

# ***Prosiding Persidangan Serantau Isu-isu Semasa IV***

## **Tarikh**

***23 November 2011 (Rabu)***

## **Masa**

***7.30 pagi-4.00 petang***

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## **Human Rights from an Islamic Perspective**

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### **Abstract**

A critical overview of human rights from western perspective reveals their deficiencies in conceptualization, flaws in formulation, and injustices in application. This all is due to political agendas, economic pressure and culturally biased viewpoints. They often serve the interests of certain organizations. As such they carry the residues of colonialism and imperialism. This is clear from the ongoing suppression and atrocities inflicted on poor and weak nations without any effective measures being taken by these organizations for their defense and protection. Double standard is applied when it comes to the violation of human rights. Weak states are vigorously pursued whereas, powerful are blatantly exempted from prosecution. Islam as a divine and universal guidance lies a comprehensive framework of values that embodies universal human rights, which is free of bias and deal with the abuser of the human rights equally regardless the race, religion and color factors, hence provides a universal criterion for human rights. Therefore, this paper attempts to analyze the issue of human rights from an Islamic perspective in the light of the purposes of the law, and delineate the mechanism for their protection. Using both descriptive and analytical methods the research concludes that Islam provides a comprehensive and practical mechanism for protection of human rights which is just and of universal application hence is the pioneer of human rights.

### **Introduction**

Naturally, human beings are entitled to certain rights necessary for their existence and continuation of life. However the question of what those rights are is much debated. Some cultures in the context of discussion of human rights concentrate more on individual rights and freedoms, whereas, others focus shift from individual rights to the rights that ensure the survival of communities. The diversity of nations and tribes and hence, their varying laws and declarations make it impossible to be accepted universally no matter how morally outstanding they are? (<http://www.islamreligion.com/articles/2575>) Unfortunately, under the influence of growing power and politics involved in the advocacy of human rights, certain people tend to view the western ideals as universal ideals applicable to all, despite their inadequacy and biasness. This has led to the perception of the human rights doctrine as a tool for the propagation of western moral imperialism and economic domination. This is rightly observed by Yusuf saraf "... the united nation is after all a political organization and its decisions are political decisions"... as such it is difficult to determine the availability and applicability of fundamental rights of men within a country purely on honest, rational basis, hence, susceptible to exploitation for political reasons.( Saraf, M. Yusuf, 1978:140)Furthermore, the member states may not be genuinely interested in the violation of human rights in a particular country to voice out against such act, for it may not enhance her interest. We have so many examples

of this sort of violation from among which is the most recent one, the case of Libya where United Nations sanctioned military action against the Libyan regime due the violation of human right- mass massacre of civilians by the regime. Whereas, the cry for taking the same action against Syrian regime, for heavy handed military use against the civilians falls on deaf ears, due to economic and political consideration.

Ironically, in recent decades, abuses of human rights are being perpetrated, often in the name of religion and to our dismay sometime in the name of Islam. However, it is imperative to bear in mind that just because a country is known as Islamic, this does not necessarily means that it automatically practice Islam thoroughly. It is also of equal importance to realise that not all Muslims understand and follow their religion as they are supposed to. This is rightly observed by Ilyas Bay-Yunis :“there is a general tendency among scholars as well as layman both, Muslim and non- Muslim, to confuse Islam with what Muslims do. Whereas, what Muslims actually do may range from being Islamic, non-Islamic to anti-Islamic”(Ilyas Bay-Yunis, et al., 1985: 27) Therefore, it is not fair to attribute violation of human rights committed by Muslims to Islam as such act might be due to their cultural affiliation rather than religious orientation.

Qur’an as a divine book and guidance for all mankind sent down to the prophet Muhammad (p.b.u.h) contains rights and responsibilities granted by God to all mankind. They are not subject to the whim and desires of human being. It contains the basic rules designed for protection of individual rights and freedom. However, it caters for individual rights in a manner that does not infringe upon the rights of community. Being religion of universal application, Islam is concerned with respect, tolerance, justice, and equality and its concepts of freedom and human rights are imbedded in the faith in One God. Hence, mankind’s security and peace depend on his compliance with His commands and obedience to Him. For, He is the sole Creator and Sustainer of mankind and the universe, and has bestowed human being with dignity and honour. The rights and privileges enjoyed by human being are granted by Him, and are meant for everybody without discrimination. No one is in position to lay exclusive claim to these rights. In other words, one person is not more worthy of protection than another is. Thus, each person is eligible to sustenance, shelter, and security. In case of the denial of these God –given rights to someone, it is the obligation of the rest of the humankind to restore them to their rightful owner. As it is commanded by God in the Quran:

“O you who believe! Stand out firmly for God, be just witnesses, and let not the enmity and hatred of others make you avoid justice. Be just: that is nearer to piety, and fear God. Verily, God is well acquainted with what you do. ( Qur’an, 5:8)

This verse signifies the equality of all mankind before God and that the true human rights can be achieved through obedience to Him.

