lawful livelihood and also to contribute to the common pool for looking after the needs of those who have suffered permanent or temporary disability.⁸¹ Islam has sanctioned the right of every human being to the basic necessities of life and has recognized the right of the needy to assistance. In this respect, the following verses may be mentioned :

"And in their wealth and possessions (was remembered) the right of the (needy) him who asked, and him who (for some reasons) was prevented (from asking).⁸² And they feed, for the love of Allah, the indigent, the orphan, and the captive (captive meaning dumb animal)"⁸³

81. Ishaque, Khalid M., "Muman Rights in Islamic Law" (1974) 12 The Review of the International Commission of Jurists, 36-37.

82. Sura 51 : verse 19, Quran.

83. Sura 76 : verse 8, ibid.

'And when the prayer is finished, then disperse in the land and seek of Allah's grace and celebrate the praises of Allah often, that you may prosper."⁸⁴

Thus if a Muslim comes to know that a certain person is in need of assistance, then, irrespective of whether he asks for assistance or not, it is his duty to give all the help that he can. Without relying on this voluntary charity, Islam has made 'zakat' compulsory, its third pillar. In this context, the Prophet (PBUH) said: "It (zakat) will be taken from the rich and given to those in the community in need."⁸⁵ Moreover, an Islamic State should support those who have no body to support them. As the Holy Prophet declared : " The Head of State is the guardian of him who has nobody to support him."⁸⁶

Special Rights of Women

Apart from these general rights, which are applicable to man and woman without any distinction, there are certain special rights which have been granted to woman by Islam. Some of these special rights are discussed below :

(1) Right to Dower

Dower, which is an essential incident under the Islamic Law to the status of marriage, is a sum of money or other property to be paid or delivered to the wife by the the husband as a mark of respect to the wife even it is not fixed at the time of marriage. As the Quran says :

"And give the women (on marriage) their dower as a free gift".⁸⁷

After the death of the husband, the wife is entitled to retain the possession of the whole or part of his estate (if it is obtained lawfully)

84. Sura 62 : verse 10, ibid.

85. Bukhari and Muslim.

86. Abu Dawud, Tirmidhi.

87. Sura 4: verse 4, Quran.

until dower is paid. Thus Islam sought to make dower, which in pre-Islamic Arabia had been paid to the wife's father, into a real settlement in favour of the wife, a provision for a rainy day and, socially, it became a check on the capricious exercise by the husband of his almost unlimited power of divorce. A husband thinks twice before divorcing a wife when he knows that upon divorce the whole of the dower would be payable immediately.

(2) The Right to maintenance

The wife is entitled to maintenance from her husband although she may have the means to maintain herself. She has the right to be totally supported by the husband in all her needs --- food, clothing, lodging, medication, entertainment etc. As the Holy Quran says :

"Men are the protectors and maintainers of women".⁸⁸

The Prophet (PBUH) in his address on the occasion of Farewell Hajj also said :

"You have to provide for dress and food for women in a nice and suitable manner, the women are like your captives and have nothing on their own, take them as a trust of Allah's words."

Conclusion

The foregoing discussion reveals that only from the end of the Second World War, especially after the establishment of the United Nations, did much concern begin to be expressed for general human rights to which all members of the human family were entitled. The Charter of the United Nations, The Universal Declaration of Human Rights, the International Covenant on Human Rights and other instruments of the UN and of the specialized agencies, adopted in the last half of the 20th century, contain provisions concerning the principle of equality of men and women and the prohibition of

88. Sura 4 : verse 34, *ibid.*

discrimination against women. Despite the adoption of these international instruments, there exists widespread discrimination against women throughout the world. Moreover, Human rights of the people have been violating in many countries and the issue, in fact, has been politicized.

It should be stressed here that the protection of human rights of the people is much more difficult than either defining them or adopting declarations, bills and covenants concerning human rights. The major problem is that neither the United Nations nor any other organization in the world has the power to force nations to honour all the rights of their citizens. The implementation of international human rights law depends for the most part on the voluntary consent of the nations; the mechanism for the observance or enforcement of human rights are yet in their infancy. Thus it seems that until there is some machinery that has such power or until the world becomes a more perfect place, the violations and abuses of human rights will continue to be fact of life. But that does not mean that violations of human rights cannot be slowed down or in some cases, prevented. In order for that to happen people across the globe will have to speak up against such infringements. It is public opinion, especially when the nationals of several countries are involved, which alone is capable of forcing States to respect human rights. For, in today's world, the most effective sanction against the violation of human rights remains, whether one likes it or not, public opinion.

Fourteen centuries before the effort of the United Nations in the field of human rights, Islam had provided for human rights applicable to the entire human family, The community as a whole and by the same token every individual is forbidden from transgressing what the Holy Quran characterizes as the "limits prescribed by Allah."⁸⁹ They are enjoined to ensure the enjoyment of the human rights. Though final accounting will be done on the day of judgment, yet some transgressions are punished in the world by provisions made in the

89. Sura 2 : verse 229, *ibid.*

Quran itself and some are not. In fact, human rights in Islam are an integral part of faith, an essential part of the Sharia and, as such, immutable. They constitute obligations connected with the Divine. Human rights in Islam exist only in relation to human obligations. Islam has given woman rights and privileges which she has never enjoyed under other religious or constitutional systems. No religion allowed woman equality. It is to be kept in mind that, in Islam, the rights and responsibilities of a woman are equal to those of a man but they are not necessarily identical with them. Equality and sameness are two different concepts. The fact that Islam gives her equal rights - but not identical — shows that it takes her into due consideration, acknowledges her, and recognizes her independent personality. It has given women a carefully crafted rights. In the words of French sociologist Maurice Guadfroy Demombynes : "The Quranic Law gives the wife a status which is in many respects more advantageous than that bestowed by modern European laws."⁹⁰ Therefore, Islamic concepts of human rights, to be judged fairly, must be seen in the context of pre-Islamic Mores and the prevailing Roman, Persian and Hindu Laws of the period.

90. Quoted in Sheriff, Sarah, op. cit, 7.