

Varieties of Approaches to Human Rights in Islamic Thoughts

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Abstract

The purpose of this study is to present survey and analyze the variety of the approaches to Human Rights in Islamic Perspective. The Human Rights are inherent, unchallengeable and indivisible rights, thus every human is entitled by virtue of being a human-being. It has become a sophisticated field of inquiry in perspective of various religions and cultures and became a part of global ethics due to contemporary emphases on its importance.

The study begins with a brief discussion of the modern concept of the Human rights. Various theories related to this concept such as legal rights, moral rights, claim, entitlement, liberty, power, and immunity have been elaborated in this part. It is followed by an analysis of the development of Human Rights in Western thoughts. This part elaborates that the concept is rooted in historical events such as *Magna Carta*, French revolution, English Bill of Rights of 1688 and Constitution of United States of America in 1779. It also explains that the horrific violation of rights during the World War II forced the then world powers to include language of human rights in the United Nations Charter 1948 from which international human rights regime emerged as Universal Declaration of Human Rights 1948. This is followed by the discussion about evaluation of this concept and its classification in Islamic Jurisprudence. It also elaborates that Islamic concept of human rights (*Haqq*), the meaning of legal obligations emerged during the golden period of Islamic Law in early centuries of Islam on the bases of texts of the Holy Qurān; early Prophetic legislation and the rulings of the classical Muslim jurists. The milestone of development of this Islamic notion are *Mithāq-e Madīna* and the Farewell Sermon of the Prophet Muhammad (Peace be upon him). In contemporary period due the influence of UN Charter various Islamic Charters have also been crafted.

The study is focused on the variety of the approaches that have been applied to measure the compatibility between Islamic provisions and Modern International Human Rights legislations. The study classified this debate into three main approaches: (1) Islamic human rights dispensation surpasses secular human rights declarations; (2) The Islamic and secular constructs of human rights are similar with minor differences; and (3) A need of new articulations of Islamic standers suitable for all the Muslim societies.

Finally, a short concluding section is attempted to suggest reconciliatory approach for articulation of human rights standards for Muslims societies driven from their own socio-cultural and historical experience.

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1-Development of Human Rights in Western Perspective
Concepts of Human Rights in International Human Rights Law:

The issue of human rights has become the subject of an extensive philosophical, theological, legal, political, and anthropological discourse¹ in the West.² The debate about the origins, nature, and meaning of human rights as well as the relationship between religion and human rights has become a fairly developed and sophisticated field of inquiry.³ Considering the broadness of the subject in the West, it is necessary to specify the particular concept of human rights to which this study is going to refer.

Amidst the jurisprudential diversity not only do the sources of human rights have dissensions but also the nature of the term 'human rights' itself has many complications. Usually it refers to 'the inherent, inalienable and indivisible rights which every human being holds by virtue of being a human.' The usage of the word 'rights', a 'chameleon-hued',⁴ term, raises more problems than it aims to resolve. There are almost as many theories of rights as there are rights theorists. Jeremy Bentham⁵ is of the opinion that the only true rights are legal rights.⁶ Other scholars argue for a broader view of rights which would encompass moral rights as well.⁷ Many philosophical writers treat a right similar to a claim.⁸ It is also defined as a 'justifiable claim, on legal or moral grounds, to have or obtain something, or to act in a certain way.'⁹ A leading proponent of this view Joel Feinberg¹⁰ considers 'To have a right is to have a claim to something and against someone, the recognition of which is called for by legal rules or, in the case of moral rights, by the principles of an enlightened conscience.'¹¹

Experts of human rights also discussed its relationship with claim and entitlement. Justification distinguishes right from the demand either by appeal to pre-existing legal rules or to morality. Thus a right is a valid claim. However McCloskey¹² prefers to define a right as an entitlement rather than a claim. He believes that it is based on promise and it must be always a right against some other person/s. He delinks rights from duty and relates it with entitlement.¹³ In contrast to the previous characterizations attempt to isolate a single concept underlying the notion of a right, normative theories of rights seeks to encompass all rights within a complex normative. Wesley Hohfeld¹⁴ has laid the foundation of this notion. He asserted that rights could be understood as belonging to one of four categories: claim, liberty, power, and immunity.¹⁵ His analysis had been used, among other things, to refute the logical correlativity doctrine.¹⁶

Whereas the normative apparatus tries to encompass all rights in a single complex explanation, a competing functionalist account of rights tries to emphasize on its functions and goals. According to this view, what is distinctive about rights is that they function as trumps over collective goals. This would seem to require that rights be individuated in order to distinguish them from what one might call 'collective rights.'¹⁷ Some theorists of Human rights have also tried to trace its relationship with the duties. It is viewed that rights and duties are correlated. It means that A has a right to X, B has a duty to insure that A can, in fact, obtain X. But further, to say that C has a duty to D with respect to E is to say that D has a right to E

vis-a-vis C.¹⁸ Many rights theorists such as Feinberg Lyons, Martin and Nickel, and McCloskey, take varying stances against this position. Most of the arguments are based on the four Hohfeldian categories.¹⁹

After discussion on various themes related to description of human rights such as positive versus negative rights, legal versus moral rights and individual versus group rights Alison Dundes Rentlen²⁰ concludes that if properly interpreted, the concept of human rights is compatible with moral systems. She removes the objection that duty-based systems cannot accommodate human rights. She accepts the diversity of moral systems and contends that we cannot presume that all moral codes contain the same or similar values. Women's rights and children's rights are particularly areas of concern as many do not accept special status for these groups. So, to assert the existence of universal standards for them is ethnocentric. She concludes that the recognition of moral diversity calls into question the presumption of universality and leaves human rights vulnerable to the apparent dangers of relativism.²¹

Development of Human Rights²² in West:

The present talk of human rights emerged as the result of a nation-state politics. However some scholars do trace its roots in the *Magna Carta* and the French Revolution.²³ The English Bill of Rights of 1688 used this terminology to designate a legal status. Thomas Jefferson had made this notion a cornerstone of the constitution of United States of America in 1779 as it speaks: 'We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that amongst these are life, liberty, and the pursuit of happiness.'²⁴ This inclusion of human rights in US constitution was based on the concept of natural rights.²⁵ However the critics considered it 'uncertain provenance.' The forceful voices of the critics such as Jeremy Bentham were contributed in natural rights falling out of fashion in the 19th and 20th centuries. Instead of natural rights that are based on laws of God, they advanced the idea of 'human rights' which are sourced in the nature of humans.²⁶ British author H.G. Wells after World War II contributed in the advancement of the human rights concept in the 20th century through his letters that he wrote to *The Times* in October 1939. He advocated that the 'Declaration of Rights' should be adopted as a fundamental law for determination of the rights in a democratic setup.²⁷

The United States of America was leading to insist that the language of human rights should be included in the United Nations charter. This was mainly due to the horrific violation of rights during the World War II. The charter affirms 'faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women,' and article I sets out this purpose of the U.N.: 'To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.'²⁸ The further development in this regard was adoption of 'Universal Declaration of Human Rights' by the General Assembly in 1948.²⁹ However these declarations offer a secular and extra-religious prohibition against

discrimination without considering any legal and moral value of religions.³⁰ This forced the leaders of world religions to articulate 'A Universal Declaration of Human Rights by the World's Religions.'³¹

2- Development of Human Rights in Islamic Perceptive Concept of Human Rights in Islamic Jurisprudence:

The understanding of human rights in Islamic perspective is emerging from the concept of 'right' in Islamic Jurisprudence. The Islamic terminology for right is called *Haqq* (pl. *Huqūq*).³² *Haqq* as opposite of *Bātil* in literal sense in Arabic is used in various meaning such as 'obligation in favor of a one person,' 'to engrave onto some object,' 'to inscribe or write,' 'to prescribe and decree,' and, it also means that which is due to God on man.³³ Al-Jurjānī defined it as 'an established fact or matter that cannot be denied.' In this meaning this term became similar to 'reality' and 'truth.'³⁴ The term *haqq* is multi-dimensional and thus could mean right or claim or duty or truth. The determination of its appropriate meaning depends on the context in which this is used.³⁵ A general notion of *haqq* has been used by the Muslim jurists in their treatises.³⁶

