Conclusion
The Modern Concept

It was not until the Middle Ages, in the west, that natural law doctrine become closely associated with liberal political theories about natural rights. In Greco-roman and medieval times, natural law doctrines taught mainly the duties, as distinguished from the rights, of “Man”. Moreover, as evident in the writings of Aristotle as St. Thomas Aquinas, these doctrines recognized the legitimacy of slavery and serfdom and, in so doing, excluded perhaps the central most ideas of human rights as they are understood today—the ideas of freedom (or liberty) and equality.

For the idea of human (i.e., natural) rights to take hold as a general social need and reality, it was necessary that basic changes in the beliefs and practices of society take place, changes of the sort that evolved from about the 13th century to the Peace of Westphalia (1648), during the Renaissance and the decline of feudalism. When resistance to religious intolerance and political-economic bondage began the long transition and liberal notions of freedom and equality, particularly in relation to the use and ownership of property, then were the foundations of what today are called human rights truly laid. During this period, reflecting the failure of rulers to meet their natural law obligations as well as the unprecedentedly committed to individual expression and worldly experience that was characteristic of the Renaissance, the shift from natural law as duties to natural as rights was made. The teachings of Aquinas (1224/25-1274), and Hugo Grotius (1583-1645), on the European continent, and the Magna Carta (1215), the Petition of Rights (1628), and the English Bill of Rights (1689) in England, were proof of this change. All testified to the increasingly popular view the human being are endowed with eternal and inalienable rights, never renounced when humankind “contracted” to enter the social from the primitive state and never diminished by the claim of “the divine right of kings”.
It was primarily for the seventeenth and eighteenth centuries, however, to elaborate upon this modernist conception of natural law as meaning or implying natural rights. The scientific and intellectual achievements of the seventeenth century – the discoveries of Galileo and Sir Isaac Newton, the materialism of Thomas Hobbes, the rationalism of René Descartes and Gottfried Wilhelm Leibniz, the pantheism of Benedict de Spinoza, the empiricism of Francis Bacon and John Locke – encouraged a belief in natural law and universal order; and during the eighteenth century, the so-called Age of Enlightenment, a growing confidence in human reason and in the perfectibility of human affairs led to its more comprehensive expression. Particularly to be noted are the writings of the seventeenth century English philosopher John Locke – arguably the most important natural law theorist of modern times – and the works of the eighteenth century Philosophers centred mainly in Paris, including Montesquieu, Voltaire, and Jean – Jacques Rousseau Locke argued in detail, mainly in writings associated with the Revolution of 1688 (the Glorious Revolution), that certain rights self evidently pertain to individuals as human beings (because they existed in “the state of nature” before humankind entered civil society); that chief among them are the rights to life, liberty (freedom from arbitrary rule), and property; that, upon entering civil society (pursuant to a “social contract”), humankind surrendered to the state only the right to enforce these natural rights, not the rights themselves; and that the states failure to secure these reserved natural rights (the state itself being under contract to safeguard the interests of its members) gives rise to a right to responsibilities, popular revolution. The Philosophies, building on Locke and others and embracing many other varied currents of thought with a common supreme faith in reason, vigorously attacked religious and scientific dogmatism, intolerance, censorship, and social – economic restraints. They sought to discover and act upon universally valid principles
harmoniously governing nature, humanity, and society, including the theory of the inalienable “rights of man” that became their fundamental ethical and social gospel.

This entire liberal intellectual format had, not surprisingly, great influence on the Western world of the late eighteenth and early nineteenth centuries. Together with the practical example of England’s Revolution of 1688 and the resulting Bill of Rights, it provided that rationale for the wave of revolutionary agitation that then swept the west, most notably in North America and France. Thomas Jefferson, who had studied Locke and Montesquieu and who asserted that his countrymen were a “free people claiming their rights as derived from the laws of nature and not as the gift of their chief magistrate”, gave poetic eloquence to the plain prose of the seventeenth century in the Declaration of Independence proclaimed by the 13 American colonies on July 4, 1776: “We hold these truths to be self-evident, 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”.

It seems that the idea of human rights, called by another name, played a key role in the late eighteenth and early nineteenth century struggles against political absolutism. It was, indeed, the failure of rulers to respect the principles of freedom and equality, which had not central to natural law philosophy almost from the beginning that was responsible for human rights, “......... absolutism prompted man to claim [human, or natural] right precisely because it denied them”.