### **Maqasid *al-Shari’ah* As the Basis of Human Rights**

A thorough survey of the commands and prohibitions of the Islamic law pertaining to the legal obligations, regardless of whether they belong to matters of faith, legislation,

worships or ethics, reveals *maslahah* (securing of benefit and removal of harm) as its main objective. In other words, attraction of utility/ benefit and avoidance of harm is the focal point of all legal obligations. This cannot be achieved unless what is called, the five principles values comprising religion, life, intellect, progeny and property are secured and preserved. The preservation of these elements is essential to the existence of society and continuation of human life. This can become obvious if we were to explore the underlying reason of all legal commands and prohibitions, which is the realization and protection of these elements. Thus, each command and prohibition and their relevant legislations aims directly or indirectly to attain one of these five basic values.

Accordingly, religion represents a natural need of humankind, hence, constituting an essential element of life. Soul represents the fulfillment of the instinct of life by its preservation and protection. Intellect as the prerequisite for legal obligation and as a means of differentiation between good and evil necessitates the right of thinking, volition and choice. Progeny represents inclination and the basic need for a different gender, requiring the right of fulfilling sexual desire in a proper and legally permitted manner, hence, leading to the protection of the right of lineage. Property represents the fulfillment of desire for possession and its consequences such as the right of disposition and capacity of possession.( Al-Risuni, Ahmad, etal: 81-21) Therefore, these elements representing the objectives of the Islamic law, constitute permanent basis for continuity and establishment of life hence, represent basic human rights which violation incur severe punishment. These five fundamental objectives, constituting contextual basis for human rights, in the Islamic legal framework are characterized as necessities. This is due to being necessary for the establishment of welfare in this world and the world hereafter for, their ignorance lead to the destruction of order and spread of chaos and disorder in the society. Beside, these essential elements there are other elements called complementary which are required for removal of restrictions and difficulties that may arise in the process of the realization of the five necessities. This is stated in the Qur'an:

“Allah does not want to place you in a difficulty, but He wants to purify you, and to complete His favour to you, that you may be grateful.” ( Qur'an, 5:6)

In another chapter it states:

“Allah intends for you ease, and He does not want to make things difficult for you.” (Qur'an, 2:185)

Thus complementary elements are intended to facilitate the realization of the basic human rights labeled as necessities, therefore, a great benefit reside in them for supplementing the five essential values or rights. However, it is important to bear in mind that no specific model is prescribed for their acquisition and fulfillment, except that they should be obtained lawfully. For instance, if food is complementary to preserving right of life as one of the main objectives, thus it does not have to be a specific kind of food, such as fast food. In this sense diversity of cultures could be preserved too. Another example is language which is necessary for enhancement of the intellect. It does not have to be the English language; the native language of the culture must be preserved and protected. For, it is the medium through which link

between the past and the present is established, hence, preserving one's identity. It is also significant to bear in mind that Islam grants people some concessions (*rukhas*) in cases of hardship such as sickness, and traveling. Neglecting these complementary things will lead to hardships in life but not to chaos and its collapse. ([http://islamic-world.net/economics/consumer\\_theory.htm](http://islamic-world.net/economics/consumer_theory.htm)) Yet they are equally taken into consideration in *shari'ah* framework.

In addition, consideration of elements belonging to the category of embellishment is also significant, for, they render human affairs or conditions more suitable to the requirements of the highest standards of moral conduct. To say it in Kamali words they "denote interests whose realization leads to improvement and the attainment of that which is desirable." (Kamali, Hashim, 2009: 272) For, instance, the observance of cleanliness in personal appearance, and in spirituality, the inculcation of moral values, the avoidance of extravagance in expenditure, and moderation in the enforcement of penalties. All these come under the category of embellishments hence, are complementary to the five basic objectives or rights.