Ibn Nujaym (d.970/1563), is of the view that human beings are entitled of rights without stipulating a reciprocal duty. He argued that a person or an entity becomes the holder of a right because of his or her legal capacity.³⁷ This concept could be further elaborated on the basis of Islamic concept of legal capacity *ahliyyah*. As per Islamic Jurisprudence the legal capacity of a person is divided into two types. 1- Capacity to acquire rights *ahliyyat al-wujb* that is based on the acceptance or acquisition of rights. 2- Capacity to perform duties *ahliyyat al-ada* that is the capacity to perform obligations and duties. As per this concept every person, even before his birth, while fetus is entitled for his rights. The legal capacity of the person cannot affect his capacity to acquire rights. Irrespective of the type of capacity that a person is entitled to, he will have right to enjoy with his rights however the performance of duties will depend on the type of capacity that a person is entitled to.³⁸

The structure of Islamic Law, its classification, and the consequential obligation and duties, revolve around a set of rights. Each act affected by an obligation creating rule (Hukam-e-Taklifi) is based on a right. There are three kinds of basic rights in Islamic Law: (1) Rights of Allah (Huqūq Allah), (2) Rights of Individual (Huqūq al-'ibad) and (3) Rights of individuals collectively (rights of state or sultan).³⁹

The rights that are based on revealed imperative and a religious rationale are named as rights of God. They can be implemented as mandatory obligations such as ritual obligations, or could involve the performance of community actions. The Muslim jurists have tried to enlist these rights more and less into: 1-Pure worship (such as i-belief on Allah or iman, ii-prayer, iii-zakat, iv-fasting (sawm), v-Hajj, vi-Jihad, associated rights such as umra and itikaf.), 2-Pur Punishment (such as Hudud penalties), 3-Imperfect Punishment (Such as prevention from inheritance in case of Murder), 4-Rights vacillating between a worship and punishment (such as Kaffarat,

that is act of expiation made for different reasons),5-Worship in which there is an element of financial liability such as Sadaqat al-fitar, which is a payment made before the Eid following ramzan,6- Financial liability in which there is an element of Worship (such as 'ushr' the ten percent charged on the agriculture producton),7- Financial liability in which there is an element of punishment(such as Kharaj tex)⁴⁰ and 8-Those that exists independently such as (i-those which lay down initially as a rule, ii-those that are imposed as an addition to a rule, iii-those are associated to the initial rule).⁴¹

The rights that are derived from secular and civil imperative and worldly rationales are named as rights of individual or a person. These are rights of individuals in which the individual is owner of right and he can forgive or can take revenge. The matter of *Tazir* and ordinary day to day matters which are not included in right of God are included in this right. They are attached to individual and serve the protection of social interests of the individuals. This category includes: 1-Finacial rights and matters related to contract (such as contract of sale, purchase, shufah and other related matters., 2-Intellectual Rights, 3-Rights of benefit (such as rights of neighbors such as right of light, right of air, right of sewerage etc.), 4-General rights (such as right for using roads, right of saying prayers in the mosques) and 5-Rights related to ownership.⁴²

Rights of state, sultan, or sultanate are rights of individuals but when these rights are presented collectively are treated as rights of sultanate or rights of government. Rights of government are duties of the individuals towards state and other fellow citizens. Individual rights are however more enforcement power than the rights of the state. The Islamic concept of human rights is therefore based on the importance of this right. This classification of rights is flexible. Some types of rights can be transferred while others can be forfeited by the consent of the owner of such rights.⁴³The above mention classification pertains to obligation-creating rules and shows how each type of law is linked with a right, which is either a right of Allah, or the right of the individual, or the right of both. The most important thing to remember, however, is that each act to which a *hukm* is related must be assigned a specific right or combination of rights. Each act therefore is a right of Allah or individual.⁴⁴

Development of Human Rights in Classical Islamic period:

The understanding of the development of human rights in Islamic perspective is dependent on the realization of a clear distinction between Muslims' practices that stem from their perception of Islam and the true Islamic teachings. Muslims practices are those that conform to certain rules and principles that a group of people calling themselves Muslims consider as binding Islamic law. True Islamic teachings, on the other hand, are Islamic Sharīḥah as Allah (the Exalted) and his Prophet originally intends it to be practiced. Although both have co-existed since the birth of Islam, they may or may not concur with each other. Islamic history has witnessed times when Muslim reality has applied Islamic Sharīḥah and complied with its true Islamic teachings; and also witnessed times when the Muslim state or society departed to a greater or lesser extent form complying with true Islamic

teachings. It is important to say that Muslim groups maintain the description 'Muslim' as long as they comply with minimum fundamental beliefs and standards that derive from original Islamic sources.⁴⁵ That is to say, Muslim reality can exist without total compliance of Muslims with Islamic Sharīah rules and principles. That is, however, also to say that the vast spectrum of rules and principle beyond this minimum fundamental beliefs and stands are not always complied with Muslims in their everyday life; a fact which leads to the unavoidable conclusion that Muslims' conduct and practice is not always representative of true Islamic teachings, i.e., what an outsider might consider Islamic might not always be Islamic in reality. Based on this description, Islam has three central issues that stem from its foundation: Muslim reality is detached from, and is not always representative of true Islamic teachings; Muslim reality has to be taken into account and addressed regardless of the degree of its compliance with true Islamic Sharīah; and Muslim reality must always aspire for (i.e. Muslims should try their best to achieve) as total compliance with true Islamic Sharīah as possible. These three issues can be termed: 1-dichotomy, 2-realistic nature and 3-aspirative nature of Islamic law. The issue of development of human rights among Muslims is a new dimension of contemporary discourse on human rights. Islamic faith has an important role in the way human particularly women are treated around the Muslim world, socially and legally therefore the development of human rights in Muslim societies needed to be understood with the distinction of the true Islamic teachings and variant practical realities of the Muslim societies.⁴⁶

The message of Islam from its inception demonstrated a close relation with the social, moral and spiritual condition of the time. The pre Islamic Bedouin society was essentially an individualist. The harsh climate forced them to live in isolation. This isolation is base of their appreciation for tradition of freedom in Arabian society. No doubt those essential human rights were much restricted in later periods but it remained a cherished ideal in the developed parts of the empire. Due to factors such as lack of authority, poverty, continual blood-shed and insecurity raids and revenge were emerged as human rights (violations). The Bedouin, likewise, had no sense of property right. Thus the property of a stranger, even though he was an Arab, was the right of the strongest. Self-help, rather than established rules of human rights, was the dominant principle.⁴⁷

Islam introduced into Arabia new principles which, though originally preached in the towns, were equally imposed on the Bedouins when they were converted to the new faith. It was in-deed no easy task for Prophet Mohammed (Peace be upon him) to induce the Bedouins to respect rights of others and live peaceably without bloodshed and robbery. In the prevailing circumstances the Holy Prophet (Peace be upon him) deemed it necessary to incorporate civil legislation in the religious tenets of Islam in order to protect the essential rights of man through religious sanctions.⁴⁸ Al-Qurān, the source of early prophetic legislation, was not only an exclusively a self-revelation of God for guidance to human beings but was also an instant where human situation was of the need of revelation.⁴⁹

