

RIGHT TO EQUALITY

(A Comparative Study of Law and Sirah of
Mohammad (S.A.W.))

*Atique Tabir**

ABSTRACT: The protection of Human Right is generally recognized to be a fundamental right. The importance of human rights can be judged simply on this basis that there are diversified views of the leaders of the world regarding almost every issue about life and its concern. However, they agree in principle that human rights should be respected. Human Right has an utmost importance in the minds of sages and philosophers in every period of human history. It received almost universal recognition by all societies and people of all creeds, particularly in the contemporary world as a dominant human rights ideology. Human rights norms are adopted and responded by them in this regard. The chief mission of every religion is to inculcate the sense of morality and dignity in the mind of man. The religion of Islam, and sayings and conduct of its Messenger in particular, lay great emphasis on the development of character and dignity of a person. Even a cursory glance at the contents of the Islamic ideology indicates that the Quran¹ and the Sunnah² have dealt in depth with nearly every aspect of human rights. Islam is not a piece of spiritual decoration only. It is a complete and a practical code of life meant to guide men in all areas of organized human existence. The present study investigates different aspects and dimensions of *Right to Life* in the light of sayings and conduct of the last Messenger of Allah Muhammad (S.A.W), along with its comparison with law and western approaches to it.

Equality means that everyone has equal rights to live in a society. Equality before the law or equality under the law is the principle under which each individual is subject to the same laws, with no individual or group having special legal privileges.³ It means that all citizens are equally subject to the ordinary law of the land administered by the ordinary courts.⁴

In the views of Laski, equality means that adequate opportunities are laid open to all⁵ The Pakistani higher courts held that, the theory of equality before law means that no man is above the law, but that every man, what be

* Assistant Professor Faculty of Shariah & Law, International Islamic University, Islamabad, Pakistan

his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals.⁶

Thus the idea of equality and Rule of Law excludes the idea of any exemption of any person from the application of law which governs other citizens. The philosophy behind this concept indicates that no man is above the law and that every man is subject to the jurisdiction of the ordinary tribunals. The history is evident that the Babylonian, Egyptian, Indian and Greek civilizations were either hierarchical in their setup, or authoritarian or paternalistic in their pattern, character and nature.⁷

The Greek philosophers gave great stress on the rule of law and justice. Although many books are written on its need and importance, but all this was in theory and they never applied it in their court system for the purpose of administering justice to all without any discrimination. Moreover, it is pertinent to mention that their ideas on justice and equality were in fact against the true spirit of equality.

A class system which is based on the presumed natural inequality of man existed for a very long period of time. The Republic of Plato is the first systematic work of political theory in the Western world. It strives to give a definition of justice in the ideal state and society.⁸

Plato in his vision of an ideal state divided a society into three classes. The justice of the state consisted in each of the three classes doing the work of its own class community.⁹

Plato, in his book *The Republic* says:

*You in this city are all brothers, but God as he was fashioning you, put gold in those of you who are capable of ruling; hence, they are deserving of most reverence. He put silver in the auxiliaries, and iron and copper in the farmers and the other craftsmen.*¹⁰

On the basis of his concept of justice and equality, he condemns democracy by stating that: 'The greatest weakness of democracy is that it grants equal status to all citizens. Democracy is a charming form of government, full of disorder and dispensing a sort of equality to equals and unequal alike'. Plato does not recognize equality between sexes. He is tolerant of inequality between man and woman. He says that women's nature is inferior to that of men in capacity of virtue.¹¹

As compared to Greeks, the views of Roman philosophers were more compatible to the idea of justice and equality. Roman Stoic philosophers admitted that men were essentially equal and that discriminations between

them on account of sex, class, race, or nationality were unjust and contrary to the law of nature.¹²

According to ancient Greek thought men are divided by nature in respect of their capacities for virtue, some as freemen and others as slaves but Cicero postulates all men are equal and equally obliged to law. However, this supposed principle of human equality was never put into practice in the Roman Empire. In their empire slavery, tyranny and all such other degrading institutions reached their zenith. The rights to life, property and trade etc. all were conditional, qualified and reserved.¹³

The idea of human dignity, justice and equality was not conducive in the Middle Ages. The church fathers were Romans at the same time as they were Christians. Their basic philosophy was based on traditional origins which swept through the Roman Empire despite the fact that the chief source of their thought was the Bible.

The society was divided into three distinct classes; the nobility, the clergy and the common people. The clergy had their own distinctive robes. On the other hand, the nobility inherited nobleness from their forefathers and passed it on to their descendants. A man belonged to the nobility by birth and remained as such until his death, regardless of whatever noble or mean actions he might have done in his lifetime. As for the common people, they had no privileges or rights. They inherited poverty, slavery and humiliation and passed them on to their descendants.¹⁴

In the modern period starting in the seventeenth century, the dominant idea was of a natural equality in the tradition of the natural law and social contract theory. In Hobbes's concept of the state of nature, all men are equal and equally have the right to whatever they consider necessary for their survival. John Locke argued that all human beings have the same natural right to both ownership and freedom. He described the state of nature as the state of perfect equality, where naturally there is no superiority or jurisdiction of one over another, what any may do in prosecution of that law, everyone must have a right to do.¹⁵

Till the end of the eighteenth century the man-made law allowed discrimination between individuals on the basis of their social status. It did not recognize equality of individuals involved in criminal cases. They were rather dealt with differently in matters of judicial proceedings as well as incidence and enforcement of punishment. Courts also varied with the social strata of a nation. Special courts and judges were reserved for

aristocracy. Similarly different courts with their respective judges existed for the ecclesiastics and the laymen. Again these courts awarded different punishments for the same offence taking into account the social position of the offender. For instance a commoner was awarded most severe punishment and an aristocrat a lighter one for one and the same offence.