Violation of these rights is seen as a great crime with grave consequences. The punishments for violation of these rights are specifically provided for in the textual sources of the law, hence, are called as *had* (fixed punishment). The purpose of the fixed punishments, which are unchangeable, is to protect these rights. Therefore, the punishment of (*qisas*) for highway robbery and hence, the spreading of corruption is to protect the right of life by maintaining social and psychological peace and security. The punishment of theft is designed to eliminate any real or expected threat to the right of property. Cheating, monopolies, interest, are prohibited and certain punishments are designed to preserve the right of ownership of property. The punishment of drinking and consumption of intoxicating substance is meant for the protection of the right of intellect, the means of thought and expression. The punishment of *qazf* (accusing innocent women of committing adultery) is meant to protect dignity hence, leading to the preservation of the right of dignity and honour. The punishment of adultery aims at protection of the right of lineage from destruction.

Consequently, the protection of the right to life, and preserving religion, reason, human dignity and property constitute the five basic fundamentals upon which the general human rights are based. In Islamic legal framework, as stated earlier, these rights are addressed under the doctrine of the objectives of *shari'ath*. Certain rules and provisions along with a mechanism for their protection and preservation are devised for their continuity and existence. Looking at the contents of international conventions on human rights, it can be observed that they are not out of the context of these objectives. It is therefore, imperative to create the awareness among Muslims and non-Muslims that Islam strictly observes and respects human rights and has taken practical measures for their protection. It elevates such awareness to a level of a necessity without which the life of man cannot be righteous. This is necessary for; the concern about the human rights is no more affluence or an intellectual luxury. It dominates international politics and is being fiercely debated. In fact, Islam stated human rights for more than fourteen centuries ago and championed the cause much more earlier than any other institution hence, can be considered as the pioneer of human rights. Whereas, United Nations and its related institutions ratified human rights six decades ago in 1948( <http://www.almanar.net/malafilm/4.htm>) and signed



treaties calling for their protection by means of establishing international foundations tasked with monitoring their application in the contemporary world.

Unfortunately, Islam despite its pioneering position in respect of human rights, within the current circumstances is exposed to unfair accusations. This calls for concerted efforts by Muslims scholars to clarify Islam's position with regard to the issue of human rights. This is necessary to clear the cloud befogging critic's vision about Islam position and commitment to human rights. Thus, establishing the fact that Islam is seriously observing over more than fourteen centuries, the basic human rights, admitting religious and cultural pluralism, and is open to all religions, cultures, and civilizations for dialogue and cooperation in every field that may contribute to human welfare through out the world.

### **Strategy for Human Rights Protection**

As mentioned earlier, the doctrine of objectives of *shari'ah* embodies five basic universal human rights which encompass all other rights in varying degree of importance. They are of such nature that represents various aspects of life, material, intellectual, religious and worldly. Islam as Syed holds: "organize them all, that they may be related together and thus furnish an all-embracing unity in which it will be difficult to neglect any of its parts." ( Syed, M. H., 2003: 45) One way of achieving this goal is by providing the essential necessities that ensure for the individuals their full rights without damage to the public good. If all members of the society enjoy their legal rights to peace, tranquility, freedom, and the general availability of all the basic human requirements, balanced with public welfare, they will all have the opportunity to live a fruitful life of fulfillment and contentment. Therefore, it adopts two folds strategy embodying negative and affirmative measures, for the protection of these rights.

#### **A. Affirmative Measures**

This approach requires the adaptation of the measures that gradually lead to the creation and establishment of the basic constituent elements of these rights. For example, Islam preserve the right of religion by means of propagation and call for the establishment of the pillars of belief, the carrying of da'wah ( Al-Risuni, Ahmad, 1997: 136 )to establish the bases of religion such as, faith through uttering the Oneness of God and the prophet hood of Muhammad, performance of prayer, paying of Zakat, poor due, fasting and pilgrimage. These measures along with other supporting acts are intended to protect and preserve the right of religion. In the same manner, Islam protects the right of life by maintaining proper nutritional care to satisfy the minimum requirements essential for decent health. Thus, man is not allowed to deprive himself of permissible food, drink, clothing, marriage and proper care under any excuse, if that causes him harm. (<http://www.islamland.org>.) Furthermore, it legislated rules of marital life and encouraged marriage and the seeking of descendents for the same purpose. Therefore, transaction of sale and purchase to the extent that is required for preservation of life comes under necessity. (Al-Yamāni, Ahmad 2006:432-436) Moreover, it preserves the right of education and knowledge, by preservation and enhancement of its means, intellect, for, it is the axis of human dignity and obligations. It plays central rule in respect of qualifying one to reward or punishment, for a person having mental deficiency is not subject of

an obligation hence, not subject to punishment.(Ibid) The significance of intellect as a tool of knowledge and education is clear from the fact that Islam holds those with knowledge in high esteem and considers them as the inheritor of the prophets.