In managing the affairs of the city of Madīna the Prophet Muhammad (Peace be upon him) established the basic rules of inter-communal coexistence

through *Mīthāq e Madīna*. After the arrival of the Prophet to Madīna, his dialogue with the Jews of the city and other tribes of Madīna resulted in an agreement of Muslims with them on *Mīthāq e Madīna*. One clause of *Mīthāq* protected the religious liberty of the parties while stating ‘for Muslims their religion and for Jews their religion.’⁵⁰ The clauses of this agreement that was between the Arab-Muslim tribes, Jews, and other non-Muslim groups (such as Christians and followers of pre-Islamic Arabian religious traditions) forced the partners of the agreement to maintain rights and duties in the territorial boundaries of this first Islamic state.⁵¹ Prophet Muhammad (Peace be upon him) legislated on the bases of justice, equality and tolerance for a multi-religious society through this *Mīthāq* which recognized Jews as part of *Ummah*.⁵² This new constitution of the Islamic city state brought revolutionary changes and offered opportunity of seeking justice from a central public institution instead of arbitrary decisions.⁵³ During the prophetic period new laws related to human rights were introduced time to time for protection of the rights of the people particularly the rights of the weak segments of the society such as women, children and slaves. The most comprehensive instructions related to human rights protection was the farewell sermon of the Prophet Muhammad (Peace be upon him). The sermon he gave at the conclusion of the sacred rites is much cited by Muslims, pre-modern and modern, as an encapsulation of the basic religious ideals and ethical orientation of Islam.⁵⁴

The Prophet's (Peace be upon him) immediate successors, in spite of governance challenges due to the unexpected expansion of the state, never forgot to keep the sense of human respect alive on the footsteps of the Prophet (Peace be upon him). Abū Bakr, the first caliph and immediate successor of the Prophet (Peace be upon him), while dispatching first military expedition after the death of the Prophet issued instructions regarding the protection of human rights. These instructions which are also famous as the ten commandments of Abū Bakr enjoined that: ‘Do not embezzle, do not cheat, do not break the pledge, do not mutilate, do not kill a child or an old man or a woman, do not hew down a date-palm, do not burn it either, do not cut down a fruit tree, do not slaughter a goat or cow or camel, except for food. You may pass near people who have secluded themselves in convents. Leave them in their seclusion.’⁵⁵

The tradition continued during the period of □ Umar the second of the righteous caliphs. He particularly issued instructions for the protection of rights of non-Muslims in Islamic society. The kind, careful and gentle treatment of the non-Muslim subjects of the Islamic state is core of Islamic rulings.⁵⁶ The Prophet (Peace be upon him) said: ‘Who ever oppress a non-Muslim subject or taxed him beyond his capacity, then I shall be the opposite party to him in the litigation on Doomsday’.⁵⁷ Umar b. al-Khattāb, the second caliph of Islam, advised at his death bed: ‘I exert my successor regarding the treatment to be meted out to the people protected (i.e. non-Muslim subject) by the Messenger of God. They should receive the fullest execution of their covenant and their life and property should be defended even by going to war, and they should not be taxed beyond their capacity.’⁵⁸ Once Umar b. al-Khattāb passed along a street where an old and blind poor Jew was asking for charity. He

asked him why you are asking charity. He replied: 'I have to pay the capitation tax; I am poor and an old'. At this Umar took him and led him to his own house and gave him something from his private coffers. Then he sent the following directive to the head of the state treasury: 'Look at him and his like. By God! We should never be doing justice if we eat his youth and leave him deserted in the old age. The government taxes are meant for the poor and the indigent. The poor are Muslims and this one is an indigent from among the Scriptures.' Then Umar b. al-Khattāb remitted the Jizya from him and his like.⁵⁹ Hārūn al-Rashīd asked his chief justice Abū Yūsuf about the treatment of the non-Muslim subjects. Abū Yūsuf replied: 'O commander of the faithfuls! May God help you! It is necessary that you should treat these people who were protected by the Prophet Muhammad with leniency, and care about their conditions so that they are neither oppressed nor given trouble nor taxed beyond their capacity, nor any thing of theirs is taken from them except for a duty encumbering them.⁶⁰ Abu Ubayd insists on the rights of non-Muslims and derives that the *dhimmi*s must not be burdened beyond their capacity, nor must they be caused to suffer.⁶¹ Bernard Lewis acknowledges that Muslim tolerance of non-Muslims was far better than anything available in Europe, till 17th century's secularism.⁶² It is to be noted that in early centuries of Islam, the majority of civil servants were non-Muslims who were citizens of the Islamic state.⁶³ Some landmark human rights developments of this period (632-661) include passages from the Qur'an dealing with the sanctity of life, property, dignity and honor; and actions taken by the Prophet's successors to rectify rights violations of their subjects. The excellent example the developments is reaction of Caliph 'Umar upon hearing that the son of □Amr bin al-□As (his governor to Egypt) chastised an Egyptian Copt during a sporting game. Moreover the victim was not provided any corrective justice from the father of the accused. The Caliph immediately asked his governor to explain: 'Since when have you enslaved a people, oh □Amr, when their mothers had given birth to them in freedom?'⁶⁴

Islamic concepts of human rights, to be judged fairly, must be seen in the context of pre-Islamic morals and the prevailing Roman and Persian laws of the period. Islam rejected the then-common infanticide and blood feuds.⁶⁵ It improved the relative status of women by limiting polygamy to four wives, and it urged the emancipation of slaves, though allowing non-Muslim slaves.⁶⁶ Although by no means approaching the much later Western ideology of individualism, Islam did introduce a measure of individual accountability into a society based primarily on tribalism.⁶⁷

Contemporary Developments of Human Rights in Muslim Societies:

The latter Muslim societies were unable to maintain the early tradition of advancing human rights due to deviation in the practical realities of the Muslim societies from the true Islamic teachings. However recently, due to the influence of Western talk of Human rights and post 1948 International Human rights legislations, Muslims are awakening up to the importance of Human rights. A brief description of postmodern development of Muslim world is presented here.

Turkey experienced three violent upheavals in '1867, 1908, and 1922-before its system was completely westernized. Finally, Turkey abolished Ottoman regime and adopted the Western republican system with incorporation of Rights of Man proclaimed by the French Revolution in new Turkish Constitution. This constitution declared that 'all privileges of whatever description claimed by groups, classes, families and individuals are abolished and forbidden.' It also proclaimed equality, liberty, freedom of conscience, freedom of thought and of the press, and freedom of religion for all citizens of Turkey.⁶⁸In Egypt the *Salafiyah* (Puritan) group, under the influence of Sheik Mohammed Abduhu (1849-1905), argued that Islam in its original form contains general principles which include all modern European ideas. This group declared that true Islam admits all modern progress for those who do not insist on standing by juridical rites. They believe that everything is in Al-Qurān and the authentic Sunna. Abduhu reinterpreted the Al-Qurān so as to make it cover almost all Western ideas and institutions.⁶⁹

In Persia violent means were used to force the Shah to grant a constitution, and human rights still await further changes in Persian social life before they become a reality. The Muslims of India have gone much further than their Persian or Egyptian coreligionists, owing to their intimate contact with the European currents of thought. Their leaders of thought, such as Sir Sayid Ahmad Khan Bahadur and Sir Sayid Ameer Ali, represented the most modern and the loftiest ethical ideals. In his *Spirit of Islam* (1902), Sir Sayid Ameer Ali attacks the *ulemas* for their desire to enforce laws 'enacted for the use of a patriarchal society.'⁷⁰ In the period that followed World War I the constitutions of the new Muslim states contained guarantees for the protection of human rights. It seems natural, after the fierce battles fought in Turkey, Egypt, and Persia for the liberty and equality of man, that a bill of rights modeled after the English and French Constitutions was regarded as essential in the political life of the modern Moslem states.⁷¹All three constitutions of Pakistan have special emphasis on human rights.

