

Perspective from *Shariah* on Legal and Human Rights

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Abstract

The aim of this paper is to examine concepts of Legal and Human Rights from the perspective of *Shariah*. The discussion is divided into three components, the first of which focuses on the origins, nature and development of Legal and Human Rights law(s) in the *Shariah* perspective. The second part discusses debates and declarations on Legal and Human Rights in modern times, while the third evaluates the role and impact of *Shariah* in the implementation and execution of Legal and Human Rights provisions by modern society. This is done with a view to highlight the dynamic nature of Islamic Legal and Human Rights systems that establish distinctly energetic Legal and Human Rights provisions and values for mankind.

Keywords: *Shariah*; Legal and Human Rights; Modern Society; Mankind; Human Being

Introduction

Shariah exercises its function in two ways, that is, one is considered as Rights (*Huquq*), and the other as Duties or Obligations (*Wajibat*). Both terms are correlative and interdependent (Khan and Khan, 2006). 'Right' in its singular form refers to the entitlement of a person to a thing (Walid Sharaiyra, 1999). Al-Zarqa, as mentioned by Walid Sharaiyra, (1999), defines a 'Right' as "An exclusive assignment by which the Lawgiver determines a person's authority over a thing or an obligation to perform an act". It is also defined as the 'authority', as recognized by *Shariah*, to control the action of the 'person' to whom it refers.

However, the Islamic concept of 'Rights' addresses two aspects that actually constitute

one reality. These are: (1) *Huquq Allah* (the Rights of Allah) and (2) *Huquq al-ibad* (the Rights of the servant). The latter right is superior and distinct from the secular Western perspective on Human Rights (*Huquq al-Insan*). This is because it affirms three basic concepts: (1) *ibadah* (acts of worship); (2) *abid* (slave) and (3) *ma'bud* (the worshipped, Almighty Allah). Hence, the concept of Rights from the *Shariah* perspective not only presumes the presence of Allah, but also affirms that human beings are obliged to worship Him at all times (Kasule, 2009).

It is noticeable that 'Rights', as defined by Muslim scholars in the exposition above, are basically Religious and Legal Rights or Rights that are grantable and disputable by law. They are Legal Rights because they were granted by Allah and guaranteed by *Shariah*. Hence, a closer look at these definitions demonstrates that 'Rights' are privileges granted to human beings by Allah in order to govern each other's actions within limitations as provided by *Shariah*.

Origin, Nature and Development of Legal and Human Rights Law in the *Shariah*

From its inception in 610 CE, *Shariah* containing Human Rights values as now claimed by the Occident. This is primarily because the sources and methods of Islamic Law contain common principles of good governance and human welfare that validate the ideals of modern international Human Rights Law (Baderin, 2003). Baderin contends that respect for justice, the protection of human life and dignity, as well as the equality of all human beings are central principles that are inherent in *Shariah*; for Allah says in the Glorious Quran (16:90) that: "God commands justice, the doing of good,

and liberality to kith and kin, and He forbids all shameful deeds, and injustices and rebellion, He instructs you that you may receive admonition”.

He further adds that Islam encourages interaction and sharing of perceptions as well as cooperation for the attainment of the common good of humanity. This is found in the Quran (5:5) where Allah says: “Cooperate with one another in good deeds and piety, but not in sin and enmity”. In addition, the *Shariah* extends the values of Legal and Human Rights to all human beings without reservation or exception, and with no demand whatsoever because all of mankind is regarded as a single brotherhood. Hence, any tendency towards discrimination against one another on the grounds of race, colour, social status, or nationhood is uncalled for (Syed Muzaffar-ud-din Nadvi, 1980).

Whereas, the concept and notion of Legal and Human Rights in the Western context has appeared only recently — between the 16th and 17th century CE — due to the political consciousness of common people who rose against totalitarian leaders. Even so, this effort has been limited and has led to their being granted just a few basic ‘Rights’ by the ruling class (Syed Muzaffar-ud-din Nadvi, 1980). Mayer (1991), corroborates this precedent by writing: “Eighteenth Century British and French thinkers put forward the precursors of modern Human Right ideas and had great influence on the Rights provisions in the American *Declaration of Independence* of 1776, the *Virginia Declaration of Rights* of 1776, and on the Bill of Rights that was added to the US Constitution in 1791”. She adds: “These, along with the Fourteenth Amendment of 1868, have, in turn, had great influence on subsequent Rights formulation, as have the concepts of the 1789 *Declaration des droits de l’homme et du citoyen* (Declaration of Human Rights and the Citizen), developed at the time of French Revolution”.