Islam protects the intellectual rights such as invention, initiation and discovery to their rightful owner along with the resultant financial benefits. The right of property as the basis of worldly life and representing one of the balancing aspects of the nation's dominance over the world is preserved by creation of instinct of desire for property in human being. (Bin 'Ashūr, Muḥammad Ṭāhir, 2000: 459) Islam permit attainment of property through permissible means, allow travelling in quest of sustenance and halal property through out the earth. It legislates rules and regulations for management and acquisition of property and its valuation. It also organises it in a balanced way where it's related rights and obligation or taken care of. It distinguishes between what can be considered as property and what cannot. The right of dignity and its subsidiary elements are preserved by subjugation of nature to human being and establishing his dominance over it. God has created universe and made it subservient to human being so as to be utilized by him in order to carry out his duty as the vice gerent on earth. Besides, human being is bestowed with the faculty of knowledge and other qualities that distinguishes him from other beings. Hence, human being is respected and honoured in the framework of *shari'ah* from the very stage of his creation even before his birth and has been given his rights. This is understood from parents' obligation to choose a good life partner so as to be able to bring up a good family hence, good descendent. Islam also entitled human being to some other rights after birth such as choosing of beautiful name for him and his compliance with the etiquette of birth. After reaching adulthood his obligations and duties along with rights are explained to him thoroughly.

## 2. Negative Measures

This approach comprises prohibitory measures by means of which destructive elements to the basic rights are negated. In the same manner as Islam has preserved the universal rights by affirming their constituent elements, it preserved them by negation of destructive elements. Thus, it repulses things or acts that are detrimental to religion or weakens its position. Such measures include prohibition of all deeds that are conducive to weakening religiosity individually or collectively. Therefore, it prohibits apostasy and considers it as a grave sin and prescribed death sentence as a punishment for such crime. Similarly, mockery of religion and blasphemous acts are prohibited.(Ibid) Jihad as a tool and mechanism of protection is adopted to protect the religion of Islam with its ultimate truth, justice and goodness, and the Muslims themselves from those that wish them harm.(<http://www.islamland.org>) To preserve the right of life certain measures are adopted. They include the prohibition of things which results in partial or total destruction of self. Therefore, one is forbidden to take his own life or cause partial or total physical destruction to him self or others. For, he does not own his soul or his own body. It is a sacred entity entrusted to him on a temporary basis hence, to torture or harm oneself intentionally or to commit an act leading to his destruction is forbidden (Ibid.). Such measures are meant to preserve self/ soul the essence of the right of life, for, according to "Islam every form of life is sacrosanct and cannot be destroyed without justification. Even unnecessary killing of animals or destroying other kinds of life is forbidden in Islam" ( <http://www.lankawen.com/news/items/2010/10/16/human-rights-and-islam/>

Islam blocks all the means conducive to insanity and mental disorder, to preserve the right of education and knowledge. For, mind is the tool through which knowledge can be acquired, as it is the condition for legal obligations and responsibilities. Thus, all harmful activities to soundness of intellect such as, consumption of intoxicating beverage and substance are prohibited. Consumption of such substance is considered as a serious offence hence, invoke a severe punishment. This is to preserve mind, the means of knowledge and education. The right of property is also preserved by prohibition of misappropriation or violation of one's own property or others without the due process of law. To take other's property or use it without seeking his permission and consent is prohibited. The act of theft is forbidden and considered as crime that incurs punishment in this world and the world Hereafter. This is due to the same reason which is to preserve the property right. Also other acts involving unethical behaviors such as deceit, treachery, fraud and others acts of similar nature are prohibited. All these measures are adopted for the purpose of preserving the right of property from violation.( Ibid.) In the same manner, derogatory act and behavior are prohibited for the protection and preservation of the right of dignity. Not only acts that constitute physical violations are prohibited, it also includes acts that cause moral injuries, for example backbiting, espionage ill thinking about others. If these acts have a full sway in the society they will cause severe damage to dignity, a right which Muslim society hold so dear. In sum, identifying the five basic elements of life as the source of the all human rights, and the two fold strategy for their realization hence, protection, underscore practicality and uniqueness of Islamic approach to human rights.