Arab League, on the request of United Nations adopted declaration of human rights in 1970⁷²Algeria promulgated 'Universal Declaration of people Rights' in 1976. 'Declaration of Human Rights in Islam'(DHRI) by Islamic world conference was adopted in 1979. It was probably the first modern Islamic articulation of Human rights.⁷³The International Commission of Jurists, together with the University of Kuwait organized in 1980 a Seminar on Human Rights in Islam. The seminar concludes: 'Islam was the first to recognize basic human rights and almost 14 centuries ago it set up guarantees and safe guards that have only recently been incorporated in universal declarations of human rights.'⁷⁴In 1981, 'the African Charter of Human rights' was elaborated by the organization of African countries to which many Arab Islamic countries belong. Islamic commission for Europe adopted the 'Islamic Universal Declaration of Human Rights'(IUDHR) in the same year. In 1985, the Tunisian League of Human Rights promulgated a 'Tunisia Charter of Human Rights.'⁷⁵To advocate the idea of human rights in Arab Muslim societies a declaration titled as 'A Charter on Human and People's Rights in the Arab World' developed by a group of Arab experts in December of 1986.⁷⁶Nevertheless, those

listed are significant enough to testify to the development Human rights themes at all levels in Islamic world during the last 30 years. In spite of adoption of many declarations of human right and inclusion of provisions of the human rights in the constitutions of many Muslim countries, the complete adoption of Modern Human rights standards in the positive legislation of Muslim countries is still awaited.⁷⁷

3-Human Rights Schemes and Approaches in Islamic Thoughts to the Human Rights:

The contemporary international legislation on Human Rights has a pervasive impact on the development of Islamic thoughts regarding this discipline in recent years. Impressive literature in shape of legal documents, declarations, books, research papers, articles and conference presentations is available to measure the levels of compatibility between Islamic rulings and Human Rights standers. Many international conferences and seminars are also dedicated to this discipline.⁷⁸ The varieties of approaches to this comparative discourse are named by Ann Elizabeth Mayer as 'human rights schemes.' She does not point out that contemporary Muslim human rights thoughts are articulated on the format of the 1948 Universal Declaration of Human Rights (UDHR) however they are based on traditional Muslim sources, nor do they address the discrepancies with contemporary developments in this field.⁷⁹ She assesses that these typologies are varied from the assertion of fully compatibility to the claim that they are repugnant to Islamic teachings. Amidst these extremes; compromise positions maintain that Islam accepts many aspects of international human rights legislation. Many Muslim scholars' endorse certain human rights standards with reservations.⁸⁰ Ibrahim Moosa has adopted Mayer's human rights schemes to analyze various Muslim approaches to Human rights. He feels that a review of this shows that three main methodological have been applied. The first relies on the classical juristic traditions as the authoritative interpretation. The second methodology is based on direct access to the texts Al-Qur'ān and al-Sūnah. The combination of the both methods is found in the third approach. In this approach the classical Jurists canonical interpretations are treated in a non-binding manner for creative contemporary interpretations of the sources of the law.⁸¹ Halliday has named the approaches to measure the comparability of Islamic teachings to the contemporary human rights legislations as Islamic reactions to human rights law. First reaction maintains that human rights are compatible with Islam. Second reaction considered that they are not compatible at all. Third reaction declares that true human rights could be possible only under Islam. In fourth reaction human rights are rejected being an imperialist agenda.⁸² Heiner Bielefeldt refers to various Muslim approaches to Human rights as a 'variety of Muslim voices' in human rights.⁸³ Stowasser has divided scholars of Islam on human rights into modernists, conservatives and fundamentalists or integrists.⁸⁴ Niaz A. Shah focuses on four major approaches: secular, non-compatible, reconciliatory, and the proposed interpretive approach.⁸⁵ David L. Johnston enlists the approaches that has been disclosed to measure the level of compatibility of Shariah with Modern Human rights standers as: (1) the secretive method (ikhfāʿ) of al-Mawdūdī, Hasan al-Turābī and Muhammad cAmāra, (2) the apologetic method (itidhār) of Muhammad Ahmad Sa'd, (3) the defensive method (difāʿ) of Cornelius and al-Mawdūdī, (4) the open (frank) method

(□arīh) of Sultan Husayn Tabandeh,(5) the method of deceit (al-murāwigh) such as the text of the UIDHR and the Cairo Declaration of Human Rights in Islam,(6) (al-multawī)the 'beating around the bush' method of Fahmī Huwaydī,(7) the selective method (intiqa'ī) of Muhammad Ahmad Hasan Khan and Saghīr Hasan Ma'□ūmī (8) the preaching (or "rhetorical") method (khitābī) of Khan and Cornelius (Pakistan) and (9) the comprehensive method (shāmil) of Abdullahi an-Na'im.⁸⁶ Suhail H. Hashmi is of the view that Muslim writing on this topic is hopelessly apologetic while much Western writing is highly contentious. He feels that the language of human rights is fundamentally alien to Islam. He considers that rulings of the Sharīah, while in advance of their time, are apparently discriminatory regarding non-Muslims and women from an international law perspective.⁸⁷

From the several approaches to understanding human rights in Islamic tradition and the relationship between Islam and the international human rights regime. This article elaborates five major approaches: secular, reconciliatory, puritan, non-compatible and the interpretive approach for a brief discussion.

In application of the secular approach, some Muslim scholars advance the idea of applying international human rights law in Muslim societies.⁸⁸In their opinion there is no obstacle in Islamic Law to human rights law and that both may coexist. Reza Afshari advocates the implementation of Universal Declaration of Human Rights (UDHR) in the Muslim Societies.⁸⁹ Some national human rights organizations in Muslim states, such as the Human Rights Commission of Pakistan, also have this opinion. This approach has three main disadvantages. There are some obvious discrepancies between Islamic and international human rights standards therefore co-existence between both is not workable due to three simple reasons. First, Islam is the state religion in many Muslim countries and any law that is not compatible with it is considered void.⁹⁰ Second, as argued above, they follow the conservative line of Qurān interpretation in official policies. Finally, the secular approach fails because a majority of the Muslim population wants to live by their religious standards as rights and not as a right recognized in international human rights law.⁹¹

The reconciliation approach finds compatibility between Islamic provisions and international human rights norms in many respects. This approach is based on the opinion that the areas of conflict could be reformulated and reconciliation between Islamic provisions and international standards is possible. They believe that there are similarities and dissimilarities and reconciliation in the divergent areas is possible.⁹²Fazlur Rahman, Mahmood Monshipouri, BassamTibi⁹³ and Abdullahi Ahmad An-Na'im have expressed their views on this issue.

The puritans believe that God alone, who is the sole lawgiver therefore any normative position that is derived from human reason or socio-historical experience is basically illegitimate. This position considered those moral approaches which are based on reason or contractual obligations or social and political consensus to intuition are inherently whimsical and illegitimate. All moral norms and laws must be derived from the Divine will as a sole source. A self-sufficient and closed system of belief without any type of engagement with others, except from a position of

dominance is proposed by them.⁹⁴ This understating is seeking a construction of Islam which is culturally independent from the West. The primary operative mode of this understanding is antithesis of the West, or at least the antithesis of world view of the West. They strongly react on the supremacy of the West.⁹⁵ This reactive formation has constructed much of the puritan debate on the idea of universal human rights.⁹⁶ They espoused international human rights as distinctly Western in origin and strongly resist it on these grounds alone. In puritans approach the Islamic scholars who are trying to find some form of doctrinal reconciliation are suffering from West oxification. They have compromised on Islamic teachings therefore needed to treat as betrayers of the Islamic values.

