CHAPTER -3
CONCEPT OF HUMAN RIGHTS IN ISLAM
The Islamic religion came to an Arab named Muhammad b. Abdullah (Ca. 570-632 C.E.) in a series of revelations that began when he was about 40 years old. His revelations are collected in a book called the Qur’an which is sacred text for all Muslims. Arabia’s society at the time of Muhammad was organized around tribal grouping comprised of clans. Each clan was headed by a Shaykh and was associated with specific town or city. Mohammad belonged to the powerful Qurash tribe located near Mecca, one of Arabia’s key trading and pilgrimage cities. His clan, the Banu Hasim, was somewhat impoverished but highly respected. It survives to the this day in the Hashemite Kingdom of Jordan.

Islam is a prophetic religion of a comparatively late origin. It has its origin in the teaching of Prophet Mohammad, who is taken by its followers as the messenger (Rasul) of God (Allah). Islam does not disbelieve in the reality and authenticity of other prophets such as Abraham, Moses and Jesus, but Mohammad is taken as the last and the mightiest. His teachings are regarded as final and they are to be observed and followed by all. Although Islam claims to be an independent religion coming directly out of revelatory experience of Prophet Mohammad, traces of Zonastrian, Judaic and Christian influences are obvious on it. Many say that Islam is nothing but Judaism added with missionary zeal. Its ethics is treated as a practical application of the Serman on the Mount. We do not think that these observations are to be taken as literally true, but this much seems obviously certain that the impact of Judaism on Islam is tremendous. And this is not strange, because Islam shares a common semitic origin with Judaism and Christianity.

The revelation received by Mohammad, the Prophet of Islam (d.632.C.E.) over the course of 22 years were written down, collated and compiled into what is called, the “Noble” Qur’an (Qur’an al-sharif) or the Book of God, (Kitab Allah). Muslim considers the Qur’an to be the words or speech of God revealed to Muhammad. In this respect, It is sacred book. The Qur’an is
considered the “Criterion: or “Discernment”, because it confirms the scriptures given to earlier biblical peoples and enables humans to distinguish between right and wrong truth and falsehood faith and ingratitude. It is also considered to be the “Guide” because it guides humans to walk on the straight path (siratal-mustaqin).\textsuperscript{1}

\section*{THE QUR’AN}

\textit{The Qur’an} consists of 114 chapter or \textit{suras}, each of which is divided into verses or \textit{ayat}. Both terms in \textit{the Qur’an} refer to a revelation being sent from God. The term \textit{ayat} in \textit{the Qur’an} also refer to a natural phenomena or an extra ordinary event or miracle the confirms God’s power and beneficence to evoke a response of gratitude and an enlightened knowledge of God’s working. Thus \textit{ayat} can mean both a verse of \textit{the Qur’an} and a sign of God’s mercy and power. The opening chapter of \textit{the Qur’an} is the \textit{Fatiha} (“the opening”), and all chapters following is arranged in order of descending length rather than chronological order. \textit{The Qur’an} ends with two short chapters that are incantations to take refuge in God\textsuperscript{2}. A chapter does not necessarily have thematic unity, but many instead comprise unrelated segments. Except the accounts of Noah, Joseph and Soloman, \textit{the Qur’an} contains very few narratives or stories, much of \textit{the Qur’an} presumes knowledge of biblical figures and invokes these characters to make a point about God is justice or mercy or about the obedience and faith expected of humans as a response to God’s generosity. Sometimes despite their varying lengths; chapters are kept togegether for thematic unity-for instance, chapter 10 through 15 all cancer prophets. Muslim traditionally refere to the chapters by name and not by number; thus chapter two is known as “\textit{The Cow}”, because the word occurs within the chapter.

Each chapter (except ninth chapter) begins with the \textit{bismala} a shortened version of the phrase “\textit{bismillah al-rahman al-rahim},” which means.\textsuperscript{3}
“In the Name of God, the Compassionate the Merciful. In chapter 29, the bismala is followed by a letter or group letters before the verses of the chapter begin. Scholar do not know the reason for these letters, and Muslim believe only God knows their meaning and significance.

THE HADITH

Muslim retain the memory of what Mohammad was tought to have said and done during his lifetime in a collection of narratives. Known as the Hatith literature also called Tradition Literature. The Hadith (literally, narrative that which is recounted) literature is considered second in authority to the Qur’an.

Legal Scholar al-Shafi; (d.820-C.E.) who argued that the term “wisdom” in the Qur’an (2:151, 3:164 and others) was references to hadith and that the Qur’an and the Prophet’s own example were key sources in defining a Muslim life, both individually and in the context of social well being. Further, he argued on basis of Qur’an 24:52, which enjoined Muslims to obey God and obey the Prophet, the emulation or the Prophet’s actions was incumbent upon Muslims and that hadith, narratives were therefore an infallible source of law. A hadith come to comprise two parts.

1. a complete chain of transmission (insad) and
2. The text of hadith (matn). Interest in verifying the authenticity of a hadith. Came about as a result of common knowledge that, as the community began to develop different theological and political interpretations of the meaning of Islam, a variety of hadith narratives reality available to support such viewpoints.

EARLY BRANCHES: (THE KHAWARIJ, MURJI’A AND SHI‘A)

The shi‘ites or supporters of ‘Ali’ disagreed with the Kharijites and the Murji’ites on one pivotal issue: leadership of the community. For them the rightful succession to Muhammad belonged to ‘Ali’ and his progeny whom
they considered to have been specially entrusted with the task at Ghadir Khumm, and thereby keeping guidance of the community with in the family of the Prophet. They held that the Prophet had communicated to Ali the means through which to interpret the Qur’an and guide the community through a special spiritual knowledge or ilm that ‘Ali would, in turn pass on to his progeny-gift that the Prophet had not made to the first three caliphs. In his capacity as Imam or leader of the community, Ali would interpret the Shari’a or divine law for Muslims in accordance with the time, providing a guide for what constituted. Correct belief, community, and what it meant to be a Muslim. Sympathy for Shi’ite perspective was found largely among non-Arab people in Iraq although over time, both Arab and non-Arab Shi’ites constituted the opposition to the central caliphate of the Umayyads.

Practical realities and political developments led to differences in interpretation regarding what faith means overtime, three distinct stands of interpretation emerged as parties or communities of interpretations the Sunni, the shi’a, and as an overlay of both the sufī within these three groups were many variations. Differences among the Sunnis arose regarding the specifics of the theological and legal regulations that a Sunni might follow, among Shi’ites, the differences comprised who might be considered the legitimate spiritual successor to the Prophet; and Sufi disagreed about which sufī master’s teachings were the defining philosophy and practice for Muslim. A sufīs could be either Shia or Sunni with respect to the legal framework followed by the practioner.

The term Sunni derives from the phrase ahl.al-sunna.wa’l-jamaa meaning “the people who follow the sunna (practice) of the Prophet. Contrary to popular notions the identifications sunni, shia and sufī did not come about overnight: rather political factors theological interpretations, legal regulations and institutions of governance all play a role in coalescing what later came to be identified as Sunni,Shia and Sufi communities. In the case of Sunni Islam, the development of the Murji’i theological position and left the decision to God
regarding the sinfulness of a Muslim was imbedded in a political context in which the *Murji‘a* declared their tacit support for the Caliphate. This contrast with the theologically, articulated political position against it as expressed by *Kharijites* and the *Shi‘ites*. At the rise of the *Umayyads*, what has come to be termed Sunni Islam was backed by the state including its military power and thus the *Sunni* interpretation was able to establish its numerical majority and hence its claim to orthodoxy.