Islam as a religion, with *Shariah* as its legal code, is a ‘way of life’ that includes spiritual,

moral and ethical dimensions that transcend geographical and racial barriers and eliminate all distinctions based on race, creed or colour. It guarantees equality of status and equality of opportunities for all mankind because, according to *Shariah*, the origin of all human beings is the same as all have descended from Adam and Eve. Hence, the need for superiority of any group of men over another does not arise (Syed Muzaffar-ud-din Nadvi, 1980).

Almighty Allah says in the Glorious Quran (49:13 and 4:1): “O humanity! Behold, we have created you all out of a male and a female, and have created you into nations and tribes, so that you might come to know one another. Verily, the noblest of you in the sight of God is the one who is most pious of you”. In the same vein, Almighty Allah says: “O humanity! Be conscious of your Lord, who has created you out of one living entity, and out of it created its mate, and out of the two spread aboard a multitude of men and women. And remain conscious of God, in whose name you demand (your Rights) from one another (and before Him you will be accountable), and of these ties of kinship. Verily, God is ever watchful over you” (Al-Quran 4:1).

These verses state that Almighty Allah is the Creator and that He is above all human beings, and nothing can be compared to Him (Al-Quran 112:4). Therefore, the belief in One God, Almighty Allah is also regarded as belief in the equality of all human beings. This is because those who believe in One God believe that all human beings are created by the One and Only Creator of Heaven and Earth. In this way, an obligation exists to maintain Human Rights by practicing the just professed equality by every Muslim; it is nothing less than a duty that is guarded by *Shariah*. Hence, any discrimination against an individual or group as to their basic Rights as members of humanity is an aberration of the Muslim faith because Islam does not behove any human to claim superiority on the basis of origin or of power as it contradicts belief in One, Ultimate and Supreme Being. Almighty Allah says: “Mankind was one community, and

Allah sent unto them Prophets as bearers of good tidings and as warners, and revealed therewith, the Scripture with the truth that it might judge between mankind concerning that wherein they differed” (Al-Quran 2:213).

On this basis, Fathi Osman (n.d.) is of the opinion that *Shariah* has never condoned any natural differences between human beings such as intellect or free will. Instead, *Shariah* guides Muslims towards the settling of their disputes with others fairly, equitably and decently (Al-Quran 4:59; 16:125; 49:6-13). Under the *Shariah*, non-Muslims are allowed to freely practise their religion, observe the tenets of their faith, express their opinion, organize and practice their activities peacefully without provoking hostilities or confrontations as long as they are in line with the notion of enjoining Rights and forbidding the wrongs (Al-Quran 3: 114,195, 2:56).

On international or ‘universal’ relations, *Shariah* prescribed that Muslims and non-Muslims should deal and cooperate with each other cordially, understandably and equitably; and furthermore that Muslims in particular should support universal peace based on universal justice and cooperate in all instances to establish virtue and righteousness, and ward off acts of evil and aggression (Al-Quran 5:2; 2:208; 8:61; 49: 9 and 13). In addition, *Shariah* prescribes that Muslim States should serve as positive instrumental factors in establishing and developing economic and cultural cooperation with non-Muslim States and that when in agreement or obligation they should always fulfill them (Al-Quran 6:152; 13:20; 16: 91).