The idea of human rights as natural rights was not without its detractors, however, even at this otherwise receptive time. In the first place, being frequently associated with religious orthodoxy, the doctrine of natural rights became less and less acceptable to philosophical and political liberals. Additionally, because they were conceived in essentially absolutist – “inalienable”, “unalterable”; “eternal” – terms,
natural rights were found increasingly to come into conflict with one another. Most importantly the doctrine of natural rights came under powerful philosophical and political attack from both the rights and the left.

Today, the vast majority of legal scholars, philosophers, and moralist agree, irrespective of culture or civilization, that every human being is entitled, at least in theory, to some basic rights. Heir to the protestant reformation and to the English, American, French, Mexican, Russian, and Chinese revolutions, the last half of the twentieth century as seen, in the words of human rights scholar Louis Henkin, “essentially universal acceptance of human rights in principles” such that “no government dares to dissent from the ideology of human rights today”. Indeed, except for some essentially isolated nineteenth century demonstrations of international humanitarian concern to be noted below, the last half of the twentieth century may fairly be said to mark the birth of the international as well as the universal recognition of human rights. In the treaty establishing the United Nations (U.N.O.), all members pledged themselves to take joint and separate action for the achievement of “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”. In the Universal Declaration of Human Rights (1948), set forth “as a common standard of achievement for all peoples and all nations”. And in 1976, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, each approved by the UN General Assembly in 1966, entered into force into force and effect.

**Magna Carta (1215)**

The great charter, the charter of English liberties granted by King John in 1215 under threat of civil war and reissued with alterations in 1216, 1217, and 1225.
The charter meant less to contemporaries than it has subsequent generations. The solemn circumstances of its first granting have given to Magna Carta of 1215 a unique place in popular imagination; quite early in its history it became a symbol and a battle cry against oppression, each successive generation reading into it a protection of its own threatened liberties. In England the Petition of Rights (1628) and the Habeas Corpus Act (1679) looked directly back to clause 39 of the charter of 1215, which stated that “no freeman shall be .... Imprisoned or diseased [dispossessed] ..... Except by the lawful judgement of and the state constitutions,” show idea and even phrases directly traceable to Magna Carta.

Earlier kings of England, Henry I, Stephen, and Henry II, had issued charters, making promises or concessions to their barons. But these were granted by, not exacted from, the king and were very generally phrased. Moreover, the steady growth of the administration during the 12th century weakened the barons’ position vis-à-vis the crown. But the need for heavy taxation for the third crusade, and for the ransom of Richard I after his capture by the Holy Roman Emperor Henry VI, increased his successor’s difficulties. John’s position was further weakened by a rival claim to the throne and the French attack upon John’s Duchy of Normandy. In 1199, 1201, and 1205 John’s barons had to be promised their “rights”; his financial exactions increased offer his loss of Normandy (1204) and during his quarrel (1208-13) with Pope Innocent III, he taxed the English church heavily. It is, therefore, not surprising that after 1213 Stephen Langton, Archbishop of Cantabury, directed baronial unrest into a demand for a solemn grant of liberties by the king. The document known as the articles of the bacons was at least agreed and became the text from which the final version of the charter was drafted at Runnymede (beside the River Thames, between Windsor and Staines, now in the county of surrey) and sealed by John on June 15, 1215.
Although written continuously, the charter has been traditionally discussed as consisting of a preamble and 63 clauses. Roughly, its content may be divided into nine groups. The first concerned the church, asserting that it was to be "free". A second group provided statements of feudal law of particular concern to those holding lands directly from the crown, and the third assured similar rights to subtenants. A fourth group of clause referred to towns, trade, and merchants. A particularly large group was concerned with the reform of the law and of justice, and another with control of the behaviour of royal official. A seventh group concerned the royal forest, and another dealt with immediate issues, requiring, for instance, the dismissal of John’s foreign mercenaries. The final clauses provided a form of security for the King’s adherence to the charter, by which a council of 25 barons should have the ultimate right to levy war upon him should he seriously infringe it.