Non-compatible conservative approach is close to the puritans approach. The proponents of this approach are comprised of some Muslim governments and traditional Muslim scholars who argue that Islamic system of rights and duties is distinct and sufficient. The advocates of this non-compatible approach considered the international human rights legislation as another tool of Western hegemony. They insist on the eternity of Sharīah based system for its antiquity, and refused to accept the international human rights being new type of Western imperialism.⁹⁷ The holders of this approach view the Islamic rights system as defense against Western intellectual arrogance and cultural imperialism.⁹⁸ There are three distinct points to be gleaned from an analysis of the non-compatible approach to human rights in Islam. First, in Islam the origin of duties and rights is divine and not a human formation. Second, Islamic human rights are theocentric,⁹⁹ which means that everything belongs to Allah and man is here only to serve his creature. This position is contradictory to anthropocentric international human rights in which man is the measure of everything.¹⁰⁰ Lastly, Islamic human rights granted by God and are permanent and eternal, while international human rights laws are man-made and therefore are changeable.¹⁰¹ Usually, Many Islamic countries follow the traditional interpretation of Islamic law therefore they view that international human rights law is not implementable or partially able to be implement in their Jurisdictions.¹⁰²

An Interpretive approach is adopted by those Islamic scholars who believe that Islamic law can be reformed by reinterpretation of the sacred texts.¹⁰³ Instead of seeking compatibility between Islamic and international human rights standards they argue that the text of al-Qurān has the capacity to be reinterpreted to meet contemporary needs of Muslim societies.¹⁰⁴ Fazlur Rahman is of the opinion that al-Qurān revealed as a specific time in history and within certain circumstances. Its expressions are relative to those circumstances. However, the message is not confined to that period or those situations historically. Muslims from other circumstances must make practical application in accordance with how the original intention reflects or manifests in new environments.¹⁰⁵ On the footsteps of Rahman, Engineer Asghar differentiates between normative and contextual verses of Al-Qurān. He is of the view that normative passages of the Qurān are universal and applicable all times and in all circumstances however application of the contextual verses is limited to periods of time and social contexts.¹⁰⁶ Wan Mohd Wan Nor Daud says some of the practices that are encouraged by the Qurān may be restricted to the

society which practiced them, but the Qurān cannot be confined to one society and its history.¹⁰⁷ This approach is based on the preference of normative verses over the contextual ones.

The above mentioned debate could be classified into: (1) Islamic human rights dispensation surpasses secular human rights declarations¹⁰⁸; (2) The Islamic and secular constructs of human rights are similar with minor differences¹⁰⁹ and (3) A need of new articulations of Islamic standers suitable for the Muslim societies.¹¹⁰

Conclusion:

All the approaches that have been identified in this study have its merits and demerits. The central theme of Human rights in Islamic perspective is that Allah, the lawgiver has conferred rights on persons, through revelation. This right scheme has authorized human authority to mediate these rights. This understanding leads to the argumentation that Islamic rights have derived from revelation and are articulated in human language based on reason and public interests. The aforementioned approaches do not deny areas of conflict and tension in both secular and Islamic rights schemes in matters such as prohibition against Muslims converting to other religions, the historically entrenched 'protected' (*dhimma*) status of non-Muslims living in Islamic states, and some rulings of Islamic jurisprudence that affect women's civic and personal liberties.¹¹¹ In amidst of this tension paradigm the differences between secular and Islamic rights systems does not lead to the conclusion that the Islamic rulings should be denied a role in the defense of human rights, in spite of conflict of some of Islamic provisions with secular human rights. This orientation leads to conclusion that Islamic Human rights scheme are among the parallel models of protection of human rights and not contradict one. Moreover reconciliation between both is possible. Despite of differences they have the capacity to generate dialogue between societies and nations. Rentlen ascertains that rights based on a moral system artifice differently from the secular rights does not necessarily derogate it from being 'rights,' *albeit* rights in a different sense.¹¹² The proponents of reconciliatory approach argue that Modern Western construction of rights is also a result of a process of globalization. Modern Human rights regime is designed on the basis of hegemonic economically advantages of Western nations. This design has articulated many compatible political ideas into a unified economic world.¹¹³ In modern world, the hegemony of Western political culture through globalization has witnessed the abuse of discourse of human rights around the globe. It is often observed that powerful nations used this discourse as a political weapon to dominate on emerging nations and to justify their own human rights abuses. This is particularly used to subdue those communities contesting the monopoly of global political power. Some Muslim countries are at the forefront of contesting these perceptions and identifying Western double standards. This state of affairs has severely affected the status of human rights in the international discourse.¹¹⁴

Amidst these international circumstances Fazlur Rahman suggest revisionist or reconstructionist approach in philosophy and ethical orientation of Muslims. He is of the view that that the success of a modern Islamic human rights theory will depends on openness of modern Islamic thought for reconstruction.¹¹⁵ Muslims need

to have their own set of right that not only be driven from their own socio cultural and historical experience but also fulfills their contemporary needs. May be in the conclusion it could be proposed that Maqāsid al-Sharīah is Islamic response to changeability. This paradigm can also be used as a tool to devise the Islamic human rights standards. The theory of Maqāsid al-Sharīah can meet contemporary as well as traditional ends of the Muslim societies.

References:

¹ For details of various theories of Human Rights in the West, see Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge: Cambridge University Press, 1996); Brian Tierney, *The Idea of Natural Rights* (Atlanta: Scholars Press, 1997); Carlos Santiago Nino, *The Ethics of Human Rights* (Oxford: Clarendon Press, 1993); Tibor Machan, *Individuals and their Rights* (La Salle, IL: Open Court, 1989).

² West refers in this study mainly to Europe, European settlements and North America. It also includes Australia and New Zealand. The reference is geographical and historical rather than cultural See: *Islam and the West: Annual Report on the State of Dialogue 2008* (Switzerland: World Economic Forum Community of West and Islam Dialogue (C-100), 2008) p.10.

³ Khaled Abou El Fadl, 'The Human Rights Commitment in Modern Islam,' in Joseph Runzo , Nancy M. Martin and Arvind Sharma (Eds) *Human Rights and Responsibilities in World Religions* (Oxford: One ward, 2003), p.303.

⁴ This concept is used for various conceptions. Hohfeld as to Austin's concept of right and duties pointed out that each covered not one single kind of relation but several. See: Julius Stone, *Legal System and Lawyers' reasoning* (California: Stanford University Press, 1964) p.138.

⁵ Jeremy Bentham (1784- 1832) is a British philosopher and founder of utilitarian theory.

⁶ Bowring, J. (ed.), *The Works of Jeremy Bentham* (London: Simpkin, Marshall & Co., 1843) p.2/501, 3/221; Hart, H. L. A, 'Bentham on Legal Rights,' in A. W. B. Simpson (ed.), *Oxford Essays on Jurisprudence* (2nd series) (Oxford: Clarendon Press, 1973) pp. 171-201.

⁷ Alison Dundes Renteln, 'The Concept of Human Rights,' *Anthropos*, Bd. 83, H. 4./6. (1988), p. 343.

⁸ Feinberg, J., *Social Philosophy* (Englewood Cliffs: Prentice-Hall, 1973) pp.64-66.

⁹ The Oxford English Dictionary

¹⁰ Joel Feinberg (1926- 2004) was famous as an American legal political philosopher. He is famous for his work in the fields of political philosophy, ethics, individual rights and the authority of the state.

¹¹ *Rights, Justice, and the Bounds of Liberty: Essays in Social Philosophy* (Princeton: Princeton University Press, 1980) pp.159-160.

¹² H.J. McCloskey is an Australian philosopher, who wrote a number of atheistic works in the 1960's and 70's. One of his famous articles has been criticized globally is 'On Being an Atheist.'

¹³ McCloskey, H.J., 'Rights - Some Conceptual Issues', *Australasian Journal of Philosophy*, No. 54, 1976, pp. 99-115.

¹⁴ Wesley Newcomb Hohfeld (1879-1918) was a jurist and author from USA. His work has an impact on the contemporary realization of the nature of rights.

¹⁵ Hohfeld, W. N., *Fundamental Legal Conceptions* (New Haven: Yale University Press, 1964)

¹⁶ His framework has been adopted and extended by a number of philosophers e.g. : Wellman, C, *A Theory of Rights: Persons Under Laws, Institutions, and Morals* (Totowa, N. J.: Rowman&Allanheld, 1985); Flathman, R. E., *The Practice of Rights* (Cambridge: Cambridge University Press, 1976)

¹⁷ Functional theory of rights was presented by Ronald Dworkin see: Dworkin, Ronald, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977) This theory was also supported by other scholars such as: Dinstein, Y., 'Collective Human Rights of Peoples and Minorities,' *International and Comparative Law Quarterly*, 25, 1976: pp. 102-120; Garet, R. 'Communitarity and Existence: The Rights of Groups,' *Southern California Law Review*, No. 56, 1983 : pp. 1001-1075.