Furthermore, the equality of mankind was emphasized by Prophet Muhammad (pbuh) when he said: “There is no preference for an Arab over a non-Arab; nor for a non-Arab over an Arab; nor for a white over a black; nor for a black over a white except on the score of piety”. It is also reported that on another occasion he said: There is no preference for one over another but on the score of piety. All

people are descendants of Adam, and Adam was made of clay (Musnad al-Imam Ahmad, as stated by Syed Muzaffar-ud-din Nadvi, 1980). The best statement on Legal and Human Rights, as mentioned by Brohi (1980), is found in the address delivered by Prophet Muhammad (pbuh) on Mountain Arafat during the parting pilgrimage (*hajj al-wada‘i*); often described as his ‘last sermon’ to the Muslim *Ummah*. He said: “Your blood and your property are sacrosanct until you meet your Lord, as this day and this month are holy. You will surely meet your Lord and He will ask you of your works... You have Rights over your wives and they have Rights over you”.

In view of the foregoing testimonials, we observe that Rights as claimed by Walid (1999), can be possessed, claimed, demanded, asserted and both exercised and enjoyed. Husein (1984) is of the view that for a Right in *Shariah* to acquire its legal status there must be three parties, namely (1) a sovereign government that establishes the law as provided by *Shariah* and in so doing confers Legal Right and also imposes the related duty; (2) the person or persons on whom the Right is conferred; and, (3) the person or persons upon whom the duty is imposed or to whom the law is directed.

The principle of Legal Rights in the *Shariah* implies that all actions are permitted except those it specifically prohibits. Hence, human beings have inherent Rights to everything except those things that are clearly prohibited by *Shariah* (Baderin, 2003). Husein (1984) is of the opinion that when these Rights are established with reference to *Shariah* or Laws of an Islamic state, they are known as Legal Rights. He then defines Legal Right as “a definite relation between an individual and the freedom essential for the preservation of his life directly, and of the lives of others indirectly in a physical-social environment within the limit authorized by law.” In other words, Human Rights are fundamental Rights that serve as a base upon which human interests cannot be reduced by man-made laws without lawfully established cause because

these essential Rights are granted by Allah from the perspective of *Shariah* (Syed Muzaffar-ud-din Nadvi, 1980). These Rights are regarded as natural and indispensable for all human beings in the sense that they are derived from Divine Authority. This is the view of Kasule (2009) when he says: "These Rights are conferred by God and not those granted by absolute reliance on human reason or other sources like cultural traditions."

In light of the foregoing, we discover the origin of Legal and Human Rights is *Shariah*, and in particular also, we find all values related to them. *Shariah* originates from two principal sources, the Quran and the *Sunnah*. However, Legal and Human Rights from the perspective of *Shariah* cover all facets of life that fundamentally meet human needs. These Rights, as specified by *Shariah*, are far too numerous to count. Some scholars, according to Walid (1999), are of the opinion that 'Rights', in its broad sense, can be divided into two types, namely the physical rights which refer to personal rights that include the right to life, right to sanctity of dwelling, freedom of movement, right to work, and the right to ownership; and, the moral rights which refer to the Rights or freedom of religion, freedom of opinion and expression, freedom of association and assembly, political rights, freedom of cultural life, and the right to education.

Other scholars such as Berween (2002), feel there is no difference between Right and Freedom and he divides 'rights' into three categories, i.e. personal freedom; freedom of thought; and Economic freedom. Other scholars categorize 'Rights' into two. These are considered 'Fundamental' Rights and 'Other' Rights according to their sources; meaning how such Rights became disseminated such as via religious or traditional rules, or judicial precedent. Nevertheless, significantly fundamental rights have also been categorized by Al-Mawdudi (1975) as follows: right to life; right to safety; respect for the chastity of women; right to basic standard of life; individual's

right to freedom; right to justice; equality of human beings and rights to cooperate and not to cooperate. Berween (2002), on the other hand, divides his own categorization of Human Rights into 'Rights' and 'Freedoms'. These are right to life, right to security, right to property, right to work, right to political participation and right to education.

Meanwhile, he mentions that freedoms comprise of freedom of religion, opinion or freedom of expression, freedom of movement, freedom to live in dignity; and freedom of privacy. However stated, *Shariah* does not object to these classifications or particular terms, as *Shariah* takes an affirmative position on almost all irrespective of what they are called (Walid, 1999).