### **The Distinctive Features of Human Rights in Islam**

Islam conceives human rights as divine gift. This is rightly observed by Muwduidi; human rights have been granted by God; they have not been granted by the kings or legislative assembly, for if they were given by them, they could be withdrawn in the same manner in which they were given. (Abu al-'A'la, Mawduidi, 2011:3) Since human rights are conferred by God no legislative assembly or government in the world has the authority or right to change or amend them. Furthermore, human rights in Islamic conception are not merely words on the piece of paper without practical consequences, nor are they like philosophical concepts with no sanctions behind them. Thus, the basic human rights in Islam are not only conceptually acknowledged they are actually realized through practical measures as stated in the preceding section. In fact, belief in the Oneness of God and other pillars of faith jointly constitute the fountainhead of the basic human rights in Islam. This is because, God created human beings free, and bestowed on them certain rights for the protection of which they are required to spare no physical and intellectual efforts. He forbids violation of these rights repeatedly in the holy Qur'an in the verses related to jihad and struggle in the path of God. These all indicate that all human rights granted by God to human beings are due to the dignity that God bestowed on him. It is therefore, from this vantage point that these rights derive their imperative, and constitute an integral part of the Islamic perspective, servitude and the primordial state of human nature (<http://www.alminbar.net/malafilmy/7kookensan/2.HTM>)

Consequently, Islam view human rights as a gift from God to His servants. God given gift is not the same as the gift given by people, which can be retracted.

They are ultimate rights that are firmly established for human being.( <http://www.alminbar.net/malafilmy/7kookensan/2.HTM> )In addition, Islamic human rights are very comprehensive and multi-dimensional in nature, include all aspects of life, political economical, social and cultural. Beside comprehension as the characteristic of Islamic human rights, generality constitutes another of its main characteristic. They are not confined to certain individuals and are meant for every members of the society without discrimination due to colour, race, place and language. Permanence is another vital element of the characteristics of Islamic conception of human rights, hence, underscoring its invulnerability to cancellation, change or postponement. For, they are piece and parcel of corpus of the *shari'ah* which is not prone to change and alteration. God destined for Islam to be the final divine religion and the prophet as the last prophet, hence the message given to him is permanent and remains as such as long as the world exist. On the contrary, human made treaties and resolutions, are vulnerable to change and amendments no matter how firmly and emphatically they are expressed. However, it is imperative to bear in mind that Islam regulated these rights in a manner that conform to the purposes of the law and are not causing harm to the welfare of the community as a whole. For, the right of society is of primary importance and the rights of individuals have priority over the right of one individual. ( Amuli, Ayatullah, 2003: 6)

Looking at the historical development of the concept of human rights, one would not fail to realise that Islam pioneered the concept from the very moment of its advent, thus, preceding all international treaties and agreements on human rights adopted by United Nations. Thus, the human rights embodied in the charter of united nation declaration of human rights, and the subsequent international agreements are reiteration of what Islam call for since fourteen centuries. (Ibid.) Therefore, the sanctity of the presently threatened human rights, which we call for their protection and respect, is established in Islam fourteen centuries ago, hence, preceded from what is acknowledged in eighteenth century as the century of the human rights advent. In sum, human rights in Islam, as mentioned earlier, are original rights and divinely ordained. Comprehension, generality and permanence constitute their distinctive features hence, not prone to change or postponement. They have binding force for being designed by God, hence, no human being has the right or authority to violate or suspend it. Neither individual nor the society can deprive these rights of the sanctity and privilege given by God. In contrast, the legal value of the international declaration of human rights is not more than declaration without legally binding force. Therefore, human rights contained in the international treaties are merely recommendation and ethical decisions without having the force of law. Conversely, Islamic human rights are obligations which enjoy retributive guarantees. They are not mere recommendations or ethical decision on the piece of paper. The public authority has the right to discharge such obligation, whereas, such rights in international treaties are considered individual rights without legally binding force behind them.