**MAJOR TENETS**

The major guidelines for Muslim are understood by theologians as consisting of two part- *iman* (expression of faith) and *ihsan* (doing what is right)-both of which are reinforced by *ibadat* (act of worship). According to the *Qur‘an iman or faith* consists of belief in God and the Prophet, previous prophets and revealed scriptures angels, and the Day of Judgment.\(^8\) (Q, 4:136). From faith come the ethical guidelines a person of faith must strive to upload. Q.17:23-38 lays down such ethics as divine injunctions for Muslims:

1. To worship none other than god.
2. To show kindness to parents.
3. To give kin their due.
4. To be charitable towards the needy and the traveler.
5. Do not squander one’s wealth
6. Do not be either miserly or wantaon in one’s spending.
7. Do not slay one’s children.
8. Do not commit adultery.
9. Do not slay wrongfully
10. Do not rob the orphan
11. To measure and weigh correctly
12. Do not follow that of which one has no knowledge.
13. Do not be full of pride
14. Do not set up with *Allah* any other job\(^9\)
**Ihsan** or “right doing” consists of obligatory and voluntary practices for Muslim. The obligatory practices have come to be termed the “five pillars” of Muslim praxis.10

1. Pronouncement of the key article of faith, the **Shahadah** there is no God but God (in Arabic, **Allah**) and Muhammad is His Messenger, to which **Shi’ite** Muslims add: and ‘Ali’is the Master of the Believers.

2. Prayers or **Salat** to be performed five times a day for **Sunni** Muslim and three times a day for **Shi’ite** Muslims.

3. Almsgiving or **Zakat** the giving of which is left up to individual conscience, and which consists of percentage of a person’s wealth, or earning and can be remitted in cash or kind according to the guidelines set by the Muslim’s particular community.

4. Fasting or **sawn** during the body month Ramazan and

5. Pilgrimage to **Mecca**, or **hajj**, to be undertaken by able and solvent Muslims at least once in their lifetime.

Muslims may perform more a fewer acts of **ihsan** then the **five pillars** as an expression of their faith. For instances, muslims may participate in acts of worship that go far beyond the obligatory **salat** prayers; they may express their devotion to God and their remembrance, of and love for the Prophet in poetry, devotional songs, music, architecture, art and theatrical performance; they may do good works in charitable ways in addition to **Zakat**; many fast on additional days as part of their own discipline, and pilgrimages to shrines of persons considered to be saintly, In their teaching, practices and stature as Muslims are a feature of Muslim life in many lands.

**BASIC FEATURES OF ISLAM AS RELIGION**

Inspite of its being influenced by Judaism, Islam has got certain distinctive features of its own. Now, here are some important features of this religion in bare outlines.
1. Islam believes in one and only one God, called ‘Allah’. It is therefore out and out a monotheistic, religion.

2. Islam believes in the reality and authenticity of Prophets who are regarded as carrying the message of God to people. It admits that there have been prophets like Noah, Abraham, Moses and Jesus even before Mohammad but Mohammad in the last, the greatest and the mightiest amongst prophets and his message is to be respected by all.

3. It believes in the sacredness and authoritativeness of many scriptures such as the Torah of the Jews the Gospel of Jesus, etc but it takes Qur’an as the greatest and the most sacred.\(^{11}\)

4. It believes in the existence of angels and spirits both of good and evil dispositions. Angels of good disposition always stand at God’s call in heaven to carry out his orders. There is no distinction of sex amongst the angels as they are all spiritual. They maintain a record of man’s conduct. For the last judgment on the day of Judgment the angels bring people from their graves to God for final judgment. Besides good angles, Islam also believes in one fallen angel Iblis and his companions. Iblis is the ruler of the hell. Besides angels, Islam also believes in good and bad jins.\(^{12}\)

5. Islam believes in life after death comprising of the resurrection of the dead on the Day of Judgment and retribution of reward and punishment by God in the form of membership of heaven and hell. Its eschatology is very well defined and graphically described.

6. Heaven and hell are regarded by it as permanent abodes of the righteous and the evil doers respectively after their physical death.\(^{13}\)

7. It is out a legalistic religion providing its followers with definite codes of ethical, religious and other individual and social conduct.

8. It is totally opposed to polytheism, ritualism, idolatry and priesthood. As a matter of fact, it came to be preached against these vice which were prevalent at the time of Mohammad in Arabia.
9. It beliefs in the absolute degree of God and therefore, fatalism and predestination seem to be the primary overtones Islamic faith, Nevertheless free will and human responsibility are not absolutely denied.  

10. It teaches an ethics of perfect purity, service of humanity and brotherhood man.  

11. It also seems to preach a holy war (Jihad) against all those who are unbelievers; Jihad is also interpreted as exerting for the cause of religion.  

12. Amongst many ethical religion duties as prescribed by Islam absolute submission (Islam) to God in perfect piety is regarded as man’s primary duty.  

ISLAM AND HUMAN RIGHTS  

Pakistani scholar Rashid Ahmad Jullundhri writes that "Islam wants to create a society based on a deep sense of moral responsibility and justice in order to preserve human dignity accorded to man by God," and he argues that "without the practical recognition of the basic rights of man all talk of human dignity will remain empty verbiage." The task of the state then is to protect the rights of its citizens.  

This is a religious duty as well. Jullundhri notes that the Arabic word huquq is used for human rights. Huquq is the plural of Haqq. Haqq is also a divine name meaning the real. In Sufi usage Haqq means the Absolute. This word is also used in the traditions of the Prophet, for the Prophet is quoted as saying: "O, God, you are the Truth." Therefore, Jullundhri asserts:  

The Ulama [Judges] regarded human rights as an integral part of faith. A Man cannot be considered religious in the true sense of the word if he does not grant the rights of his fellowmen. The measure of judging a man's religiosity is how he deals with people, not how much he prays.
As practice is the measure of all piety, "Faith in human rights alone cannot make man free of fear and spiritual anxiety." The truth must be lived as well as believed.

**Mohammed Allal Sinaceur** argues that contemporary human rights are recognized as compatible with Islam. "Human rights in Islam are human rights in the light of Islam, Islam as the outward medium through which its believers attain their true value, through which is realized the right to right [sic] and the right to truth." He identifies five basic principles in Islam that legitimate human rights: the primacy of the life and dignity of the human person, the protection against restraint on religion, respect for the dwelling, the right of asylum, and the duty of care for others.

The text from the Qur'an fundamental to all human rights reads: "that whoso slays a soul not to retaliate for a soul slain, nor for corruption done in the land, shall be as if he had slain mankind altogether." In Islam the human person has absolute value:

Not merely because of man's resemblance to God as affirmed, for example, by Cicero, nor because of the Christian tradition, recalled to us in a *hadith*, that God created Adam in his own image, nor because the human individual is of more value than a whole material universe, nor because, as St. Thomas Aquinas put it, 'the relation between each individual person and the entire community is that of the part to the whole,' nor because the individual is above the community, nor because a single man typifies or exemplifies man, like Hamlet, who is neither you nor I but all of us.

The value of the human person is absolute because the individual is humankind as a whole: "The value of the individual is neither numerical nor rational nor social; it is the gift of God himself, a gift to man as such—without regard either for attributes of civilization or for historic renown or for the excellence of his self-consciousness."
Abdul Aziz Said begins his well known essay, "Human Rights in Islamic Perspectives," with a challenging paragraph:

Human rights are concerned with the dignity of the individual—the level of self-esteem that secures personal identity and promotes human community. While the pursuit of human dignity is universal, its forms are designed by the cultures of people. Politics is a cultural activity reflecting tradition and environment. The debate on human rights assumes that in spite of the differences that characterize the spectrum of world cultures, political conduct can be conceptualized by certain common norms and attitudes. In the modern global system, Westerners have concentrated on discovering common denominators rooted in Judeo-Christian traditions and from which a calculus of human rights would emerge. This emphasis on Western common denominators projects a parochial view of human rights that excludes the cultural realities and present existential conditions of Third World societies.25

Politics is cultural, and human rights are political: "The character and nature of human rights are determined in the crucible of a specific sociopolitical culture."26

In an Islamic culture the state has the responsibility of enforcing the principles of the Shari'a: "the laws derived from the Qur'an, the Sunnah—the Hadith and decisions of Muhammad, Ijma'—the consensus of opinion of the Ulama (Judges) and Ijtihad—the counsel of judges on a particular case."27 As sovereignty belongs to God, the state exists not merely to protect its citizens but to achieve social justice. Thus, "it is the state's duty to enhance human dignity and alleviate conditions that hinder individuals in their efforts to achieve happiness."28

Said argues that the Western liberal emphasis on freedom from restraint is alien to Islam. Freedom in Islam is not the ability to act, but the ability to become:
The jurists see human freedom in terms of personal surrender to the Divine Will. Freedom is not an inherent right. ... The goal of freedom is human creativity. Freedom is defined as belonging to the community, and participating with the people in cultural creation.²⁹