Bill Of Rights (1689)

Bill of Rights, formally an act declaring the rights and liberties of the subject and setting the succession of the crown (1689), one of the basic instrument of the British Constitution and the result of the long seventeenth century struggle between the Stuart Kings and the English people and parliament. It incorporated the provision of the Declaration of Rights, acceptance of which had been the condition upon which the throne, held to have been vacated by James III, was offered to the prince and princess of Orange, afterward William III and Mary II. With the Toleration Act (1689), granting religious toleration to all Protestants, the Triennial Act (1694), ordering general elections to be held every three years, and the Act of Settlement (1701), and providing for the Hanoverian succession, the Bill of Rights provided the foundation on which the government rested after the revolution of 1688. It purported to introduce no new principles but merely to declare explicitly the existing law. The revolution settlement,
however, made monarchy clearly conditional on the will of parliament and provided a freedom from arbitrary government of which most English men were notably proud during the eighteenth century.

The main purpose of the act was unequivocally to declare illegal various practices of James II. Among such practices proscribed were the royal prerogatives of dispensing with the laws in certain cases, the complete suspension of laws without the consent of parliament, and the longing of taxes and the maintenance of a standing army in peacetime without specific parliamentary authorization. A number of clauses sought to eliminate royal interference in parliamentary matters, stressing that elections must be free and that members must have complete freedom of speech – certain forms of interference in the course of justice were also prescribed. The act also dealt with the proximate succession to the throne, settling it on Mary’s heirs, then on those of her sister, afterward Queen Anna, and then on those of William, provided they were Protestants.

**Declaration of the Rights of Man and Of the Citizen (1789)**

The French Declaration *Des Droits De L’homme et Du Citoyen*, one of the basic charter of human liberties, containing the principles that inspired the French revolution. Its 17 articles adopted between August 20 and August 26. 1789, by France’s National Assembly, served as the preamble to the constitution of 1791. It also served as the preamble to the constitution of 1793 (re-titled simply Declaration of the Rights of Man) and to the constitution of 1795 (re-titled Declaration of the Rights and Duties of Man and the Citizens).

The basic principle of the Declaration was that “all men are born free and equal in rights” (Article 1), which was specified as the rights of liberty, private property, the
inviolability of the person, and resistance to oppression (Article 2). All citizens were
equal before the law and were to have the right to participate in legislation directly or
indirectly (Article 6); no one was to be arrested without a judicial order (Article 7).
Freedom of religion (Article 10) and freedom of speech (Article 11) was the safeguard
within the bounds of “public order” and “law”. The document reflected the interests of
the bourgeois who wrote it: properly was given the status of an inviolable rights, which
could be taken by the state only if an indemnity were given (Article 17); offices and
position were opened to the middle class (Article 6).7

Universal Declaration of Human Rights (1948)8

The catalogue of right set out in the Universal Declaration of Human Rights,
which was adopted without dissent by the general assembly on December 10, 1948, is
scarcely less than the sum of all the important traditional political and civil rights of
national constitutions and the important traditional political and civil rights of national
constitutions and legal system, including equality before the law; protection against
arbitrary arrest; the right to a fair trail; freedom from ex post facto criminal laws; the
right to own property; freedom of thought, conscience, and religion; freedom of
opinion and expression; and freedom of peaceful assembly and association. Also
enumerated are such economic, social, and cultural rights as the right to work and to
choose one’s work freely, the right to equal pay for equal work, the right to form and
join trade unions, the right to education.

The Universal Declaration, it must be noted, is not a treaty. It was meant to
proclaim “a common standard of achievement for all peoples and all nations” rather
than enforceable legal obligation and the completion for signature and ratification of
the two covenants, the Universal Declaration has acquired a status juristically more
important than original intended. It has been widely used, even by national courts, as a means of judging compliance with human right obligation under the UN charter⁹.

A Comparison

A comparative study of the Western Declaration of Human Rights, and the Farewell Prophetic Sermon, clearly explained and updated in the form of Muslim Declarations, clearly shows that the idea of human rights announced publicly and implemented internationally in the west was basically borrowed from the Holy Qur‘ān and Prophetic traditions. Both the Western and Islamic Declarations have foundations and common provision as well.

The original infrastructure of the first Universal Declaration of Human Rights is the unity of mankind. This view is not compatible with religious approach but it directly or indirectly arises from that as, except when addressed generally for which terms like “O People”, “O Men”, “O Mankind” and are used, it is clear that in Qur‘ānic insight all men are equal.