## **Some of Human Rights in Islam**

### **1- Right of Honour**

The right of honour and respect is mentioned in the Quranic verse:

“We have honoured the children of Adam” ( Qur'an 17:70)

This verse clearly states the dignity that God bestowed on man. The Glorious *Qur'an* and *Sunnah* honour man and his individual rights in the society. They did not overlook the needs and rights of the society and public interest. In fact, the Almighty God states in the Glorious *Qur'an*:

”We have honored the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favors, above a great part of Our Creation. □ (17:70)

In order for Man to gain this honour and these privileges, he should fulfil his obligations and renders the rights due to others. To execute his role in such capacity on earth, there is a need for specific tasks to be performed by specific individuals. This concept is illustrated by God the Almighty in the Glorious *Qur'an*:

“□It is He Who has made you (His) agents and inheritors of the earth. He has raised you in ranks, some above others, that He may try you in the gifts He has given you. This is because Your Lord is quick in punishment. Yet, He is indeed Oft-Forgiving, Most Merciful. □ (7:165)

## **2- Right of Equality and no Discrimination**

As far as the basic human rights are concerned Islam does not permit any discrimination between human beings in respect of their entitlement to these rights. Race, sex, lineage and property do not carry any weight in the context as it is clear from the Qur’anic verse:

“O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise (each other). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things).” ( Qur’an 49: 13)

This verse signifies the desirability of interaction between nations. However, due to human selfishness and jealousy such interactions may experience some strains and set backs. Therefore, Islam devised a legal system that addresses all human rights and responsibilities in a balanced way. In fact, the human rights lay at the very roots of its structure and the right of equality is one of them. The right of equality and elimination of discrimination is also stressed in a tradition of the prophet p.b.u.h. where, he states:

“There is no superiority for an Arab over a non-Arab. There is no superiority for a non-Arab over an Arab. There is no superiority for a red (race) person over a white person. Likewise, there is no superiority of a white over a red (race) person, except for the piety and God consciousness.”( Reported by Ahmad no. 411)

These all sufficiently prove equal entitlement of all human beings to basics right without any discrimination, based on, colour, race, sex and place factors. Any discrimination arising out of race, sex, color, lineage, class, region or

language factors is vehemently prohibited in Islam. This is to remove the artificial barriers between the privileged and underprivileged. However, equality does not mean that all are exactly alike since there is no denial about natural differences. (Abdul-Rahman, <http://www.islamland.org>)

### **3- The Right of Justice and Cooperation**

This is clear from the Qur'anic injunction calling for cooperation and assistance between different nations on matters that enhance human welfare and lead to common good without the slightest atom of discrimination due to difference in nationality and religion. It is stated in the Holy Quran:

“ Allah does not forbid you to act righteously and justly towards those who have not fought against you in matter of religion, and who have not expelled you from your homes.” ( Qur'an, 60:8)

It is also confirmed by the tradition of the prophet in which he has said:

“You will never be believer until you show charity” They said to him, O! Messenger of Allah all of us are charitable.” He replied:” it is not a question of your charity to your neighbour, but of your charity to humankind in general.

The prophet (p.b.u.h.) by making charity as a characteristic of faith sets a lofty pattern of charity which is pure and universal.( M.H. Syed, 2003: 50) Thus, charity as Syed observes, as a fundamental part of Islam, indicates the religious sincerity and dept of conscience that ascertain the existence of that human spirit without which there can be no religion. It is on this bases that Islam establishes the practice of alms-giving, hence, making one fond of spending voluntarily without any compulsion, in anticipation of return in this world and the reward in hereafter from God the Almighty. The same inspiration was manifested by the people of Madinah, as they received the emigrants and give them shelter, sharing their property and houses with them with cheerfulness and gladness of spirit. (Ibid)

### **4- The Right of Freedom of Religion and Expression**

Islam does not allow any compulsion in respect of one's belief and religious thought. This is stated in the Quranic verse: “ there is no compulsion in religion” ( Qur'an, 2:255)

Generally, this verse in its totality implies the negation of forced conversion to any religion, hence, implying the freedom of religion.

## **5- The Right of Property and Protection of Life.**

Beside, Quranic verses implying the right of property and protection of life, there are some traditions of the prophet (p.b.u.h.) with the same implications. For example, the saying of the prophet which states:

“Verily, your blood and your property are forbidden to be violated.

## **6- The Right of Privacy**

Islam secures privacy of family by not allowing one to enter other’s house without seeking permission. This is clear from the Quranic verse prohibiting unauthorized entrance to other house without his prior knowledge of doing so. It is stated in the holy Quran:

“... Enter not houses other than your own, until ye have asked permission and saluted those in them” ( Qur’an, 24:27)

## **7- The Right to Social Welfare**

Mutual responsibility is the basic principle underlying the social relation network in the society. It is through this basic principle that poverty can be eradicated and individual members of the society can achieve an honorable life. Therefore, Islam has prescribed certain measures to insure individual freedom from the burden of poverty, unfulfilled needs and necessities. Imposition of certain portion in the wealth of the rich to be spent on the poor in according to their needs is one of such measures. This is stated in the Quran as follow:

“And those in whose wealth are a recognized right. For the (needy) who asks and him who is prevented (for some reason from asking)” Qur’an, 70:23-24)

## **8- The Right of Education**

Islam does not consider acquisition of knowledge only as a right that an individual is entitled to; it rather envisages it as an obligation of every individual member of society. For, through knowledge human being can improve his living skill and achieve prosperous life, hence securing his interest in this world and the hereafter. This is stated in the prophet hadith as follow:

“Seeking knowledge is an obligation of every Muslim, male and female”( Al-Haisami, Nur al-din, 1992: 473)

Islam initiates certain punitive measure for those abstaining from acquisition of knowledge or its dissemination. This is due to the fact that it is every individual Muslim obligation to acquire knowledge. The nations claiming to be the champion of human rights lack such measures.

## 9- The Right of Healthy Life

Islam imposes certain measures in time of out break of epidemic illness to prevent it spreading to other than those affected with such epidemic disease. This is to safeguard the health of general public and enhance their right of healthy life and live in good and healthy condition. Imposition of quarantine represents a form of such preventive measure for the protection of healthy life, hence, securing their right of healthy life. The prophet (p.b.u.h.) has stressed on securing healthy life as follow:

“when you come to know a plague has spread an a place do not enter that place, when it happen in areas you are living do not get out of that area out of fear of that disease (Al-Bukhari, 1987: no.5396)

In deed, Islam has emphatically stressed on the preservation of these rights, which are basic to every human beings, through numerous legal texts and provisions. Thus, these rights are basic human rights which cannot be ignored at any cost. Besides, these rights there are some other rights that are explained elaborately in other provisions; their treatment is beyond the scope of this study, such as economic rights, social rights and cultural rights. This demonstrates a broader horizon of rights that Islam establishes for humanity as whole without discrimination. What is unique with the Islamic concept of human rights is the addition of spiritual dimension. It is through the enhancement of spiritual dimension that a balance is struck between rights and obligations. It is stated in the holy Quran

“O ye 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: and fear Allah. For Allah is well-acquainted with all that ye do”

This verse stresses on impartiality in meeting out justice to people. Therefore, it is imperative to prevent one’s personal bias and hatred intermingling with the process of decision making hence, hindering others from excess to their right of justice. One should be mindful of the fact that Allah is watching him, hence, not letting his personal hatred interfere with delivery of the right of justice to others. This is necessary because under the influence of envy and animosity human being tends to deny others their rights as they deserves, hence violating their right to justice. Islam overcomes this problem by awakening the spiritual dimension in human being hence, reminding him of his accountability before God the Almighty. Furthermore, Islam, as mentioned earlier, does not suffice on mere declaration of human rights it rather stresses on their safeguard and preservation as an obligation of bilateral significance. It has recognized these rights from the very early time not as human rights only but also as divine rights, obligations and duties. (Muhammad ‘Ammarah, 1998: 83) Characterization of these rights as divine rights implies that they cannot be compromised in any circumstances. Their protection is an obligation of both individuals and the state. The ruler is personally responsible to insure and



guarantee these rights to all citizens equally without fear and favour.( Fadil al-Safar,1997: 233)

However, it is important to bear in mind that the recognition of these rights and the fact that Islam holds them in high esteem do not imply their absolute independence from any conditions. Islam draws an adequate mechanism requiring the inclusion of certain conditions through which these rights can be realized and protected. Adapting such a mechanism is necessary to avoid chaos and anarchy that may emerge as a result of unregulated utilization or misuse of these rights. The basic principle for the realization of these rights is that they are rationally acceptable and do not contradict any specific or general prohibition.

## Conclusion

Islam presents a crystal clear concept of the human rights which is very unique and flawless. It adopts an integrated and practical approach for their realization and protection. The merit and advantage of Islamic approach lies in the fact that it is based on divine sources Qur'an and the *Sunnah*. It embodies all types of rights within its scope and, covers all classes and groups of people. Balancing between all dimensions of human life, it provides a formidable set of values suitable to all time and place. Being rooted in divine sources Islamic human rights, enjoy durability and their observation and protection is accompanied with the blessing from God the Almighty. The embodiment of the spiritual aspect in the framework of human rights has far reaching effect as it goes beyond the preservation of individual and societal rights to include international relation. Consequently, human rights in Islamic conception are not merely words on the piece of paper without practical consequences, nor are they like philosophical concepts with no sanctions behind them. Thus, it is not conceptual recognition that matters in the Islamic framework of human rights but also their actual realization through practical measures. However, a real and effective realization and respect of these rights, especially by their violators cannot be achieved unless such motive stem from the legal and moral approach based on the divine guidance.