Basharat Ahmad proclaims: "It was the Holy Qur’an which for the first time preached the gospel of human freedom with such zeal and emphasis that the whole world woke up, as it were, from deep sleep."³⁰ However, this human freedom must be understood, as Seyyed Hossein Nasr clearly states in "The Concept and Reality of Freedom in Islam and Islamic Civilization," as the freedom to do what is right. For as pure freedom belongs to God alone, "the more we are, the more we are free."³¹

According to the Shari'a, human rights are "a consequence of human obligations and not their antecedent":

We possess certain obligations toward God, nature, and other humans. ... As a result of fulfilling these obligations, we gain certain rights and freedoms that are again outlined by the Divine Law.³²

Thus, democracy is understood differently in Islamic culture than in the West. As all members of a society are responsible to God, all share equally in delegating authority to the state. In the words of Pakistani Abul A’la Mawdudi: "In Western democracy, the people are sovereign; in Islam sovereignty is vested in God and the people are His caliphs or representatives."³³

Human rights are justified because they are the gift of God and the responsibility of those who rule the world on behalf of God. This gives them ultimate authority:

When we speak of human rights in Islam we mean those rights granted by God. Rights granted by kings or legislative assemblies can be withdrawn as
easily as they are conferred; but no individual and no institution has the authority to withdraw the rights conferred by God.\textsuperscript{34}

\textbf{Mawdudi} argues that the resolutions of the United Nations cannot be compared with the rights sanctioned by God for "the former are not obligatory on anybody, while the latter are an integral part of the Islamic faith."\textsuperscript{35}

\textbf{Fouad Zakaria} also asserts that: "the basic foundation of the concept of human rights, in the contemporary Muslim Arab mind, is religious."\textsuperscript{36} He admits that this "sacredness" of human rights was fully recognized for only a brief time in Islam and that the rulers who came after the age of the Prophet and the four Rightful or Orthodox Caliphs have distorted "the true Islamic rule."\textsuperscript{37} Thus, in Islam, human rights are not associated with history at all, but with the ancient precepts of the \textit{Qur’an} and its early enforcement.

\textbf{Zakaria} summarizes the features that characterize the concept of human rights in Islam, as interpreted by contemporary Muslims in the Arab world:

This concept is theocentric; in it man counts only as far as he is a reflection of divine nature. It is non-historical, or rather it freezes a certain moment of history and holds fast to it till the very end, thus doing away with dynamism, mobility and historical development. Finally, it is non-empirical; it does not depend on long and graduated practice in widening the scope of human rights, but seeks to imitate a theoretical and spiritual ideal, while completely disregarding the effect of practice on this theoretical ideal.\textsuperscript{38}

Tragically, there is not only a great divide between theory and practice, but few tools of interpretation are available in the tradition to bridge this gap.

The practical problems are aptly illustrated by conflict over freedom of religion. The conclusions of the 1980 Seminar in Kuwait call upon the Islamic state to guarantee the rights of non-Muslims, including their right
To practice their religious beliefs, conduct their ceremonies, pursue their professions, vocations and other activities and benefit like everyone else from public revenues such as state assistance and aid.\textsuperscript{39}

However, Muslim scholar \textbf{Abdullahi Ahmed An-Na'im} argues that "discrimination on grounds of religion or belief is fundamental to traditional Shari'a law."\textsuperscript{40} And \textbf{James Piscatori} agrees.\textsuperscript{41}

\textbf{John Kelsay} argues that, at least in the modern era, there is greater diversity of belief within Islam than Piscatori and others acknowledge. He notes that \textbf{Muhammed Ali Jinnah}, the "Great Leader" of Pakistan, affirmed freedom of religion in his presidential address to the Constituent Assembly of Pakistan on 11 August 1947. \textbf{Kelsay} asserts: "Whatever the case for Jinnah's status as a religious thinker, it is certainly true that his statement in the 11 August speech, as well as \textbf{Zafrullah Khan's} comments at the United Nations, would have been in accord with certain tendencies in Indo-Pakistan Islam at the time."\textsuperscript{42}

As evidence for this position he notes that the popular work by Amir 'Ali, \textit{The Spirit of Islam}, which was first published in 1891 and went through several editions, presents a view of Islam which is not in conflict with modern notions of freedom of conscience. \textbf{Amir 'Ali} writes:

By the laws of Islam, liberty of conscience and freedom of worship were allowed and guaranteed to the followers of every other creed under Moslem dominion. The passage in the Koran, "Let there be no compulsion in religion," testifies to the principles of toleration and charity inculcated by Islam. "If thy Lord had pleased, verily all who are in the world would have believed together." "Wilt thou then force men to believe when belief can come only from God?"\textsuperscript{43}
Muhammed Zafrullah Khan, Muhammed Ali Jinnah, and Amir 'Ali argue for freedom of conscience on the basis of the statement in the Qur’an that there is to be no compulsion in religion.44

Abdulaziz A. Sachedina notes that the division in Islam over freedom of religious belief and conscience can be traced back to a controversy between the Mu'tazilite and Ash'arite schools of dialectical theology. The first school supports the notion that religious belief and practice cannot be compelled, because it is God "who grants or withholds the gift of faith, who either makes the heart receptive to warnings or hardens it upon unsatisfactory actions or attitudes on the part of an individual."45 In this tradition God's guidance may be known through the natural order, by reason, as well as through revelation.

The exegetes of the second school believe that the will of God is only known through Islamic law. Moreover, they interpret the Qur’an to mean that only the "People of the Book"—Jews, Christians, and Zoroastrians—are to be allowed freedom of religious practice, as these peoples have God's guidance through Scripture. They also point out that the Prophet supported compelling idol worshippers, as well as those who renounced Islamic faith, to accept it.

Clearly then, the Qur’an, as understood by some Muslim commentators, contains elements which may be used to support religious liberty. However, it must also be noted that many Muslim commentators do not take this position. Moreover, the practice within Islamic cultures has often denied freedom of religion and conscience.

In Islamic culture legal capacity has traditionally been determined by one's religion, with only Muslims being recognized as full citizens of the state. To be sure, the treatment of non-Muslims in Muslim countries has varied greatly from country to country and era to era. However, Muslims have often held that "A Muslim who abandons Islam, whether or not he or she subsequently embraces another faith, is guilty of the crime of apostasy, which is punishable by death
under *Shari'a law*."46 *Christians* and *Jews*, as believers in Scripture which Muslims believe to be divine, have frequently enjoyed a limited degree of independence, as "People of the Book" or *Dhimmas*. However, *Abdullah Ahmad An-Na'im* asserts that "even the best Dhimma system in conception and implementation would still discriminate against Christians and Jews and violate their religious freedom."47

*An-Na'im* argues that the Islamic tradition can be reformed, along the lines advocated by the late Sudanese scholar Ustadh Mahmoud Mohmed Taha, who "did not propose to discard any part of *the Qur’an* or undermine its divine nature" but suggested "that Muslims should undertake modern legislation to enact those verses of *the Qur’an* which were previously deemed to be abrogated in the sense that they were not made the source of legally binding rules (*ayat al-ahkam*)."48 With respect to religious liberty, M. Taha argued:

That the verses emphasizing freedom of choice and individual responsibility for such choice before God should be the bases of modern Islamic law. To do that, Muslims need to abrogate the verses of compulsion and discrimination against non-Muslims, in the sense of denying them legal efficacy in modern Islamic law. Such verses shall remain part of *the Holy Qur’an* for all purposes except the purpose of legally binding rules. In other words, in the same way that early Muslim jurists employed the technique of abrogation (*naskh*) to rationalize and develop a body of law for their time, modern Muslim society should undertake a similar process in order to develop a body of law for modern society.49

Without changes in the *Shari'a* such as these, *An-Na'im* argues, it will hardly be an instrument of religious freedom. Furthermore, the "immediate and total implementation of Shari'a demanded by Muslim fundamentalists would make a difficult situation completely intolerable."50
CONCEPT OF EQUALITY

Khalid Duran notes that M. Taha had great support among educated Sudanese, even for his position that the Qur’an supports equal rights for women. Muslims have long held that historically the position of women in society was improved wherever Islam was practiced. For example, an Iranian report written in 1968 affirms: "Islam, a religion based on equality, regarded women as equal to men in the political, economic, and social spheres." However, the report goes on to acknowledge that in Islamic society other ideologies have often resulted in unequal treatment of women.