The following sacred verse verifies this view,

يَابِيْهَا الْنَّاسُ إِنَّا خَلَقْنَكَ مِنْ ذَكَرٍ وَأُنثىٰ وَجَعَلْنَاكُمْ شَعُوبًا وَتَمَتَّعْنَ بِالْأَرْضِ لِتَعْلَمُواﷺ

“O mankind verily! We have created you from a single (pair) of a male and female and made you into nations and tribes that ye may know each other”¹⁰

Furthermore, what is received from the oral and practical traditions of the Holy Prophet ﷺ and our religious leaders indicate the same approach:

كَلِكِم مِنْ آدَمٍ وَآدَمُ مِنْ تَرابٍ

“You are all the descendents of Adam and Adam came from dust”¹¹

The provision of the Universal Declaration of Human Rights also originate from a public and ideological approach governing at the time of formulating this
Declaration, i.e., after the end of the second world war, the formulators of the Declaration of the Human Rights believed that human family was a single entity with common gains and losses. This foundation per se originated from their ideology, which made them see external reality as this. Thus, the notion of man’s unity is based on the reality of the existence. Here, we also reach the linking bond of Islamic and Western Human Rights system, as in the Islamic approach. The human family is one unit with common gains and losses.

The other common element between the human rights in Islam and the western human rights is the natural value and respect for man.

The Holy Qur’an states,

ان اكرمكم عند الله اتقكم

"Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you."\(^1\)

And the preamble to the Universal Declaration of Human Rights talks of the recognition of the innate value of all members of the human family; it comes to our mind that this Declaration has been, directly or indirectly, influenced by that Qur’anic instruction or at least both of them are compatible with supreme reason and man’s wisdom. The deep difference between these two relates to the divine revelation by some intermediate factors.

Another linking bond between the Islamic and the Western Human Rights system is the issue of individual and the society and man’s individual and social dignity. Disregarding the theoretic and philosophical discussions related to individualism and socialism, in both legal systems, the interests of society are prevailing on the individuals. Means and instruments have been devised to protect the interests of each against the other. The interesting point is that the conflict of the
interests of the individuals and the society with the individual may be removed only by social institutions. This deep-rooted experience has made mankind establish the government in order to regulate the relations of individuals with one another and with the society and give power and legitimacy to this institution. In this area, there may be seen many similarities between the statutory laws of man and the provisions of the Holy Qur’ān and the traditions of the Prophet (صلى الله عليه وسلم). The similarities may be identified in the articles and principles of human rights too. Here, we shall give some instances

A) Life

B) Freedom

C) Justice

Life

Some Muslim scientists have divided life into two parts: material and spiritual. The attention to spiritual aspects in Islam and its deletion from the Universal Declaration of Human Rights is the priority of Islamic human rights over the western one. In Islamic and western human rights system, by material life we mean that man is born one day and dies another day and paying attention to this very life (or the material life) is another common point and a linking bond of these two systems. “Blood shed and murder” is so vice and condemned in Islam that killing one person is regarded equal to killing all mankind,

من قتل نفسه بغير نفس اوقसاد في الأرض فكانا قتل الناس جميعا،
ومن احياها فكانا احيا الناس جميعا.

“If anyone slew a person unless it be for murder or for spreading mischief in the land it would be as if he slew the whole people.”

\(^{13}\)
This verse is certainly about the common meaning we have in mind of "murder". Of course, a more general interpretation might be derived from the context of the verse as well.

**Freedom**

Concerning the sublime value of freedom which serves as another link between the two law systems involved, it is to be stated the fact that in this area, the religious concept of freedom which is freedom from carnal desires and slavery by everybody but by God. It is worth mentioning that man’s responsibility originates from his freedom. Man is by nature a free being. As he is wise, he himself regards restraints for his individual and social life based on wisdom and reason illumination and through divine revelation. As suggested at the outset, human wisdom when exalted from the ordinary restraints and elevated to the superior state becomes capable of achieving the truth and human laws and rules of life through revelation. Therefore, as a reasonable being, man puts curbs on his natural and innate freedoms in individual and social life. Any man with a religion or belief in a school; of thought have limits and regulations as well:

متي استعبد تم الناس وقد ورد تهم أمهاتهم أحرارا

"How did you try to enslave the people while their mothers had born them free"\(^{14}\)

If some differences are observed in the Islamic and western human rights with respect to the limits of freedom, this does not impair the rational and fundamental freedoms.