¹⁸ Lyons, D., 'The Correlativity of Rights and Duties,' *Nous*, 4, 1970: p. 45; Martin, R., and J. W. Nickel, 'Recent Work on the Concept of Rights,' *American Philosophical Quarterly*, No. 17, 1980: p. 165.

¹⁹ Alison Dundes Renteln, 'The Concept of Human Rights,' *Anthropos*, Bd. 83, H. 4./6. (1988) p. 344.

²⁰ Alison Dundes Renteln is a Professor of Political Science, Anthropology, Public Policy and Law at the University of Southern California. She is famous as an expert on cultural rights, including the use of the "cultural defense" in the legal system

²¹ *Alison*, *op.cit.*, p. 360.

²² The discourse on the evolution of human rights can be seen in: Costas Douzinas, *The End of Human Rights* (Oxford: Hart Publishing, 2000), pp. 1–145; Upendra Baxi, *The Future of Human Rights* (New Delhi: Oxford University Press, 2002).

²² On the development of Human rights see: Jack Donnelly, 'The Social Construction of International Human Rights,' in Tim Dunne and Nicholas J. Wheeler (eds.) *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), pp. 71–102; Jack Donnelly, *International Human Rights: Dilemmas in World Politics*, 2nd ed. (Boulder: West view Press, 1998), pp. 3-17, 86–114; David P. Forsythe, *Human Rights in International Relations* (Cambridge: Cambridge University Press, 2000), pp. 139–60, 217–36; Peter Schwab and Adamantia Pollis, 'Globalization's Impact on Human Rights,' in Adamantia Pollis and Peter Schwab (Eds.) *Human Rights: New Perspectives, New Realities*, (Boulder: Lynne Rienner, 2000), pp. 209–223; Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (Philadelphia: University of Pennsylvania Press, 1998), pp. 241–280; A.H. Robertson and J.G. Merrills, *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights*, 3rd ed. (Manchester: Manchester University Press, 1992), pp. 286–304; Thomas Risse, Stephen Ropp, and Kathryn Sikkink (Eds.) *The Power of Human Rights:*

International Norms and Domestic Change, (Cambridge: Cambridge University Press, 1999) and Obrad Savic (Ed.), *The Politics of Human Rights* (London: Verso, 1999).

²³ Ebrahim Moosa , ‘The Dilemma of Islamic Rights Schemes,’ *Journal of Law and Religion*, Vol. 15, No. 1/2 (2000 - 2001), p.189.

²⁴ Geoffrey Robertson, *Crimes against Humanity: The Struggle for Global Justice* (New York: Penguin Books, 2000), p. 6.

²⁵ Joseph Runzo, ‘Secular Rights and Religious Responsibilities,’ in Joseph Runzo , Nancy M. Martin and Arvind Sharma(Eds) *Human Rights and Responsibilities in World Religions* (Oxford: Oneward, 2003) p.11.

²⁶ Geoffrey Robertson, *Crimes Against Humanity*, p. 12; On the evolution of concept of human rights. See : Costas Douzinas, *The End of Human Rights* (Oxford: Hart Publishing, 2000), pp. 1–145. ; Upendra Baxi, *The Future of Human Rights* (New Delhi: Oxford University Press, 2002).

²⁷ Robertson, *Crimes Against Humanity*, p. 12.

²⁸ The so-called International Bill of Rights comprises the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, and the International Covenant on Civil and Political Rights. See Jimmy Carter, Adolfo Perez Esquivel, and Tom J. Farer, *The International Bill of Rights* (Glen Ellen, CA: Entwhistle Books, 1981). See also: Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 1999).

²⁹ See Michael Ignatieff, *The Rights Revolution* (Toronto: House of Anansi, 2000); Carl Wellman, *The Proliferation of Rights: Moral Progress or Empty Rhetoric* (Boulder: Westview, 1999); Kirsten Sellars, *The Rise and Rise of Human Rights* (Stroud: Sutton, 2002); Norberto Bobbio, *The Age of Rights* (Cambridge: Polity, 1996); Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990).

³⁰ Joseph Runzo, ‘Secular Rights and Religious Responsibilities,’ in Joseph Runzo , Nancy M. Martin and Arvind Sharma(Eds) *Human Rights and Responsibilities in World Religions* (Oxford: Oneward,2003) p13.

³¹ See J.N.D. Anderson, *Islamic Law in the Modern World* (New York: New York University Press, 1959); J.N.D. Anderson, *Law Reform in the Muslim World* (London: Athlone, 1976); Wael Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 2001), pp. 207–211. On the adoption of secularized law, and the emergence of Western legal professionals in Egypt, see Farhat J. Ziadeh, *Lawyers, the Rule of Law, and Abou El Fadl*, the human rights commitment in modern Islam 343 *Liberalism in Modern Egypt* (Stanford: Hoover Institution Publications, 1968), pp. 3–61.

³² This term has been used in various verses of Al-Qurān verses in various meaning. See: 2:241;8:8;17:81;24:25;36:7 and 40:20.

³³ Encyclopaedia of Islam second edition cited in full as Encyclopedia of Islam [s.v. hakk(Leiden: Brill 1960).p.2; Ibn Manzūr, Muhammadb.Makrāmb.Ali, *Lisān Al-*

Arab, (Ed.) Yūsuf al khiyat (Beirut: Dār Al Jilwa Dār Līsān Al-Arab,1988) S.V. Haqa.

³⁴ Alī b. Muhammad b. Alī al-Jurjānī, *Kitāb al-Ta'rifāt* , Ibrāhīm al-Ibyāri (ed.), (Beirut: Dār al-Kitāb al-'Arabī 1405AH/1985AD).p. 120.

³⁵ Al-Zūhailī ,Wahībab. Mustfa, *Al-Fīqh al Islamīwa 'adīlātuhū* (Damascus: Dār al-Fīkar,n.d) p.4/2838.

³⁶Ebrahim Moosa, 'The Dilemma of Islamic Rights Schemes,' *Journal of Law and Religion*, Vol. 15, No. 1/2 (2000 - 2001), p. 191.

³⁷ See Muhammad Fathi 'Uthman, *Taqrīr Huqūq al-Insān bayna al-shari'a al-Islaniyya wa'l Fikr al-Qānūnī al-Gharbī* (2d ed., Wazarat al-Ta'lim al-' Āli 1398/1978).p555. He considers Ibn Nujaym's concept of rights synonymous to that of the Belgian jurist, Jean Dabin (d. 1963). See Jean Dabin, *General Theory of Law, in The Legal Philosophies of Lask, Radbruch, and Dabin* , Kurt Wilk (trans.), (Cambridge, Mass: Harvard. U . Press, 1950). P. 232.

³⁸ Imran Ihsan Niazi, *Islamic Jurisprudence* (Islamabad: Islamic Research Institute, 2000) pp.45-65.

³⁹Ibn Amir al-Hāj, *al-Taqrīrwa 'l-Tahbīr* , vol. 2, 104 (2d ed., Beirut: Dār al-Kutub al- 'Ilmiyya 1403/1983); 'Abd al-Razzāq al-Sanhuri, *Masādir al-Haqfi' l-Fiqh al-Islāmī* (Cairo: Dar al-Ma'arif 1967)p.1/14; Al-Zūhailī ,Wahībab. Mustfa, *Al-Fīqh al Islamī wa 'adīlātuhū* p.4/2843 see also Baber Johansen, *Secular and Religious Elements in Hanafite Law: Function and Limits of the Absolute Character of Government Authority, in Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh* (Leiden: E .J. Brill 1999).p.210-216.

⁴⁰ Abū Yūsuf, Yāqūb b. Ibrāhīm, *Kitāb al-Kharāj* (Cairo: al-Maktaba al-Salafiyyawa Maktaba'tuhā,352AD) p.34.