Legal and Human Rights in Islamic Modern Society: Debates and Promulgations

According to Khan Afridi (2008), the latter half of the 19th century witnessed Muslim intellectuals and statesmen formulating their own Legal and Human Rights theories based on provisions of the *Shariah* in order to deal with practical problems of protecting Rights and Freedoms in Islamic modern society. Among them, was an Egyptian and al Azhar scholar, Shaykh Rif'an Rafi' al-Tantawi (1801-1891), who prepared a report on the concepts of political rights, the rule of law, liberty, equality, and ideations stemming from the so-called 'Enlightenment'. His report was translated into Turkish. A Persian diplomat, Mirza Malkom Khan (1833-1908) who studied in Paris, wrote extensively on the concepts of Human Rights and reconciled European concepts of government, the rule of law and liberty with Islam. Another prominent Muslim literary figure, Namik Keman (1840-1888), disseminated ideas on Rights and Freedoms and their compatibility with Islam. Mention must also be made of contemporary exponents on Human Rights in Islam such as Abul A'la al-Mawdudi who occupies an eminent position as a great thinker whose lectures and speeches

related to the topic at hand were compiled into 'Human Rights in Islam'. Muhammad Zafrullah Khan's work, 'Islam and Human Rights', as mentioned by Kasule (2009), is also important because he actively participated in drafting the formulation known as the *Universal Declaration of Human Rights* by the United Nations in 1948 and, as such, was thought to have represented Muslim interests on that committee.

At the national level, in 1857, Tunisia announced a fundamental pact that guaranteed equality for all before the law with complete security for all inhabitants irrespective of religion, nationality, or race. For part of a series of *tanzimat* (reorganization) periods or modernizing reforms, between 1856 and 1908, Turkey, which had many non-Muslims subjects, established security of life, honor and property; of fair and public trials; of non-discrimination; of freedom of the press; of association and education; and of equality before the law irrespective of religious affiliation. In 1907, the supplementary constitutional law of Iran guaranteed the inhabitants of the country the enjoyment of equal Rights before the law as well as freedom of publication and freedom of education in as much as they are not harmful to, or prohibited by the Shariah. In addition, the 1979 Iranian constitution (Article 20) provided all citizens with human, political, economic, social and cultural Rights according to Islamic standards. The Afghanistan Constitution, which was produced between 1921 and 1924 provided for all inhabitants to be equal before the government without distinction of religion and sect. Additionally, it also provided that all Afghans would be equal before the *Shariah* and the Laws of the State. Similarly, the 1989 Algerian Constitution provides equality before the law regardless of gender. It also guarantees Fundamental Human Rights and Human Rights advocacy. The basic law of government adopted in Saudi Arabia in 1922 provided that "the State protects Human Rights in accordance with the Islamic Shariah" (Khan Afridi, 2008).

Pertaining to Human Rights movements in most

of the countries mentioned above, independent non-governmental organizations were established to spearhead campaigns to improve respect for Human Rights. Among these was the Muslim Human Rights Organization, established in Morocco in 1933 in the Spanish controlled region of Tetouan. Another prominent Human Rights group with Islamic affiliation was the Iranian Committee for the Defense of Freedom and Human Rights, formed before the Islamic Revolution (Khan Afridi, 2008).

At the international level, Muslim countries were among members of the United Nations (U.N.) whose 1945 Charter called for respect for Human Rights and Fundamental Freedoms. The Charter of the Organization of Islamic Conference, now known as Organization of Islamic Cooperation (OIC), founded in 1973, indicated in its preamble that its members were reaffirming their commitment to the U.N. Charter and Fundamental Human Rights. During the 1980s, Human Rights organizations featuring academics, professionals and intellectuals flourished throughout the Muslim world. These groups proffered solutions to challenges imposed by Human Rights 'awareness campaigns' that attempted to raise the protection of International Human Rights to the stature of formalized constitutional norms.