Muslim Scholar Riffat Hassan also takes the position that, while Islamic society continues to treat women as unequal to men, the proper reading of the Qur’an leads to a very different conclusion:

Having spent seven years in study of the Qur’anic passages relating to women, I am convinced that the Qur’an is not biased against women and does not discriminate against them. On the contrary, because of its protective attitude toward all downtrodden and oppressed classes, it appears to be weighted in many ways in favor of women.

However, she acknowledges that human rights are disappearing today "under the pressure of mounting fanaticism and traditionalism in many areas of the Muslim world."

I am particularly concerned about serious violations of human rights pertaining to the rights of women, the rights of minorities, the right of the accused to due process of law, and the right of the Muslim masses to be free of dictatorships.
THE CONCEPT OF THE STATE

The purpose of the state in Islam is to enforce the principles of the Shariah, the laws derived from the Qur’an, the Sunnah—the Hadith and decisions of Muhammad, Ijma’—the consensus of opinion of the Ulama (Judges) and, Ijihad— the counsel of judges on a particular case.”54 These legislative sources together constitute the Fiqh, the doctrine that regulates relationships of human beings with the Divine and each other. The implementation of the Shariah means that the Islamic state must create an environment in the territory under its jurisdiction which satisfies the material and spiritual needs of the people. In the Islamic state, sovereignty belongs to God alone. Both the rulers and the ruled are working for the glory of God whose commands must be fulfilled for achieving happiness here and in the hereafter.

Since sovereignty belongs to God alone, the process of legislation becomes less significant in an Islamic state than it is in its counterpart in the West. The Qur’an proclaims “If we give authority to these men on earth they will keep up prayers, and offer welfare due, bid what is proper and forbid what is improper.”55 Legislation is restricted within the limits prescribed by the Shariah. No legislative body can revise the Qur’an or the Sunnah. The judiciary derives its authority from the Shariah and is not accountable to the ruler.

In Islam, the state surrenders its sovereignty to God and accepts the position of Khilafah or Caliphate (viceregency) under God’s suzerainty. The power of the Khilafah does not reside in any person or a community, but in believers who perform good deeds. Since the purpose of the individual is the service of God, the existence of an organized community of believers requires the establishment of government. Accordingly, the legitimacy of government is its ability to ensure the service of God through consultaiong (Shurah) among
the Muslims. *The Qur’an* makes the injection “And their business is (conducted) through consultation among themselves.”

The Islamic state combines elements of theocracy with democracy. It is theocratic as it is predicated upon the doctrine of sovereignty of God. However, it does not delegate the vice regency of God to priesthood. The *Khilafah* is given to the believers who are virtuous. The state is democratic since the right to govern derives from consultation among the believers, a form of general will. The principle of popular *Khilafah* is the Islamic equivalent of the concept of popular sovereignty in the Western tradition. However, the rights of the people to change the law of the state are limited. The *Shariah* provides a check which ensures that the life of the community remains consistent with the law of God and protected from executive, legislative and judiciary revisionism.

**A SUFI COMMENTARY**

To mark the twentieth anniversary of the Universal Declaration of Human Rights, Sultanhussein Tabandeh of Gunabad, Iran, leader of the Ne'ematullahi Sultananalishahi Sufi Order which was founded about 1400, wrote *A Muslim Commentary on the Universal Declaration of Human Rights* and had it delivered to every Islamic representative who attended the 1968 Tehran International Conference on Human Rights.

Sultanhussein Tabandeh describes the Universal Declaration as "a masterpiece" of the United Nations, but suggests "most of its provisions were already inherent in Islam." Denying any involvement in politics and confessing ignorance as to the political implications of the Declaration, he asserts his concern is "only the religious angle, and in particular the relation to the sacred theology of Islam and of Shi'a belief." He suggests this is particularly appropriate, as the "Declaration was greeted by private individuals of all races as a gospel proclaimed for their protection by the jurists and the liberals of the world."
After reviewing the "genesis" of the Universal Declaration, Sultanhussein Tabandeh suggests:

The UN became the Ka'aba of peaceloving hopes. It has performed great services, one of which was its publication of the Universal Declaration of Human Rights. Like any human institution, this Declaration has its defects, as indeed at its very inception was pointed out by the representative of Syria in the first debate in the General Assembly. It does not guarantee all the longings of mankind: nonetheless it is a great step forward in the right direction towards the foundation of the human society of peace, freedom and equality which men of vision have aimed at through the millennia. He then proceeds to discuss each article in detail "in order to show that what all good people hold in common, Islam possesses in itself; and offers to humanity for the benefit of all."61

Sultanhussein Tabandeh argues that occasionally the Declaration is at variance with Islamic law.62 He asserts that Islam forbids the marriage of a Muslim to a polytheist, an idolater or an infidel, and that a Muslim woman has no right to marry any non-Muslim man. Moreover, he argues that Islamic law limits the right of divorce to the husband, and in other ways does not recognize the equal rights of men and women who are naturally "adapted to different natural functions, and capable of different duties in life."63 He defends the different rights and duties assigned to husband and wife by Islamic law as necessary for the protection of the family, which the Universal Declaration affirms is "the natural and fundamental group unit of society and is entitled to protection by society and the State."64 Moreover, he is extremely critical of Muslim representatives to the UN who agreed to the provisions of Article 16 of the Universal Declaration, which affirm equal rights in marriage.

Freedom of thought, conscience and belief are acceptable within Islamic law, he notes, but only to the extent consistent with Islamic teachings: "No one's
freedom gives him the right to blaspheme or to curse God, His Prophets or His Saints." Thus religious minorities "who follow the one true God and the revelation given to a prophet of His," such as Jews, Christians and Zoroastrians, can pursue their religious practice freely:

But followers of a religion of which the basis is contrary to Islam, like those who demand Islam's extirpation, have no official rights to freedom of religion in Islamic countries or under an Islamic government, nor can they claim respect for their religion, any more than in certain countries definite political parties which are contrary to the ideology of the regime can claim freedom since they are declared to be inimical to the welfare of that land and people.

In addition to stressing that the common good limits religious liberty, Sultanhussein Tabandeh argues—much as Augustine did in the fourth century—that freedom of religion should not be interpreted as allowing people to reject the truth, for no one would knowingly endanger his or her salvation. Thus, conversion is restricted to giving up "some other religion than Islam in order to accept Islam's sound faith."

The rest of the Declaration is found to conform to Islamic teaching. Sultanhussein Tabandeh concludes:

The Universal Declaration of Human Rights has not promulgated anything that was new nor inaugurated innovations. Every clause of it, indeed every valuable regulation needed for the welfare of human society ever enacted by the lawgivers, already existed in a better and more perfect form in Islam.

In faith he affirms that "Islam is the summit and nothing excels it!"

In 1981, the Universal Islamic Deceleration of Human Rights (UIDHR) had been prepared by representative of several Muslims countries, including Saudi Arabia, under the auspices of the Islamic Council, a private group
affiliated with the Muslim World League, which is headquartered in Saudi Arabia. The UIDHR, which severely curtailed the human rights afforded under international law in the interests of upholding conflicting rules of Islamic law, was presented to the United Nations Educational, Scientific, and the Cultural Organization (UNESCO) as if it represented Muslim’s views on human rights—despite the fact that there had been no democratic consolations or referenda to establish Muslims’ views.