This then, was the position of legislated criminal laws till the end of the eighteenth century or the French Revolution. In the wake of that Revolution, however, equality was declared the basis of law and consequently a principle was laid down to the effect that criminal laws are to be equally applied to all the individuals of the society.¹⁶

International Instruments recognizes the individual's rights to equality and equal access to the courts. It was the first half of the 19th century which led to the framing of legal rules for the prohibition of slave trade and subsequently the institution of slavery itself.¹⁷ The practice of slavery was first condemned in the Paris Peace Treaty (1814) between Britain and France but within 50 years the General Act of the Berlin Conference providing for the European colonization of Africa declared that trading in slaves is forbidden in conformity with the principles of international law.¹⁸

The first treaty to deal specifically with racial discrimination was the International Convention on the Elimination of All Forms of Racial Discrimination and was adopted by the General Assembly in 1965 and entered into force in 1969.¹⁹

A glaring instance of inequality on the ground of birth existed in England herself until the passing of the Criminal Justice U.K. Act, 1948, namely, the right of a peer to be tried by peers, i.e., the immunity of a peer from the ordinary courts of law and his right to be tried only by the House of Lords. This ancient right mentioned in the Magna Carta has been abolished by the Act of 1948 and a Lord has in fact been convicted by the ordinary Criminal Court in 1950.²⁰

The English courts have also recognized the right to equal access and the remedy of the individuals, which is not confined to the invasion of civil rights only but it extends to all causes for justice.²¹

According to Pakistani law *all citizens are equal before law and are entitled to equal protection of law* and there shall be no discrimination on the basis of sex alone.²²

The Pakistani courts have applied the principle of equality while deciding many of the cases.²³ Though in general the trend of the Pakistani courts is to

apply the principle of equality in its letter and spirit however, it has given decisions recognizing some sort of discrimination, where the law of the state specifically legislates approving such discrimination. It is observed by the judges of the Supreme Court that “All citizens are equal before law and are entitled to equal protection of law, yet State is not prohibited to treat its citizens on the basis of reasonable classification.”²⁴

Similarly, in another case pertaining to admission in a medical college it was observed by the august Supreme Court that “admission in Medical College against seats allocated to various categories according to their ratio in population is valid.”²⁵

It is worth mentioning here that despite of the adoption of many of the provisions the principle of equality has not yet been enforced in all its aspects, even today the international law and almost all the constitutions of the world recognize immunity and unaccountability. These privileges and valuables in modern laws which may relate to prestige, respect, power, or wealth and income are often distributed according to race, gender, religion, or culture. Diplomats, the heads of the states, world organizations and international personalities all are immune from the application of general law of the state, in one pretext or other.²⁶

From very ancient times states have acknowledged the special rights of foreign representatives. However, since the Vienna Convention on Diplomatic Relation 1961, which came into force in 1964. These special rights are formally embodied in written form.²⁷

Under the law, ambassadors and diplomats of foreign countries together with members of their staff and families are exempted from proceedings under the law of the land to which they are accredited.²⁸

The person of a diplomatic agent enjoys complete immunity, thus he cannot be arrested, detained or prosecuted.²⁹

The only remedy with the host state under article is that it can declare him *persona non grata*, requesting the receiving state to take him back.³⁰

It further states that the private residence of a diplomatic agent, together with their furnishings and other property thereon and the means of transport are immune from search, requisition, attachment or execution [29] In the international laws not only States themselves, but governmental agencies and instrumentalities claim the immunity and are sometimes successful.³¹

The modern laws exempts elected representatives of the people in democratic states from punishment for whatever they may say while discharging their duties. Similarly the members of parliament are not accountable for the ideas and views they express on the floor of the house when it is in session. This provision is meant to allow complete freedom of speech to the representatives of nation in the parliament. The army personnel are also immune from the ordinary law of the states.³²

The American courts while recognizing these immunities held in its various decisions that the guarantees to the equal protection do not debar the Legislature from providing for different jurisdictions in different Courts or in different local areas.³³

In the Case entitled *The Schooner Exchange vs. McFaddon* it was held by the Chief Justice Marshall of the US Supreme Court that the jurisdiction of a state within its own territory was exclusive and absolute, but it did not encompass foreign sovereigns.³⁴

In Islam there is no distinction in dignity and fundamental rights between one man and another on the basis of race, sex, blood relations or wealth. No person can be denied the equal protection and enforcement of the law. Freedom, justice and equality are inherent in the Islamic belief.³⁵