An important group issued the Cairo Declaration on Human Rights in Islam, during the 19th Islamic Conference of Foreign Ministers, Session of Peace, Interdependence and Development, held between 9-14 Muharram 1411 A.H (31 July - 5 August 1990). The Cairo Declaration, mentioned by Kasule (2009) was intended as an alternative to the U.N Universal Declaration of Human Rights. This was so because fundamental rights and freedoms, according to Islam, are integral to the religion and no one should have any 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 contained in the revealed Books of Allah sent through the last of His Prophets in order

to complete the previous divine messages. Therefore, safeguarding these 'Fundamental Rights and Freedoms' is an act of worship, while the neglect or violation thereof is an abominable sin. In addition, this 'safeguarding' is also an individual responsibility of every person as well as a collective responsibility incumbent upon the entire *Ummah*. Another treaty that espoused Human Rights programs at the regional level was the 'Arab Charter on Human Rights' adopted by the League of Arab States on 15 September 1994, in order to preserve the faith and unity of the Arab world and re-affirm their support for the principles of extant International Human Rights Charters at global and regional levels. Incidentally, it also rejected racism and Zionism which, according to the signatories, posed a threat to world peace.

Implementation and Execution of Legal and Human Rights Provisions in Modern Society: The Role and Impact of *Shariah*

In the present time, regarded as an age of advanced civilization and culture, the evil effect of regional and racial discrimination in different parts of the world cannot be overemphasized. The United Nations with all its steps taken to curb the exploitation of the weak by the strong and thus ensure Fundamental Rights for all mankind has, nevertheless, failed to reach this objective because prominent and powerful members such as the United States of America (U.S.A), Britain, Russia, China, France all of which claiming peak positions of their civilizations, along with others such as Israel, India and Bosnia as backed by these powers, continue to perpetuate acts of discrimination and oppression against the poor and the weak in their respective domains (Syed Muzaffar-din Nadvi, 1980). Although, many of these Nations speak volumes on Equality of Rights for mankind, in practice they monopolize rights and powers by excluding peoples of other religions and nationalities who differ from their own. These double-standards are reflected, for example, in actions such as the Gulf War of 1991 and the military intervention by the

North Atlantic Treaty Organization's (NATO) in Libya during the 2011 riots; which stand in stark contrast to their failures to act on behalf of the Palestinians, or Kashmir's Muslims and Bosnian Serbs.

According to the prevailing notion of an Islamic state, rulers are obliged to rule according to *Shariah*. Their subjects are to obey them in as much as they follow the right path and do not do something that constitutes a transgression. Subjects do, in addition, have the rights to call to account any ruler who strays from this order because the rulers are answerable firstly, to Almighty Allah and secondly, to their subjects. It is no longer clandestine to speak of governments in the majority of Muslim countries that engage in conduct constituting flagrant violations of Legal and Human Rights. The situation is so appalling in many of these countries that individual autonomy and freedom have been reduced to the bare minimum. This gives 'just cause' for functional oppositions to oppressive governments in Muslim countries, most especially in the Arab States, as such opponents truly believe in the efficacy of the provisions and values contained within *Shariah* principles. They therefore have devised conceptual and practical strategies to challenge these governments and make their voices and opinions known even in the face of threats posed by some of these corrupt authorities. Consequential effects, in most instances, are that some Muslim Human Rights activists, in their efforts to promote Human Rights according to *Shariah* standards, are forced to operate in exile, jailed or even put to death. The discriminatory and oppressive rules of the governments in these countries eventually led to the so-called 'Arab Spring' with its wide protests and demonstrations beginning on 18 December, 2010. The resistance cut across most Arab nations including Libya, Egypt, Tunisia, Yemen, Bahrain, Oman, Morocco, Saudi Arabia, Sudan, Qatar, Algeria, United Arab Emirates, Kuwait, Syria and Iraq. To date, four rulers have been forced out of power in Tunisia, Egypt, Libya and Yemen.

Despite the fact that the Islamic Legal heritage dates to the Seventh Century C.E, and is rich in elements that support principles of equality, freedom, democracy, and respect for human dignity, the realities of oppression and 'Rights' violations by governments in some of the Muslim countries demonstrate that. At the grass-roots level, Muslim countries have Human Rights records that are dreadful, especially with abuses and violations which some Muslim governments have perpetrated in the areas of civil and political rights (Mayer, 1991). In attempts to end these Legal and Human Rights violations, considerable efforts have been made by independent Muslim Legal, Political and Human Rights groups and organizations, both at national and regional levels. These have demanded stronger guarantees for Freedom, Human and Legal Rights, all according to *Shariah* provisions and values. A few of these are cited here, to mention but a few (Delling, 2004): (a) Moroccan Human Rights Organization, established in 1972; (b) Tunisian League of Human Rights, 1977; (c) Egyptian Society of Supporters of Human Rights, 1977; (d) Egyptian Organization for Human Rights, 1985; (e) Sudanese Human Rights Organization, 1985; (f) Kuwaiti Human Rights Organization, established in 1985.