UNIVERSAL ISLAMIC DECLARATION OF HUMAN RIGHTS

(19 SEPTEMBER, 1981)

Preamble

WHEREAS the age-old human aspiration for a just world order wherein people could live, develop and prosper in an environment free from fear, oppression, exploitation and deprivation, remains largely unfulfilled;

WHEREAS the Divine Mercy unto mankind reflected in its having been endowed with super-abundant economic sustenance is being wasted, or unfairly or unjustly withheld from the inhabitants of the earth;

WHEREAS Allah (God) has given mankind through His revelations in the Holy Qur'an and the Sunnah of His Blessed Prophet Muhammad an abiding legal and moral framework within which to establish and regulate human institutions and relationships;

WHEREAS the human rights decreed by the Divine Law aim at conferring dignity and honour on mankind and are designed to eliminate oppression and injustice;

WHEREAS by virtue of their Divine source and sanction these rights can neither be curtailed, abrogated or disregarded by authorities, assemblies or other institutions, nor can they be surrendered or alienated;
Therefore we, as Muslims, who believe

a. in God, the Beneficent and Merciful, the Creator, the Sustainer, the Sovereign, the sole Guide of mankind and the Source of all Law;
b. in the Vicegerency (Khilafah) of man who has been created to fulfill the Will of God on earth;
c. in the wisdom of Divine guidance brought by the Prophets, whose mission found its culmination in the final Divine message that was conveyed by the Prophet Muhammad (Peace be upon him) to all mankind;
d. that rationality by itself without the light of revelation from God can neither be a sure guide in the affairs of mankind nor provide spiritual nourishment to the human soul, and, knowing that the teachings of Islam represent the quintessence of Divine guidance in its final and perfect form, feel duty-bound to remind man of the high status and dignity bestowed on him by God;
e. in inviting all mankind to the message of Islam;
f. that by the terms of our primeval covenant with God our duties and obligations have priority over our rights, and that each one of us is under a bounden duty to spread the teachings of Islam by word, deed, and indeed in all gentle ways, and to make them effective not only in our individual lives but also in the society around us;
g. in our obligation to establish an Islamic order:
   i. wherein all human beings shall be equal and none shall enjoy a privilege or suffer a disadvantage or discrimination by reason of race, colour, sex, origin or language;
   ii. wherein all human beings are born free;
   iii. wherein slavery and forced labour are abhorred;
   iv. wherein conditions shall be established such that the institution of family shall be preserved, protected and honoured as the basis of all social life;
   v. wherein the rulers and the ruled alike are subject to, and equal before, the Law;
vi. wherein obedience shall be rendered only to those commands that are in consonance with the Law;

vii. wherein all worldly power shall be considered as a sacred trust, to be exercised within the limits prescribed by the Law and in a manner approved by it, and with due regard for the priorities fixed by it;

viii. wherein all economic resources shall be treated as Divine blessings bestowed upon mankind, to be enjoyed by all in accordance with the rules and the values set out in the Qur’an and the Sunnah;

ix. wherein all public affairs shall be determined and conducted, and the authority to administer them shall be exercised after mutual consultation (Shura) between the believers qualified to contribute to a decision which would accord well with the Law and the public good;

x. wherein everyone shall undertake obligations proportionate to his capacity and shall be held responsible pro rata for his deeds;

xi. wherein everyone shall, in case of an infringement of his rights, be assured of appropriate remedial measures in accordance with the Law;

xii. wherein no one shall be deprived of the rights assured to him by the Law except by its authority and to the extent permitted by it;

xiii. wherein every individual shall have the right to bring legal action against anyone who commits a crime against society as a whole or against any of its members;

xiv. wherein every effort shall be made to

a. secure unto mankind deliverance from every type of exploitation, injustice and oppression,

b. ensure to everyone security, dignity and liberty in terms set out and by methods approved and within the limits set by the Law;

Do hereby, as servants of Allah and as members of the Universal Brotherhood of Islam, at the beginning of the Fifteenth Century of the Islamic
Era, affirm our commitment to uphold the following inviolable and inalienable human rights that we consider are enjoined by Islam.

**I Right to Life** 70-72

a. Human life is sacred and inviolable and every effort shall be made to protect it. In particular no one shall be exposed to injury or death, except under the authority of the Law.

b. Just as in life, so also after death, the sanctity of a person's body shall be inviolable. It is the obligation of believers to see that a deceased person's body is handled with due solemnity.

**II Right to Freedom** 73-76

a. Man is born free. No inroads shall be made on his right to liberty except under the authority and in due process of the Law.

b. Every individual and every people has the inalienable right to freedom in all its forms—physical, cultural, economic and political — and shall be entitled to struggle by all available means against any infringement or abrogation of this right; and every oppressed individual or people has a legitimate claim to the support of other individuals and/or peoples in such a struggle.

**III Right to Equality and Prohibition Against Impermissible Discrimination** 77-84

a. All persons are equal before the Law and are entitled to equal opportunities and protection of the Law.

b. All persons shall be entitled to equal wage for equal work.

c. No person shall be denied the opportunity to work or be discriminated against in any manner or exposed to greater physical risk by reason of religious belief, colour, race, origin, sex or language.
**IV Right to Justice**85-94

a. Every person has the right to be treated in accordance with the Law, and only in accordance with the Law.

b. Every person has not only the right but also the obligation to protest against injustice; to recourse to remedies provided by the Law in respect of any unwarranted personal injury or loss; to self-defence against any charges that are preferred against him and to obtain fair adjudication before an independent judicial tribunal in any dispute with public authorities or any other person.

c. It is the right and duty of every person to defend the rights of any other person and the community in general (*Hisbah*).

d. No person shall be discriminated against while seeking to defend private and public rights.

e. It is the right and duty of every Muslim to refuse to obey any command which is contrary to the Law, no matter by whom it may be issued.

**V Right to Fair Trial**95-104

a. No person shall be adjudged guilty of an offence and made liable to punishment except after proof of his guilt before an independent judicial tribunal.

b. No person shall be adjudged guilty except after a fair trial and after reasonable opportunity for defence has been provided to him.

c. Punishment shall be awarded in accordance with the Law, in proportion to the seriousness of the offence and with due consideration of the circumstances under which it was committed.

d. No act shall be considered a crime unless it is stipulated as such in the clear wording of the Law.

e. Every individual is responsible for his actions. Responsibility for a crime cannot be vicariously extended to other members of his family or group, who
are not otherwise directly or indirectly involved in the commission of the crime in question.

**VI Right to Protection Against Abuse of Power**¹⁰⁵

Every person has the right to protection against harassment by official agencies. He is not liable to account for himself except for making a defence to the charges made against him or where he is found in a situation wherein a question regarding suspicion of his involvement in a crime could be reasonably raised.

**VII Right to Protection Against Torture**¹⁰⁶-¹⁰⁷

No person shall be subjected to torture in mind or body, or degraded, or threatened with injury either to himself or to anyone related to or held dear by him, or forcibly made to confess to the commission of a crime, or forced to consent to an act which is injurious to his interests.

**VIII Right to Protection of Honour and Reputation**¹⁰⁸-¹¹⁰

Every person has the right to protect his honour and reputation against calumnies, groundless charges or deliberate attempts at defamation and blackmail.

**IX Right to Asylum**¹¹¹-¹¹⁴

a. Every persecuted or oppressed person has the right to seek refuge and asylum. This right is guaranteed to every human being irrespective of race, religion, colour and sex.

b. *Al Masjid Al Haram* (the sacred house of Allah) in Mecca is a sanctuary for all Muslims.
**X Rights of Minorities**\(^{115-118}\)

a. The Qur'anic principle "There is no compulsion in religion" shall govern the religious rights of non-Muslim minorities.

b. In a Muslim country religious minorities shall have the choice to be governed in respect of their civil and personal matters by Islamic Law, or by their own laws.

**XI Right and Obligation to Participate in the Conduct and Management of Public Affairs**\(^{119-121}\)

a. Subject to the Law, every individual in the community (Ummah) is entitled to assume public office.

b. Process of free consultation (Shura) is the basis of the administrative relationship between the government and the people. People also have the right to choose and remove their rulers in accordance with this principle.

**XII Right to Freedom of Belief, Thought and Speech**\(^{122-126}\)

a. Every person has the right to express his thoughts and beliefs so long as he remains within the limits prescribed by the Law. No one, however, is entitled to disseminate falsehood or to circulate reports which may outrage public decency, or to indulge in slander, innuendo or to cast defamatory aspersions on other persons.

b. Pursuit of knowledge and search after truth is not only a right but a duty of every Muslim.

c. It is the right and duty of every Muslim to protest and strive (within the limits set out by the Law) against oppression even if it involves challenging the highest authority in the state.

d. There shall be no bar on the dissemination of information provided it does not endanger the security of the society or the state and is confined within the limits imposed by the Law.
e. No one shall hold in contempt or ridicule the religious beliefs of others or incite public hostility against them; respect for the religious feelings of others is obligatory on all Muslims.