In other words, the Islamic and the western human rights have set limits for man’s inherent freedom from epicurist view, the limits and restraints on sexual freedom are much less than divine value-oriented approach, but even in the same western view, there are limits for this freedom such as the ban on rape and overt sexual
activities. In other words, even in the freest of societies, human reason has not stopped working: it has restrained freedom though on a very small scale. In order to remove any misconception, the basis of western view toward sexual freedom is a mixture of feeling and desire and if it has any rational basis it is mixed with irrational and diverted extravagances and with a reaction against sexual ban guilt feeling concerning the sacred issue of marriage as sermonizing by church authorities. At any rate, this approach is condemned in Islam.

Justice

In the preamble to the Universal Declaration of Human Rights, it is expressed that lack of recognition of human rights had led to barbarous acts which have in turn made human souls revolt and in general, the rights of people should be protected by law enforcement so that man may not be urged to revolt against injustice and cruelty as a last resort. The following points may be seen in the articles provided in this Declaration.

Prohibition to slavery (Article 4), prohibition of torture, inhuman or degrading treatment or punishment (Article 5), Equality of everyone before the law (Article 7), the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the law (Article 8), prohibition of arbitrary arrest, detention o exile (Article 9), the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence (Article 11, paragraph 2), prohibition of arbitrary interference with people's privacy, family, correspondence, or attacks upon his honour and reputation (Article 12), prohibition of arbitrarily depriving others of their property (Article 17, paragraph 1).
These provisions are in fact evidence for enforcement of justice and removing injustice and the links of Islamic and western human rights systems are quite firm and stable in them. The concept of justice in the Islamic teachings is so extensive which is an attributes of the highest rank of existence (God) and this attribute, like other attributes of God, is His nature. What is stated is enough to show the superiority and the elevation of this issue, but the problem does not end here and the realm of justice has covered all the universe and all particles of the existence are covered by this general overwhelming issue so as it is said “The universe is made stable by justice”.

On the other hand, man with any religion, seek justice by virtue of reason and wisdom and hate cruelty and injustice and pressure in religious, social and economical domain. Therefore, what we see in the Declaration of Human Rights is a proper manifestation of man’s wishes. Man strives to actualize and realize in the individual and social life what originates from the creator of the world and what is current in the existence and what the cause is of is strength as instructed by his reason and wisdom.

The Holy Qur’ān states that,

"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"

Apart from similarities between the Islamic and western system of human rights there are so many provisions and concepts different from each other.

و إذا قلتم فاعبدوا كان ذا قريب

"Whenever ye speak, speak justly even if a near relative is concerned"
Article I of the Universal Declaration of Human Rights announces all the members of human family of equal rights without any difference between Muslims and non-Muslims. Islam differentiated between the two communities in the sphere of politics where the non-Muslims are not eligible for the appointment of head of any Islamic state.

Article II of the Universal Declaration of Human Rights treats the followers of all the religion entitled to all rights and freedoms. Islam does not allow a Muslim who converts into an apostate (*murtad*) to live more. It considers such a Muslim as one who rebels against it and become liable to death.

According to Article VI of Universal Declaration of Human Rights, all the men and women of full age are entitled to equal rights as to marriage, during marriage and its dissolution. The Holy Qur’an as declared men as the guardian and protector (*Qawwam*),\(^{17}\) of the women and are awarded a degree above the women.

Some of these important points which are in confront with each other into two systems of human rights should be studied comparatively. The most important features in their comparison however is the right of Allah Almighty and His Will, this right is the basis of all human rights as weaved by the Holy Qur’an and traditions of the Holy Prophet (صلى الله عليه وسلم). This is totally neglected in the Universal Declaration of Human Rights\(^ {18}\).
Notes & References:

2. For original document text see Appendix II.
4. For original document text see Appendix III.
6. For original document text see Appendix IV.
8. For original document text see Appendix V.
9. *The New Encyclopaedia Britannica*, Chicago, 1994, vol. 20, p. 661; This is the most advance and updated declaration made by the west and is therefore selected here for a comparison with the Islamic concept.
10. The Qur'an 49: 13
12. The Qur'an 49: 13
13. The Qur'an 5: 32
15. The Qur'an 5: 8
16. The Qur'an 6: 152
17. The word *Qawwam* used in the Holy Qur'an (Q. 4: 34) has been translated by various commentators into various phrases, such as,

   Allama Abdullah Yusuf Ali
   "Men are the protectors and maintainers of women"

   Muhammad Marmaduke Picthall
   "Men are in charge of women"

   Abdul Majid Daryabadi
   "Men are overseers over women"

   Muhammad Mohsin Khan
   "Men are the protectors and maintainers of women"