

Human Rights in Islamic Law

Abdel Wadoud Moustafa Moursi El-Seoudi

Department of Syariah, Faculty of Islamic Studies, University Kebangsaan Malaysia,
43600 Bangi, Selangor, Malaysia

Abstract: Undeniably, the Universal Declaration of Human Rights Charter adopted by the United Nations in December, 1948 is a great step forward in the history of United Nations in respect human rights issue. However, the rights enumerated therein characterized by deficiencies in conceptualization, flaws in formulation and injustices in application. Being subject to political agendas, economic pressure and culturally biased viewpoints, they often serve the interests of certain organizations and powerful special interest groups. As such, they carry the residues of colonialism and imperialism. This is clear from the ongoing suppression and atrocities inflicted on poor and weak nations without any effective measures being taken by these organizations for their defense and protection. Double standard is applied when it comes to the violation of human rights. Weak states are vigorously pursued whereas powerful are blatantly exempted from prosecution. Islam as a divine and universal guidance lies a comprehensive framework of values that embodies universal human rights which is free of bias and deal with the abuser of the human rights equally regardless the race, religion and color factors, hence provides a universal criterion for human rights. Therefore, this study attempts to analyze the issue of human rights from an Islamic perspective in the light of the purposes of the law and delineate the mechanism for their protection. Using both descriptive and analytical methods the research concludes that Islam provides a comprehensive and practical mechanism for protection of human rights which is just and of universal application, hence is the pioneer of human rights.

Key words: Islam, human rights, Islamic law, violation, conceptualization, Malaysia

INTRODUCTION

It is undeniable fact that human beings by birth are entitled to certain rights which fulfillment and preservation are necessary for the existence and continuation of life. However, the question of what those rights are is much debated. Some cultures in the context of discussion of human rights concentrate more on individual rights and freedoms whereas others focus shift from individual rights to the rights that ensure the survival of communities. The diversity of nations and tribes and hence their varying laws and declarations make it impossible to be accepted universally no matter how morally outstanding they are?

Unfortunately, under the influence of growing power and politics involved in the advocacy of human rights, certain people tend to view the western ideals as universal ideals applicable to all, despite their inadequacy and biasness. This has led to the perception of the human rights doctrine as a tool for the propagation of Western moral imperialism and economic domination. This is rightly observed by Saraf (1978):

The united nations is after all a political organization and its decisions are political decisions

as such it is difficult to determine the availability and applicability of fundamental rights of men within a country purely on honest, rational basis, hence susceptible to exploitation for political reasons. Furthermore, the member states may not be genuinely interested in the violation of human rights in a particular country to voice out against such act for it may not enhance her interest. We have so many examples of this sort of violation from among which is the most recent one, the case of Libya where United Nations sanctioned military action against the Libyan regime due the violation of human right mass massacre of civilians by the regime. Whereas, the cry for taking the same action against Syrian regime for heavy handed military use against the civilians falls on deaf ears, due to economic and political consideration.

Ironically in recent decades, abuses of human rights are being perpetrated, often in the name of religion and to our dismay sometime in the name of Islam. However, it is imperative to bear in mind that just because a country is known as Islamic, this does not necessarily means that it automatically practice Islam thoroughly. It is also of equal importance to realise that not all Muslims understand and follow their religion as they are supposed to. This is rightly observed by Ilyas and Ahmad (1985):

There is a general tendency among scholars as well as layman both, Muslim and non-Muslim to confuse Islam with what Muslims do. Whereas, what Muslims actually do may range from being Islamic, non-Islamic to anti-Islamic

Therefore, it is not fair to attribute violation of human rights committed by Muslims to Islam as such act might be due to their cultural affiliation rather than religious orientation.

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

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

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

SOME OF HUMAN RIGHTS IN ISLAMIC LAW

Right of honour: The right of honour and respect is mentioned in the Quranic verse. We have honoured the children of Adam (Qur'an, 17:70). This verse clearly

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

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

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

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

Right of equality and no discrimination: As far as the basic human rights are concerned Islam does not permit any discrimination between human beings in respect of their entitlement to these rights. Race, sex, lineage and property do not carry any weight in the context as it is clear from the Qur'anic verse:

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

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

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

These all sufficiently prove equal entitlement of all human beings to basics right without any discrimination based on colour, race, sex and place factors. Any discrimination arising out of race, sex, color, lineage, class, region or language factors is vehemently prohibited in Islam. This is to remove the artificial barriers between the privileged and underprivileged. However, equality does not mean that all are exactly alike since there is no denial about natural differences.