**XIII Right to Freedom of Religion**\textsuperscript{127}

Every person has the right to freedom of conscience and worship in accordance with his religious beliefs.

**XIV Right to Free Association**\textsuperscript{128-131}

a. Every person is entitled to participate individually and collectively in the religious, social, cultural and political life of his community and to establish institutions and agencies meant to enjoin what is right (\textit{ma'roof}) and to prevent what is wrong (\textit{munkar}).

b. Every person is entitled to strive for the establishment of institutions where under an enjoyment of these rights would be made possible. Collectively, the community is obliged to establish conditions so as to allow its members full development of their personalities.

**XV The Economic Order and the Rights Evolving Therefrom**\textsuperscript{132-149}

a. In their economic pursuits, all persons are entitled to the full benefits of nature and all its resources. These are blessings bestowed by God for the benefit of mankind as a whole.

b. All human beings are entitled to earn their living according to the Law.

c. Every person is entitled to own property individually or in association with others. State ownership of certain economic resources in the public interest is legitimate.

d. The poor have the right to a prescribed share in the wealth of the rich, as fixed by Zakah, levied and collected in accordance with the Law.

e. All means of production shall be utilised in the interest of the community (\textit{Ummah}) as a whole, and may not be neglected or misused.
f. In order to promote the development of a balanced economy and to protect society from exploitation, Islamic Law forbids monopolies, unreasonable restrictive trade practices, usury, the use of coercion in the making of contracts and the publication of misleading advertisements.

g. All economic activities are permitted provided they are not detrimental to the interests of the community (Ummah) and do not violate Islamic laws and values.

_XVI Right to Protection of Property_\(^{150-153}\)

No property may be expropriated except in the public interest and on payment of fair and adequate compensation.

_XVII Status and Dignity of Workers_\(^{154-160}\)

Islam honours work and the worker and enjoins Muslims not only to treat the worker justly but also generously. He is not only to be paid his earned wages promptly, but is also entitled to adequate rest and leisure.

_XVIII Right to Social Security_\(^{161}\)

Every person has the right to food, shelter, clothing, education and medical care consistent with the resources of the community. This obligation of the community extends in particular to all individuals who cannot take care of themselves due to some temporary or permanent disability.

_XIX Right to Found a Family and Related Matters_\(^{162-172}\)

a. Every person is entitled to marry, to found a family and to bring up children in conformity with his religion, traditions and culture. Every spouse is entitled to such rights and privileges and carries such obligations as are stipulated by the Law.

b. Each of the partners in a marriage is entitled to respect and consideration from the other.
c. Every husband is obligated to maintain his wife and children according to his means.

d. Every child has the right to be maintained and properly brought up by its parents, it being forbidden that children are made to work at an early age or that any burden is put on them which would arrest or harm their natural development.

e. If parents are for some reason unable to discharge their obligations towards a child it becomes the responsibility of the community to fulfill these obligations at public expense.

f. Every person is entitled to material support, as well as care and protection, from his family during his childhood, old age or incapacity. Parents are entitled to material support as well as care and protection from their children.

g. Motherhood is entitled to special respect, care and assistance on the part of the family and the public organs of the community (Ummah).

h. Within the family, men and women are to share in their obligations and responsibilities according to their sex, their natural endowments, talents and inclinations, bearing in mind their common responsibilities toward their progeny and their relatives.

i. No person may be married against his or her will, or lose or suffer diminution of legal personality on account of marriage.

**XX Rights of Married Women**

Every married woman is entitled to:

a. live in the house in which her husband lives;

b. receive the means necessary for maintaining a standard of living which is not inferior to that of her spouse, and, in the event of divorce, receive during the statutory period of waiting (iddah) means of maintenance commensurate with her husband's resources, for herself as well as for the children she nurses.
or keeps, irrespective of her own financial status, earnings, or property that she may hold in her own rights;

c. seek and obtain dissolution of marriage (Khul'a) in accordance with the terms of the Law. This right is in addition to her right to seek divorce through the courts.

d. inherit from her husband, her parents, her children and other relatives according to the Law;

e. strict confidentiality from her spouse, or ex-spouse if divorced, with regard to any information that he may have obtained about her, the disclosure of which could prove detrimental to her interests. A similar responsibility rests upon her in respect of her spouse or ex-spouse.

**XXI Right to Education**

a. Every person is entitled to receive education in accordance with his natural capabilities.

b. Every person is entitled to a free choice of profession and career and to the opportunity for the full development of his natural endowments.

**XXII Right of Privacy**

Every person is entitled to the protection of his privacy.

**XXIII Right to Freedom of Movement and Residence**

a. In view of the fact that the World of Islam is veritably *Ummah Islamia*, every Muslim shall have the right to freely move in and out of any Muslim country.

b. No one shall be forced to leave the country of his residence, or be arbitrarily deported therefrom without recourse to due process of Law.

Thus, Islam gave to mankind an ideal code of human rights fourteen centuries ago. These rights aim at conferring honour and dignity on mankind
and eliminating exploitation, oppression and injustice. Human rights in Islam are firmly rooted in the belief that God, and God alone, is the Law Giver and the Source of all human rights. Due to their Divine origin, no ruler, government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered.

Human rights in Islam are an integral part of the overall Islamic order and it is obligatory on all Muslim governments and organs of society to implement them in letter and in spirit within the framework of that order. It is unfortunate that human rights are being trampled upon with impunity in many countries of the world, including some Muslim countries. Such violations are a matter of serious concern and are arousing the conscience of more and more people throughout the world. In large measure due to the efforts of Iran and Saudi Arabia, in 1990 the OIC issued the Cairo Declaration on Human Rights in Islam, the only Islamic variant on human rights to won the formal backing of Muslim governments. The document bore some similarities to the 1981 Universal Islamic Declaration of Human Rights (UIDHR), one of the many Islamic human rights schemes produced by Muslims seeking to persuade their coreligionists that Islam had its own version of human rights. Like the UIDHR, the 1990 Cairo Declaration set standards that diverged significantly from their international counterparts, eliminating many rights and restricting those that remained on accordance with what were said to be Islamic criteria.

**THE CAIRO DECLARATION ON HUMAN RIGHTS IN ISLAM**

*31 July-5 August 1990*

The Nineteenth Islamic Conference of Foreign Ministers (Session of Peace, Interdependence and Development), held in Cairo, Arab Republic of Egypt, from 9-14 Muharram 1411H (31 July to 5 August 1990),

Keenly aware of the place of mankind in Islam as vicegerent of Allah on Earth;
Recognizing the importance of issuing a Document on Human Rights in Islam that will serve as a guide for Member states in all aspects of life;

Having examined the stages through which the preparation of this draft Document has so far, passed and the relevant report of the Secretary General;

Having examined the Report of the Meeting of the Committee of Legal Experts held in Tehran from 26 to 28 December, 1989;

Agrees to issue the Cairo Declaration on Human Rights in Islam that will serve as a general guidance for Member States in the Field of human rights.

Reaffirming the civilizing and historical role of the Islamic *Ummah* which Allah made as the best community and which gave humanity a universal and well-balanced civilization, in which harmony is established between hereunder and the hereafter, knowledge is combined with faith, and to fulfill the expectations from this community to guide all humanity which is confused because of different and conflicting beliefs and ideologies and to provide solutions for all chronic problems of this materialistic civilization.

In contribution to the efforts of mankind to assert human rights, to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life in accordance with the Islamic *Shari'ah*.

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

Believing that fundamental rights and freedoms according to Islam are an integral part of the Islamic religion and that no one shall have the right as a matter of principle to abolish them either in whole or in part or to violate or ignore them in as much as they are binding divine commands, which are contained in the Revealed Books of Allah and which were sent through the last
of His Prophets to complete the preceding divine messages and that safeguarding those fundamental rights and freedoms is an act of worship whereas the neglect or violation thereof is an abominable sin, and that the safeguarding of those fundamental rights and freedom is an individual responsibility of every person and a collective responsibility of the entire Ummah:

Do hereby and on the basis of the above-mentioned principles declare as follows:

**ARTICLE 1:**

a. All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity.

b. All human beings are Allah's subjects, and the most loved by Him are those who are most beneficial to His subjects, and no one has superiority over another except on the basis of piety and good deeds.