At the regional level, several documents showcasing 'Islamic Standards' for Legal and Human Rights were produced by different organizations with governmental support and cooperation. Among these are: (a) The 1974 Conferences of Riyadh, Paris, Vatican, Geneva and Strasbourg on Muslim Doctrine and Human Rights in Islam between Saudi 'ulama' (scholars) and Eminent European Jurists and Intellectuals; (b) The 1980 Kuwait Seminar on Human Rights in Islam, organized by the International Commission of Jurists, University of Kuwait and Union of Arab Lawyers; (c) The 1981 Universal Islamic Declaration on Human Rights promulgated at the UNESCO headquarters in Paris. The document was prepared by representatives from Pakistan, Egypt, Saudi Arabia and other

Muslim countries in the Islamic Council, a London based Organization affiliated with the Muslim World League, Saudi Arabia; (d) The Cairo Declaration on Human Rights in Islam, issued during the nineteenth Islamic Conference of Foreign Ministers Session of Peace, Interdependence and Development in August of 1990; (e) Arab Charter on Human Rights, adopted by the League of Arab States on 15 September, 1994; (f) Islamic Views on Human Rights: Viewpoints of Iranian Scholars, released in 2003 by the Organization for Islamic Culture and Communications, Directorate of Research and Education, Centre for Cultural-International Studies, Iran.

At this junction, there is the need to distinguish between the conduct of the governments in some Muslim countries and the tenets and teachings of the *Shariah* that are neglected by these governments when it comes to practical implementation. Nevertheless, we note also that it is unjust to judge *Shariah* by the violations continually perpetuated by governments in some of these Muslim countries as their acts cannot be said to conform with the true principles and provisions of *Shariah* as are richly found in the Quran (the Glorious Book of Almighty Allah); and the Sunnah (Traditions and teachings of Prophet Muhammad); as well as *ijma'* (general consensus of the earlier Muslim scholars); and *qiyas* (analogical deduction); and *ijtihad* (personal endeavor or a jurist's personal effort).

Conclusion

This paper's attempts have not only been made to recapture the Legal and Human Rights values as provided in *Shariah* from its inception but efforts were made to present how *Shariah* models of Legal and Human Rights values also conform with reality as presented by modern society. We further demonstrated that concepts regarding International Human Rights Law resemble those that are also upheld by *Shariah* because *Shariah* contains aspects of Human Rights that preceded the West's attribution of these values for themselves; as these very values

existed from *Shariah's* inception. In addition, Muslims believe that Legal and Human Rights concepts in *Shariah* are superior to and quite differentiated from the Secular Human Rights of Occidental concepts because *Shariah* altogether comprises and affirms the 'Rights' both of Allah (s.w.t) and of human beings. Hence, Legal and Human Rights as per the *Shariah* perspective are not attributed to nature and neither were they created by human intellect. To the contrary, they are considered to have their origin in Almighty Allah, which makes them not only inalienable, but also irrevocable except on the basis of legal or just cause.

Also, the contributions of contemporary Muslim Human Rights organizations comprise scholars, activists and intellectuals at regional and international levels cannot be overstressed. They have formulated dynamic Fundamental Human Rights charters and declared them according to the provisions and values of *Shariah* with its impacts at regional and international levels. We have clearly highlighted these in order to demonstrate that violations of Legal and Human Rights as reported and practised by authorities in some Muslim countries do not stand in congruence with *Shariah* prescriptions. Therefore, we submit it is a gross error to abuse Islam or *Shariah* in the face of the obvious contradistinctions between systems of governance operated in some Muslim countries and governance as prescribed by *Shariah*.

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