## References

- Al-Bukhārī, Muḥammad bin Ismā'īl, 1987, *Ṣaḥīḥ al-Bukhārī*, no.5396, Beirut: Dār Ibn Kathīr
- Al-Risunī, Aḥmad, etal. *Huqūq al-Insān miḥwar Maqāṣid al-Sharī'ah*, retrieved from Maktabah Shamilah.
- Al-Risunī, Aḥmad, 1997, *Nazariyat al-Maqāṣid 'Inda al-Imām al-Shāṭibī*, al-Mansūrah: Dār al-kalimah.
- Al-Yamānī, Aḥmad bin Maḥmūd Ḥamūd, “ Ḥājāt al-Ummah fī Fahm Maqāṣid al-Sharī'ah al-Islāmīyyah” a seminar paper presented in *al-Nnadwah al-'Ālamīyah 'An al-Fiḥ al-Islāmī Wa 'Uṣūlihī wa Taḥddīyāt al-Qarn al-Hādy wal 'shrūn*. 8-10 Aug. 2006. Pp. 432-436
- Amuli, Ayatullah 'Abdullah Javadi, 2003 “Sources of Human Rights in Islam” in *Islamic Views on Human Rights*, New Delhi: Kanishka Publishers.

- Bin ‘Ashūr, Muḥammad Ṭāhir, maqāṣid al-sharī’ah al-Islāmīyyah, edited by : Muḥammad Ṭāhir al-Misāwī, Jurdon: Dār al-Nafā’is, P.459
- Fadil al-Safar,1997, *al-Ḥukūmah al-Dīmuqrāṭīyyah Uṣūlahā , manahijuhā*, ed. 1., Beirut: Dār al-Mahījah al-Baidā.
- Al-Haisamī, Nur al-dīn Alī Bin Abī bakr,1992, *Majmū; al-Zawāid, wa Manba’ al-Fawāid*, no. 473, Beirut: Dār al-fikr
- Ilyas Bay-Yunis, etal., 1985, *Islamic Sociology: An Introduction*, UK: Hodderand Stoughton: The Islamic Academy.
- Kamali, Mohammad. Hashi, 2009, *Principles of Islamic Jurisprudence*, ed. 2, Selangor: ‘Ilmiah Publishers.
- M.H. Syed, 2003, *Human Rights in Islam, The Modern Perspective*, V. 2. Social Justice, New Delhi:Anmol Publications Pvt. Ltd.
- Muḥammad ‘Ammārah, 1998, *al-Islām wa al-Amn al-Ijtimā’ī*, ed.2. Cairo: Dār al-Sharq, p.83.
- Saraf, M. Yusuf, “Evolution of The concept of Human Rights And The Role of United Nations” in *Islamic Concept of Human Rights* , By: Haider S. M., Lahore:The Book House, Urdu Bazar,1978.

### Online Sources

- <http://www.islamreligion.com/articles/2575> ( July 30 2011)
- [http://islamic-world.net/economics/consumer\\_theory.htm](http://islamic-world.net/economics/consumer_theory.htm) (May 25 2011)
- <http://www.almanar.net/malafilmy/4.htm> (September 20, 2010)
- Abdul-Rahman al-Sheha, *Human Rights in Islam And Common Misconceptions* retrieved May 23, 2011 from: <http://www.islamland.org>.
- Abu al-‘A’la, Mawdudi, Human rights in Islam, retrieved 15 April, 2011, from: [http://www.witness-pioneer.org/vil/Books/M\\_hri/index.htm#The\\_Western\\_Approach](http://www.witness-pioneer.org/vil/Books/M_hri/index.htm#The_Western_Approach), p.3
- Abdul-Rahman al-Sheha, *Human Rights in Islam And Common Misconceptions* retrieved 23 May 2011, from: <http://www.islamland.org>, p.18
- Retrieved October 16 2010 from://[www.lankawen.com/news/items/2010/10/16/human-rights-and-islam/](http://www.lankawen.com/news/items/2010/10/16/human-rights-and-islam/)
- Al-Hāqīl,Sulaimān, Ḥuqūq al-Insān fī al-Islām, retrieved 2 July 2010, from:<http://www.alminbar.net/malafilmy/7kookensan/2.HTM>