**ARTICLE 2:**

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

b. It is forbidden to resort to any means which could result in the genocidal annihilation of mankind.
c. The preservation of human life throughout the term of time willed by Allah is a duty prescribed by *Shari'ah*.

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

**ARTICLE 3:**

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

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

**ARTICLE 4:**

Every human being is entitled to human sanctity and the protection of one's good name and honour during one's life and after one's death. The state and the society shall protect one's body and burial place from desecration.

**ARTICLE 5:**

a. The family is the foundation of society, and marriage is the basis of making a family. Men and women have the right to marriage, and no restrictions stemming from race, colour or nationality shall prevent them from exercising this right.

b. The society and the State shall remove all obstacles to marriage and facilitate it, and shall protect the family and safeguard its welfare.
ARTICLE 6:

a. Woman is equal to man in human dignity, and has her own rights to enjoy as well as duties to perform, and has her own civil entity and financial independence, and the right to retain her name and lineage.
b. The husband is responsible for the maintenance and welfare of the family.

ARTICLE 7:

a. As of the moment of birth, every child has rights due from the parents, the society and the state to be accorded proper nursing, education and material, hygienic and moral care. Both the fetus and the mother must be safeguarded and accorded special care.
b. Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the interest and future of the children in accordance with ethical values and the principles of the Shari'ah.
c. Both parents are entitled to certain rights from their children, and relatives are entitled to rights from their kin, in accordance with the tenets of the shari'ah.

ARTICLE 8:

Every human being has the right to enjoy a legitimate eligibility with all its prerogatives and obligations in case such eligibility is lost or impaired, the person shall have the right to be represented by his/her guardian.

ARTICLE 9:

a. The seeking of knowledge is an obligation and provision of education is the duty of the society and the State. The State shall ensure the availability of ways and means to acquire education and shall guarantee its diversity in the
interest of the society so as to enable man to be acquainted with the religion of Islam and uncover the secrets of the Universe for the benefit of mankind.

b. Every human being has a right to receive both religious and worldly education from the various institutions of teaching, education and guidance, including the family, the school, the university, the media, etc., and in such an integrated and balanced manner that would develop human personality, strengthen man's faith in Allah and promote man's respect to and defence of both rights and obligations.

**ARTICLE 10:**

Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism.

**ARTICLE 11:**

a. Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to Allah the Almighty.

b. Colonialism of all types being one of the most evil forms of enslavement is totally prohibited. Peoples suffering from colonialism have the full right to freedom and self-determination. It is the duty of all States peoples to support the struggle of colonized peoples for the liquidation of all forms of and occupation, and all States and peoples have the right to preserve their independent identity and control over their wealth and natural resources.

**ARTICLE 12:**

Every man shall have the right, within the framework of the Shari'ah, to free movement and to select his place of residence whether within or outside his country and if persecuted, is entitled to seek asylum in another country. The country of refuge shall be obliged to provide protection to the asylum-seeker
until his safety has been attained, unless asylum is motivated by committing an act regarded by the Shari'ah as a crime.

**ARTICLE 13:**

Work is a right guaranteed by the State and the Society for each person with capability to work. Everyone shall be free to choose the work that suits him best and which serves his interests as well as those of the society. The employee shall have the right to enjoy safety and security as well as all other social guarantees. He may not be assigned work beyond his capacity nor shall he be subjected to compulsion or exploited or harmed in any way. He shall be entitled - without any discrimination between males and females - to fair wages for his work without delay, as well as to the holiday’s allowances and promotions which he deserves. On his part, he shall be required to be dedicated and meticulous in his work. Should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias.

**ARTICLE 14:**

Everyone shall have the right to earn a legitimate living without monopolization, deceit or causing harm to oneself or to others. Usury (riba) is explicitly prohibited.

**ARTICLE 15:**

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

b. Confiscation and seizure of property is prohibited except for a necessity dictated by law.
**ARTICLE 16:**

Everyone shall have the right to enjoy the fruits of his scientific, literary, artistic or technical labour of which he is the author; and he shall have the right to the protection of his moral and material interests stemming therefrom, provided it is not contrary to the principles of the *Shari’ah*.

**ARTICLE 17:**

a. Everyone shall have the right to live in a clean environment, away from vice and moral corruption, that would favour a healthy ethical development of his person and it is incumbent upon the State and society in general to afford that right.

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

c. The States shall ensure the right of the individual to a decent living that may enable him to meet his requirements and those of his dependents, including food, clothing, housing, education, medical care and all other basic needs.

**ARTICLE 18:**

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

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

c. A private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted.
ARTICLE 19:

a. All individuals are equal before the law, without distinction between the ruler and the ruled.
b. The right to resort to justice is guaranteed to everyone.
c. Liability is in essence personal.
d. There shall be no crime or punishment except as provided for in the *Shari'ah*.
e. A defendant is innocent until his guilt is proven in a fast trial in which he shall be given all the guarantees of defence.

ARTICLE 20:

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

ARTICLE 21:

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

ARTICLE 22:

a. Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the *Shari'ah*.
b. Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic *Shari'ah*.
c. Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical Values or disintegrate, corrupt or harm society or weaken its faith.

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

**ARTICLE 23:**

a. Authority is a trust; and abuse or malicious exploitation thereof is explicitly prohibited, in order to guarantee fundamental human rights.

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

**ARTICLE 24:**

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

**ARTICLE 25:**

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

In effects, the *Cairo Declaration* delegated to the various national governments of Muslim countries the prerogative of deciding the scope of rights that would be allowed under the version of Islam officially approved in individual countries. No explanation was given for why granting the government of a modern nation-state, an institution borrowed from the West and unknown in Islamic tradition, such great latitude in defining the ground for denying and restricting rights should be deemed appropriate in a system supposedly based on Islamic law.
CRITIQUE OF THE CAIRO DECLARATION

A review of some of the specific provision in the Cairo Declaration is instructive, because it shows where the problem areas typically are when proponents of Islamic human rights confront international human rights law. It made no provision for equal rights for all persons regardless of sex or religion, an omission that allowed countries such as Iran and Saudi Arabia to retain their laws discriminating against women and non-Muslims. An Article 19 (a) provision of equality before the law, which might superficially seem to establish a right to equality, on examination turns out only to bar the law from making distinctions between the ruler and the ruled. Instead of offering an unequivocal guarantee of equality in rights, Article 1 spoke in terms of dignity and duties. It stated that “all men [not all ‘people’] are equal in terms of basic human dignity and basic obligations and responsibilities [not ‘rights’], without any discrimination on the grounds of race, color, language, sex, religious belief, political affiliation, social status or other considerations.” Article 6 further provided that a woman is equal to a man “in human dignity,” deliberately avoiding any guarantee of women’s equality in terms of basic rights. The same article stipulated with conspicuous vagueness that a woman “has rights to enjoy as well as duties to perform.” Women’s duties were left unspecified, and only three very meager rights enumerated. A woman was accorded a right to legal personality, to own and manage her property, and “to retain her name and lineage.” The first two rights were among the improvements that Islam made in women’s rights over a millennium ago, but they are of less significance in modern circumstances, when such minimal rights are taken for granted. The third right did not advance women’s position in Muslim societies, where women have typically kept their family names after marriage, Article 6 also imposed on a husband the responsibility for the support and welfare of his family, which reflected the ideas of medieval Islamic jurist, who envisaged women as housebound dependents subject to their husbands’ control. A husband’s right over his wife, including his
right to demand obedience, flow from his duty to support her so in emphasizing this duty the *Cairo Declaration* provided reasons for requiring women to submit to male authority\(^1\). *Article 5* established that in the context of the right to marry there should be no restrictions stemming from race, color or nationality.”, but it did not prohibit restrictions based on religion. *Article 5* thereby accommodated Islamic rules such as bans on Muslim women marrying non-Muslims and on Muslim men marrying women other than Muslims, Christians, or Jews.