⁴¹see: 'Abd al-Razzāq al-Sanhuri, *Masādir al-Haqfi' l-Fiqh al-Islāmī* (Cairo: Dār al-Ma'arif 1967) p.1/14; Al-Zūhailī ,Wahībab. Mustfa, *Al-Fīqh al Islamī wa 'adīlātuhū* p.4/2844.

⁴² see: 'Abd al-Razzāq al-Sanhuri, *Masādir al-Haqfi' l-Fiqh al-Islāmī*, p.1/15; ; Al-Zūhailī ,Wahībab. Mustfa, *Al-Fīqh al Islamī wa 'adīlātuhū* p.4/2845

⁴³Ebrahim Moosa, 'The Dilemma of Islamic Rights Schemes,' *Journal of Law and Religion*, Vol. 15, No. 1/2 (2000 - 2001), p 192.

⁴⁴ Al-Zūhailī ,Wahībab. Mustfa, *Al-Fīqh al Islamī wa 'adīlātuhū* p.4/2847; Abdul Aziz Said, 'Precept and Practice of Human Rights in Islam,' *Universal Human Rights*, Vol. 1, No. 1 (Jan. - Mar., 1979), p. 63.

⁴⁵ Al-Rayyess, Muhammad Dhiya Al-Deen, *Al-Nadhariyyat AL-Siyasiyyah AL-Islamiyyah*, (Cairo: Dār Al-Turath, , 1976,) p. 171-211; Muhammad Zia Ul Haq, 'Validity of Classical Methodologies of Sharī'ah' in Modern age : An Analysis', *Pakistan Journal of Islamic Research* , Vol. 6, 2010,p.30.

⁴⁶See Al-Zarqa', Mustafa Ahmad, *Al-Fiqh Al-Islamic fi Thawbihi Al-Jadid*, Al-Madkhal Al-Fiqhi ; Zahraa Mahdi, 'Characteristic Features of Islamic Law, Perceptions and Misconceptions' , *Arab Law Quarterly* (2000)op.cit. p.200;

Muhammad Zia Ul Haq, 'Validity of Classical Methodologies of Shari'ah' in Modern age: An Analysis', *Pakistan Journal of Islamic Research*, Vol. 6, 2010, p.30.

⁴⁷Majid Khadduri, 'Human Rights in Islam,' *Annals of the American Academy of Political and Social Science*, Vol. 243, Essential Human Rights (Jan., 1946), p. 77.

⁴⁸*Id.*,

⁴⁹Ebrahim Moosa, 'The Dilemma of Islamic Rights Schemes' *Journal of Law and Religion*, Vol. 15, No. 1/2 (2000 - 2001), p187.

⁵⁰Hamidullah Muhammad, *The Emergence of Islam* (Islamabad: Islamic Research Institute, 2002) p.197.

⁵¹Ebrahim Moosa, *op.cit.*, p.188.

⁵²See: Roger Boase, 'Ecumenical Islam: A Muslim Response to Religious Pluralism in Roger Boase' (Ed.) *Islam and Global Dialogue Religious Pluralism and the Pursuit of Peace* (England, USA: Ashgate Publishing Limited, 2005) p.259.

⁵³Hamidullah Muhammad, *First written Constitution of the world*, p.15; *the emergence of Islam* (Islamabad: Islamic Research Institute, 2002) p.197.

⁵⁴Ebrahim Moosa, *op.cit.*, p.188

⁵⁴Ibn Hishām, *al-Sīra al-Nabawiyya*, (ed.) Mustafa al-Saqqā, Ibrāhīm al-Abyārī and Abdul Hafeez al-Shalabī, (Mīsar: Matba'at al-Mustafa al-babī wa auladuhu, 1955/1375) p.2/602.

⁵⁵Al-Sakhasī, Muhammad bīn Ahmed, *Al-mabsūt* (Beirut: Dār al-ma'rifah, 1993) p.10/64; Al-wāqdi, Muhammad bīn Umar, *Fatūh al-Shām* (Dār al-Kūtab al-Ilmiya, 1997) p.1/8.

⁵⁶For details see al-Bukhārī, *Sahīh al-Bukhārī*, Hadīth No. 3162, 3166 (Ed.) Mustafā Dīb al-Baghā (Beirut: Dār Ibn Kathīr, 1407/1987) p.4/98.

⁵⁷Abū Yūsuf, *Kitāb al-Kharāj*, p.68.

⁵⁸*Ibid.*, p.70.

⁵⁹*Ibid.*, p.71.

⁶⁰*Ibid.*, p.70.

⁶¹Abu Ubayd, *Kitāb al-Amwal* (Ed.) Khalil Muhammad Haras (Beirut: Dar al-Fikar, n.d.) p.53.

⁶²Bernard Lewis, *The Jews of Islam* p.24.

⁶³It is famous in Islamic law that according to the opinion of al-Māwardī and Abūya'lā al-Farrā that non-Muslims could be appointed to any administrated post of the Islamic state, provided the ultimate responsibility is assumed by some Muslim. See: Al-Māwardī, *Kitāb al-Ahkām al-Sultānia wa al-wilāyāt al-dīniya*, (Ed.) Ahmed Mubārak al-Baghdādī, (Kuwayt: Maktabat Dār Ibn Qutayba, 1989); Abūya'lā al-Farrā (d.458), *al-Ahkām al-sultānia* (Ed.) Muhammad Hamīd al-Fiqrī (Beirut: Dar al-Kutab al-Ilmiya, 2001/14021) p.236.

⁶⁴Ibn 'Abd al-Hakam, *Futh Misrwa' l-Maghrib* 'Abd al-Mun'im Amir (ed.), Cairo: 'Isa Babi al-Halabi, 1961) p. 225-226.

⁶⁵Donna E. Arzt, 'The Application of International Human Rights Law in Islamic States,' *Human Rights Quarterly*, Vol. 12, No. 2 (May, 1990), p. 209.

⁶⁶Muhammd .Zafarullah .Khan, *Islam and Human Rights* (London: London Mosque, 1976) p. 72.

⁶⁷Donna E. Arzt, 'The Application of International Human Rights Law in Islamic States,' *Human Rights Quarterly*, Vol. 12, No. 2 (May, 1990), p. 210.

⁶⁸Majid Khadduri, 'Human Rights in Islam,' *Annals of the American Academy of Political and Social Science*, Vol. 243, Essential Human Rights (Jan., 1946), p. 80.

⁶⁹Henri Lammens, *Islam, Beliefs and Institutions*, trans. Sir E. Denison Ross (London, 1929), pp. 212, 214. See also Charles C. Adams, *Islam and Modernism in Egypt* (London, 1933), pp. 18 ff.

⁷⁰Majid Khadduri, 'Human Rights in Islam, loc.cit' p. 80.

⁷¹Majid Khadduri, 'op.cit., p. 81.

⁷²Tabet Korayatem, 'Arab Islamic Development on Human Rights,' *Arab Law Quarterly*, 2001, p.257.

⁷³*Id.*

⁷⁴Human Rights in Islam (Geneva: International Commission of Jurists, 1982), 9.

⁷⁵Tabet Korayatem, 'op.cit., p.257.

⁷⁶Robert Traer, 'Human Rights in Islam,' *Islamic Studies*, Vol. 28, No. 2 (Summer 1989), pp. 126.

⁷⁷Tabet Korayatem, op.cit., p.257.

⁷⁸Some of the famous books and articles written in Arabic on the comparison of Islamic teachings and Human rights are:⁷⁸ Muhammad Ahmad Fathī, and Sāmī al-ālāh al-Wākīl, *Huqūq al-insān wa-l-shar' al-islām ī: dirāsa muqārana* (Beirut: Dar al-Nahda al-Islāmiyya, 1992); Abd al-Nabī al-Asan Abd al-Wahhāb, 'Huqūq al-insān wa-wājibatuhu fī l-islām', in Qadaya al-Islāmiyya (Cairo: al-Majlis al-A'la li-Shu'ūn al-Islāmiyya, 2000) p.57.; Muhammad Abd al-Aziz Abū Sakhīla, *Huqūq al-insān fī al-Sharīah al-islāmiyya waqawā'id al-qānūn al-dawī*, (n. p.: Matābī 'al-Khatt, 1985) ; Amir Abd al-Azīz Huqūq al-insān fī l-islām (Nablus, West Bank: Dār al-Salām, 1997).