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

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

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

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

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

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

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

The right of property and protection of life: Beside, Quranic verses implying the right of property and protection of life, there are some traditions of the Prophet (PBUH) with the same implications. For example, the saying of the Prophet which states:

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

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

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

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

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

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

Seeking knowledge is an obligation of every Muslim, male and female

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

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

When you come to know a plague has spread an a place do not enter that place, when it happen areas you are living do not get out of that area out of fear of that disease

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

O ye who believe! stand out firmly for Allah, as witnesses to fair dealing and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just that is next to piety and fear Allah. For Allah is well-acquainted with all that ye do

This verse stresses on impartiality in meeting out justice to people. Therefore, it is imperative to prevent one's personal bias and hatred intermingling with the process of decision making, hence hindering others from excess to their right of justice. One should be mindful of the fact that Allah is watching him, hence not letting his personal hatred interfere with delivery of the right of justice to others. This is necessary because under the

influence of envy and animosity human being tends to deny others their rights as they deserves, hence violating their right to justice. Islam overcomes this problem by awakening the spiritual dimension in human being, hence reminding him of his accountability before God the Almighty. Furthermore Islam, as mentioned earlier, does not suffice on mere declaration of human rights it rather stresses on their safeguard and preservation as an obligation of bilateral significance. It has recognized these rights from the very early time not as human rights only but also as divine rights, obligations and duties. Characterization of these rights as divine rights implies that they cannot be compromised in any circumstances. Their protection is an obligation of both individuals and the state. The ruler is personally responsible to insure and guarantee these rights to all citizens equally without fear and favour.

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

THE DISTINCTIVE FEATURES OF HUMAN RIGHTS IN ISLAM

Islam conceives human rights as divine gift. This is rightly observed by Muwduki; human rights have been granted by God; they have not been granted by the kings or legislative assembly for if they were given by them, they could be withdrawn in the same manner in which they were given. Since, human rights are conferred by God no legislative assembly or government in the world has the authority or right to change or amend them. Furthermore, human rights in Islamic conception are not merely words on the piece of study without practical consequences, nor are they like philosophical concepts with no sanctions behind them. Thus, the basic human rights in Islam are not only conceptually acknowledged they are actually realized through practical measures as stated in the preceding section. In fact, belief in the Oneness of God and other pillars of faith jointly constitute the fountainhead of the basic human rights in Islam. This is because, God created human beings free and bestowed on them certain rights for the protection of which they are

required to spare no physical and intellectual efforts. He forbids violation of these rights repeatedly in the Holy Qur'an in the verses related to jihad and struggle in the path of God. These all indicate that all human rights granted by God to human beings are due to the dignity that God bestowed on him. It is therefore, from this vantage point that these rights derive their imperative and constitute an integral part of the Islamic perspective, servitude and the primordial state of human nature.

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

Looking at the historical development of the concept of human rights, one would not fail to realise that Islam pioneered the concept from the very moment of its advent thus preceding all international treaties and agreements on human rights adopted by United Nations. Thus, the human rights embodied in the charter of the United Nations declaration of human rights and the subsequent international agreements are reiteration of what Islam call for since 14 centuries. Therefore, the sanctity of the presently threatened human rights which we call for their protection and respect is established in Islam 14 centuries ago, hence preceded from what is acknowledged in

eighteenth century as the century of the human rights advent. In sum, human rights in Islam, as mentioned before are original rights and divinely ordained. Comprehension, generality and permanence constitute their distinctive features, hence not prone to change or postponement. They have binding force for being designed by God, hence no human being has the right or authority to violate or suspend it. Neither individual nor the society can deprive these rights of the sanctity and privilege given by God. In contrast, the legal value of the international declaration of human rights is not more than declaration without legally binding force. Therefore, human rights contained in the international treaties are merely recommendation and ethical decisions without having the force of law. Conversely, Islamic human rights are obligations which enjoy retributive guarantees. They are not mere recommendations or ethical decision on the piece of study. The public authority has the right to discharge such obligation whereas such rights in international treaties are considered individual rights without legally binding force behind them.

CONCLUSION

Islam presents a crystal clear concept of the human rights which is very unique and flawless. It adopts an integrated and practical approach for their realization and protection. The merit and advantage of Islamic approach lies in the fact that it is based on divine sources Qur'an and the Sunnah. It embodies all types of rights within its scope and covers all classes and groups of people. Balancing between all dimensions of human life, it provides a formidable set of values suitable to all time and place. Being rooted in divine sources Islamic human rights, enjoy durability and their observation and protection is accompanied with the blessing from God the Almighty. The embodiment of the spiritual aspect in the framework human rights has far reaching effect as it goes beyond the preservation of individual and societal rights to include international relation.

Consequently, human rights in Islamic conception are not merely words on the piece of study without practical consequences, nor are they like philosophical concepts with no sanctions behind them. Thus, it is not conceptual recognition that matters in the Islamic framework of human rights but also their actual realization through practical measures. However, a real and effective realization and respect of these rights, especially by their violators cannot be achieved unless such motive stem from the legal and moral approach based on the divine guidance.

REFERENCES

- Ayatullah, A. and A. Javadi, 2003. Sources of Human Rights in Islam: In Islamic Views on Human Rights. Kanishka Publishers, New Delhi, India.
- Ilyas, B.Y. and F. Ahmad, 1985. Islamic Sociology: An Introduction. Hodder and Stoughton/The Islamic Academy, UK., ISBN: 978-0340359044, Pages: 96.
- Saraf, M.Y., 1978. Evolution of The Concept of Human Rights And The Role of United Nations. In: Islamic Concept of Human Rights, Haider, S.M. (Ed.). The Book House, Urdu Bazar, Lahore, Pakistan.
- Syed, M.H., 2003. Human Rights in Islam: The Modern Perspective. Anmol Publications Pvt. Ltd., New Delhi, ISBN: 978-8126113804, Pages: 538.