Although torture was prohibited in *Article 20*, the fact that Islamic law was to define what *Cairo Declaration* principles meant suggested this prohibition would not bar the kinds of draconian physical punishments in use in countries such as Iran and Saudi Arabia, which profess to follow Sharia. In such countries, not only is torture regularly employed, but also Islamic penalties like floggings, amputations of limbs and stoning are inflicted. The *Cairo Declaration* failed to reaffirm modern norms of criminal procedure, offering only the vague assurance in *Article 19* that the defendant would get “a fair trial in which he shall be given all the guarantees of defense.” The failure to specify what these guarantees would entail suggested that the need to uphold due process in the criminal sphere had been accorded little weight. This correlated with reliance on Sharia models in which standards of criminal procedure and protections for the criminally accused were traditionally underdeveloped. The vague provision in *Article 19* left open the possibility that trials would be deemed “fair” as long as they were conducted in conformity with whatever a particular government declared the Sharia required\(^2\). The gross miscarriages of justice that routinely occur in criminal cases in the courts of countries such as Iran and Saudi Arabia indicated how proceedings fundamentally at odds with international standards could take place under Islamic rubrics.

The *Article 19* provision that there shall be no crime or punishment except as provided for in the Sharia seemed to allow for the application of *ta’zir* (discretionary) penalties. These *ta’zir* penalties are not delineated in written laws
but devised by judges after the fact, according to their personal assessments of what punishments a particular defendant’s conduct merits. Thus the *Cairo Declaration* lacked a cornerstone of human rights protections in the area of criminal law, the principle of legality, failing to guarantee that no criminal penalty could be imposed for conduct unless a legal text already existed specifying what the applicable penalty would be. *Article* 2 prohibited taking away life except for a *Sharia*-prescribed reason. This could allow the imposition of death penalties in violation of the standards of international human rights law, because *Sharia* rules are widely understood to call for the death penalty for acts like apostasy from *Islam*, any acts of fornication committed by persons who are married or have previously been married and highway robbery - which in a contemporary context is often expanded to include sedition and political dissent.

The provisions regarding religion made no pretense of neutrality. *Article 10* stated that Islam was the religion of unspoiled nature and treated proselytizing for other faiths as predatory and exploitative - prohibiting “any form of compulsion on man or to exploit his poverty or ignorance in order to convert him to another religion or to atheism.” With this prohibition, the *Cairo Declaration* seemed to set the stage for penalizing apostasy from *Islam*, but without expressly stipulating that Islamic law barred conversions from *Islam* and required that apostates be executed. *Article 9* called for the state to ensure the means to acquire education “so as to enable man to be acquainted with the religion of Islam,” apparently encouraging the adoption of national school curricula favorable to Islam. In the context of contemporary Muslim countries, this would support the common state practice of promoting a particular state-sponsored version of Islam and denigrating other versions of Islam, as well as other faiths - a practice that correlates with patterns of religious discrimination and intolerance.

Islam was also stipulated as a basis for restricting freedom of speech, with *Article 22(a)* stating that the free expression of opinions was allowed “in such manner as would not be contrary to the principles of the *Sharia*.” Governments
could exploit this vague qualification to impose drastic curbs on speech. Article 22 (c) barred the exploitation or misuse of information “in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical values or disintegrate, corrupt or harm society or weaken its faith.” Although not stating that the protection of Islam was its goal, because of the overarching Islamic qualifications that the Cairo Declaration places on rights, the article may be interpreted to mean that a wide range of Islamic moral and theological concerns could justify imposing censorship\textsuperscript{197}. Noteworthy by their absence were provisions for equal protection of the law; guarantees of freedoms of religion, association, and the press and provisions calling for political systems to be based on democratic principles.

**Article 11 (a)** provided that no one had the right to enslave human beings. This was emblematic of how Sharia rules are only selectively appropriated for use in Islamic human rights schemes and how international standards have exerted some influence on their formulations despite their authors’ claims to be committed to upholding Islamic tradition. Slavery was an ingrained feature of Islamic civilization and extensively regulated in the medieval juristic treatises. It survived into the twentieth century in milieus where traditional Sharia rules remained in force, not being formally ended in Saudi Arabia until 1962 and persisting subsequently in Mauritania. However reacting to the disrepute into which slavery has sunk, the authors of the Cairo Declaration were willing to lay down a principle that squarely repudiated an institution with a long pedigree in the Islamic legal heritage. In so doing they showed that they did not feel bound to endorse venerable Islamic principles when perpetuating them seemed impolitic.

This ambivalence on the part of the authors of the Cairo Declaration was linked to a broader phenomenon; like other educated Muslims, the authors could not elaborate Islamic human rights precepts without bearing in mind international human rights law. Contemporary Muslims may be of very
different minds regarding how Islam relates to International Human Rights law, but they cannot deny the normative force of the latter. Thus, even those pressing for supposedly Islamic version of human pay tribute to the prestige of international human rights law by attempting to minimize formulations that have an Islamic pedigree but blatantly clash with modern human rights. 198

In summary, in failing to guarantee basic human rights principle and in deploying Islamic criteria to circumscribe and deny rights, the Cairo Declaration significantly degraded civil and political rights. However, there was no indication that any OIC members were disposed to reject the second- or third-generation rights enumerated in international law. That is, the quarrel of OIC members with international human rights law existed in areas where international law required restraints on governmental powers and respect for the rights and freedoms of the governed. Because OIC member states were predominantly run by regimes with poor records in the area of civil and political rights, their decision to propose a version of Islamic requirement that reinforced their powers at the expense of those whom they governed correlated with their political agendas.

In the Islamic World, human rights focus upon a role for the state and the essentials of life. In the meantime, protagonists of change in Islamic countries suffer various indignities. Their demand for human rights continues to expand.

Eventually, the Islamic World may experience a cycle of evolution of human rights similar to that of the West, but in reverse order—from concrete essential rights to abstract universal rights to concrete rights again. In the process, certain human rights conflict in specific circumstances, the reasons for the differences in particular lists of rights being both historical and functional. The need for tradeoffs between the ideal and the possible forces. Muslim government to assign priorities. However, the heavy burden of sacrifices
suffered by the people cannot be justified, not merely by Western standards, but particularly in Islamic terms.\textsuperscript{199}

Moving from the Islamic world to the global system, the development of a global conception of human rights suffers from the lack of agreement on sources of human rights including the very foundation of international law. The uncertainly about the content of the doctrines of human rights, including the lack of a philosophical common core, poses additional obstacles. In fact, the very conception of the organization of society differs from one culture to another. The West places more emphasis on rights while Islam valued obligations. The Western tradition posits freedom in order to avoid the outcome of a despotic system, while Islam emphasizes virtue as a goal to perpetuate traditions of society which often support a coercive system. The West emphasized individual interests while Islam values collective good. In the areas where natural rights transcend cultural valued, as in the right to survival, the vested interests of ruling elites reduces human rights to more techniques for the implementation of narrowly conceived foreign policy objectives. Such political use of human rights increases the possibility of their perversion.

The concept of human rights must include Islamic and other Third World traditions. Otherwise, human rights will continue to suffer from irreconcilable differences. The fundamental problem of political life, the tension between rights and liabilities of the individual and the duties and powers of the government, has characterized the development of the Western state system. Since ancient Greece the West has approached this polarity within the framework of \textit{Platonic organicism} and \textit{Sophistic nominalism}. The Platonic-Sophistic dichotomy was reproduced with greater sophistication by the Nominalists of the 17\textsuperscript{th} century and the Organicists of the 19\textsuperscript{th} century. Seventeenth century nominalism represented a final break with medieval organicism, which following the dissemination of Aristotelian doctrines, provided the philosophical basis of political life in Europe.\textsuperscript{200}
The agenda of human rights is dictated by the historical necessity of the time, the interaction between culture and environment and the creative intervention of the human spirit. The “rightness” of human rights may be difficult to define but impossible to ignore. The idea of the individual as a means to an end is a libel upon humankind and an insult to its innate nobility.

Finally, Islamic law and international human rights law evolved along different tracks and in different contexts. Tensions between the two have emerged in the area of civil and political rights, despite the fact that Muslims participated in UN forums in formulating the International Bill of Human Rights, and Muslim countries generally indicated approved of its principles. In the wake of Islamization pressures, alternative Islamic approaches to human rights have been proposed, and some Muslim countries and ideologues have actively promoted the idea that international human rights law clashes with Islamic version of human rights. However, possibilities for harmonization have also emerged as new trends in Islamic thoughts have developed and reassessments of the Islamic heritage- which are propitious for the accommodation of human rights- have gained adherents. Until the contours of the relationship between Islam and human rights become more settled, both Muslims and the international community are destined to be concerned with this subject.
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