⁷⁹See Ann Elizabeth Mayer, *Islam and Human Rights*, pp. 175-192.

⁸⁰Mayer, A. E. 'Current Muslim Thinking on Human Rights' in An-Na'im and Deng (Eds.), *Human Rights in Africa: Cross Cultural Perspectives* (Washington: Brooking Institutions, 1990)

⁸¹Ebrahim Moosa, 'The Dilemma of Islamic Rights Schemes' p 195.

⁸²Halliday, S. 'Relativism and Universalism in Human Rights: The Islamic Middle East' In: Beetham (eds.) *Politics and Human Rights* (Leeds: Leeds University Press.1995), pp.154-155.

⁸³Bielefeldt, H. 'Muslim Voices in the Human Rights Debate' *Human Rights Quarterly*. 17 (4), 1995 p.597.

⁸⁴Stowasser, B. 'Liberated Equals or Protected Dependent? Contemporary Religious Paradigms on Women's Status in Islam', *Arab Studies Quarterly* 9 (3), 1987, pp.260-283.

⁸⁵Niaz A. Shah, 'Women's Human Rights in the Koran: An Interpretive Approach,' *Human Rights Quarterly*, Vol. 28, No. 4 (Nov., 2006), p.869.

⁸⁶Mayer, *Islam and Human Rights*, pp. 278-96; David L. Johnston, 'Maqā'id al-Sharī' An: Epistemology and Hermeneutics of Muslim Theologies of Human Rights,' *Die Welt des Islams*, New Series, Vol. 47, Issue 2 (2007), p. 154.

⁸⁷ Suhail H. Hashmi, 'Islamic Ethics in International Society,' in Sohail H. Hashmi(ed.) *Islamic Political Ethics: Civil Society, Pluralism, and Conflict*, (Princeton University Press, 2002),

⁸⁸ Reza Afshari, 'An Essay on Islamic Cultural Relativism in the Discourse of Human Rights,' *Hum. Rights Quarterly* , 16 , (1994) pp. 235, 236.

⁸⁹ Id. .

⁹⁰ Pakistan and Afghanistan are two countries, which have declared Islam as a state religion. See Pakistan Const., art. 2 (1973); Afghanistan Const., art.2 (2004). 8. "

⁹¹ For the bulk of humankind, belief is the most significant of all aspects of life." *Freedom of Religion and Belief: A World Report 1* (Kevin Boyle &Julieo Sheen eds., 1997). International Covenant on Civil and Political Rights, adopted 19 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, art.18, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force 23 Mar. 1976).

⁹²Niaz A. Shah, 'Women's Human Rights in the Koran: An Interpretive Approach,' *Human Rights Quarterly*, Vol. 28, No. 4 (Nov., 2006), p.875.

⁹³ Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse: Syracuse University Press, 1990).

⁹⁴ See Sayyid Qutb, *Milestones on the Road* (Indianapolis: American Trust Publications, 1991); and Ahmad S.Mousalli, *Radical Islamic Fundamentalism: The Ideological and Political Discourse of Sayyid Qutb*(Syracuse: Syracuse University Press, 1993).

⁹⁵ See Daryush Shayegan, *Cultural Schizophrenia: Islamic Societies Confronting the West*, trans. John Howe (London: Saqi Books, 1989); Malise Ruthven, *A Fury for God: The Islamist Attack on America* (London: Granta Books, 2002), pp. 134–168; Louay M. Safi, *The Challenge of Modernity: The Quest for Authenticity in the Arab World* (Lanham, MD: University Press of America, 1994) pp. 153–193.

⁹⁶ Timothy McDaniel, 'The Strange Career of Radical Islam,' in Wasserstrom, Hunt, and Young(eds.) *Human Rights and Revolutions*, pp. 211–229.

⁹⁷ Abdul Aziz Said, *Precepts and Practice of Human Rights in Islam*, *Universal Hum. Rts.* 63 (1979).

⁹⁸ James P. Piscotri, 'Human Rights in Islamic Political Culture,' in Thompson (Ed), *The Moral Imperatives of Human Rights: A World Survey* (. 1980) p. 158-159.

⁹⁹ A.K. Brohi, *Islam and Human Rights*, in *The Challenge of Islam* (Altaf Gauhar ed., 1978) p. 79-80; Riffat Hassan, 'On Human Rights and The Quranic Perspective,' in Swidler (Ed.), *Human Rights in Religious Traditions* , 53 (., 1982).

¹⁰⁰Niaz A. Shah, 'Women's Human Rights in the Koran: An Interpretive Approach,' *Human Rights Quarterly*, Vol. 28, No. 4 (Nov., 2006), p.870.

¹⁰¹ See Michael Freeman, 'The Problem of Secularism in Human Rights Theory,' *Human Rights Quarterly* ,26 ,(2004),p. 375, 387-89.

¹⁰²Baderin, M. A. 'A Macroscopic Analysis of the Practice of Muslim State Parties to International Human Rights Treaties: Conflict or Congruence?' *Human Rights Law Review.* 1 (2),2001, pp.265-303.

¹⁰³Niaz A. Shah, 'Women's Human Rights in the Koran: An Interpretive Approach,' *Human Rights Quarterly*, Vol. 28, No. 4 (Nov., 2006), p.881.

¹⁰⁴ Chilla Bull beck, Less than Overwhelmed by Beijing: Problems Concerning Women's Commonality and Diversity, 6 Austl. Feminist L. J. 3 (1996).

¹⁰⁵ Fazlur Rahman, Islam & Modernity: Transformation of an intellectual Tradition (1982) p.4-9; Major Themes in the Quran. 2nd ed. Minneapolis: Bibliotheca Islamica'1982; 'Towards Reformulating the Methodology of Islamic Law' New York University Journal of International Law and Politics. 12 (2),1979. pp.219-224.

¹⁰⁶ Asghar Ali Engineer, *The Rights of Women in Islam* (1996).p.45

¹⁰⁷ Wan Mohd Wan Nor Daud, 'The Concept of Knowledge in Islam and its Implications for Education in a Developing Country', (1989).p.7

¹⁰⁸ David Little, John Kelsay& Abdulaziz A. Sachedina, (Eds.), *Human Rights and the Conflict of Cultures: Western and Islamic Perspectives on Religious Liberty* (Columbia, S.C.: U.S.C. Press 1988) p.4.

¹⁰⁹ Rāshid al-Ghannūshī ,*al-urriyāt al 'Ammāfi 'l-Dawla al-Islāmiyya* (Beirut: M'arkaz Dirāsāt al-waḍa al-'Arabiyya, 1993) p.320.

¹¹⁰ FazlurRahman, Internal Religious Developments in the Present Century Islam, *Journal of World History* 2 Nov 1955,p. 862

¹¹¹ Ebrahim Moosa ,op.cit. 200.

¹¹² Alison Dundes Rentlen, *The Concept of Human Rights, Anthropolos* 83,1988, p.343

¹¹³ Robert W. Cox, *A Perspective on Globalization, in Globalization: Critical Reflections* 24 (James Mittelman ed., Boulder, Colo.: Lynne Rienner Publishers 1996), states that "Globalism and globalization arose together as orientations for thought and action." See also Bassam Tibi, *Islam and the Cultural Accommodation of Social Change* (Clare Krojzl trans., Boulder, Colo.: Westview Press 1990).

¹¹⁴ Ebrahim Moosa ,loc.cit., p. 205-206

¹¹⁵ FazlurRahman, *Internal Religious Developments in the Present Century Islam*, *Journal of World History* 2 Nov 1955,p. 862; EbrahimMoosa , 'The Dilemma of Islamic Rights Schemes,' *Journal of Law and Religion*, Vol. 15, No. 1/2 (2000 - 2001), pp.184-185.