Islam not only recognizes absolute equality between men irrespective of any distinction of colour, race or nationality, but makes it an important and significant principle, a reality.³⁶

Malcolm X, the famous leader of African Negroes in America, was so impressed during his pilgrimage to Makkah by the spirit of brotherhood among Muslims of different races and colours that it changed him from a black nationalist to a human rights advocate. He wrote:

America needs to understand Islam, because this is the one religion that erases from its society the race problem. Throughout my travels in the Muslim world, I have met, talked to, and even eaten with people who in America would have been considered white—but the white attitude was removed from their minds by the religion of Islam. I have never before seen sincere and true brotherhood practiced by all colors together, irrespective of their color.³⁷

Islam clearly insists and demands that all officials of the Islamic State are equal in the eyes of the law; there is one law which governs all the people, including the Head of the State, its governors and judges as well as the

ordinary common citizen. None of them is above the law or can claim immunity. Even an ordinary citizen in Islam has the right to put forward a claim or file a legal complaint against the highest executive of the country. The Khalifa himself is accountable in courts and can be summoned there as an ordinary party. Even the Prophet (S.A.W.) of Islam did not consider himself or the members of his family above law.³⁸

In Islam law cannot be separated from justice. In the Islamic state there is no scope of the English doctrine that *the king can do no wrong* or *Head of the State is above the law*; this is foreign to the Islamic concept of justice. Islam enjoins upon believers to stand firm in the cause of Justice. Unlike justice for the Romans, equality for the Spartans, and freedom for the Greeks, Islamic freedom, justice and equality are as universal as the faith of which they are a part.³⁹

In the time of the Caliphs, complaints were made in the court of the Qadi(judge) of the metropolis, or wherever the ruler may be residing, and Abu Bakr, Umar, Ali and many in Umayyad and 'Abbasid Caliphs attended the court at the summons of the judges.⁴⁰

Khalid bin Walid while addressing Romans who regarded their emperor as the king of kings said:

Your king might be like that but the person whom we have made our chief shall be deposed immediately if he thinks of kingship even for a moment.⁴¹

Islam sees all human being with the same eye. The right of equality before law and equal protection of law in Islam extends to all human beings without any regard to their faith.

There can be no discrimination towards the people of any faith so far as the appointment to the various services in an Islamic state is concerned. The non-Muslim minorities living in an Islamic state have been given equal legal and civil rights, though in the matters of personal law and religious affairs they continue to be governed by their own religious practices and customs.⁴²

It is only the highest office of the state and a few key posts where policy is determined that are not open to non-Muslim subjects. It is quite obvious that in an ideological state some measures have to be taken to maintain and protect its ideology from subversion. Even in the United Kingdom, although it is not an ideological state, a Roman Catholic cannot become its head, according to its traditions. And likewise, a Communist cannot be

accepted for key positions in the United Kingdom, nor in the United States of America.⁴³

During the Righteous Caliphate non-Muslim were never denied this right. Some non-Muslims were holding very high posts.⁴⁴

So in an Islamic state, any person male or female, Muslim or non-Muslim, rich or poor can rise to any place on the basis of his hard work, education, virtues and his personal merits.⁴⁵

In the Holy Quran and ahadith there are clear instructions on equality. The Quran emphasizes the common origin of mankind and declares that mankind was but one community and then there arose differences between them.⁴⁶

يأيتها الناس إنا خلقناكم من ذكر و أنثى وجعلناكم شعوبا و قبائل لتعارفوا إن أكرمكم عند الله أتقاكم

O mankind! Lo! We have created you by male and female, and have made you nations and tribes that ye may know one another. Lo! The noblest of you, in the sight of Allah, is the best in conduct.⁴⁷

The tribal and class system among the Arabs was very deep rooted. The chief of the clan was considered to be the most superior person of the clan. Similarly each tribe was having a sense of superiority over the other Arab clans and all the Arabs over the non Arabs. The Messenger of Allah by his conduct and sayings brought a legal and constitutional fundamental revolution in the connectional basis of equality among the Arabs and taught them a lesson of no superiority of someone over others, except on the basis of Taqwa (Piety).⁴⁸

The Messenger (S.A.W.) of Islam, in his famous address given on the occasion of his farewell pilgrimage, declared in unambiguous words:

O people: your Lord is one. You are descendants from the same line. Beware: no Arab has any superiority over a non Arab, and o non Arab has any superiority over an Arab, and no white one has any superiority over a black one, and no black one has any superiority over a white one, except on the bases of piety. All men are the progeny of Adam and Adam was made of clay.⁴⁹

The wording of the hadith is very clear and simple, which implies that Islam is nor for the Arabs nor for the non-Arabs but for all mankind. In Islam every human being is equal and is entitled to equal treatment of law including the right of access to seek justice. No distinction is made on the

basis of color, territory, language or race in Islam as all mankind is treated to be the off sprigs of Adam. No one is superior to another except on the basis of piety of Allah; which results in the good deeds that people earn and that they are accounted for. So whoever sends forth virtue for himself, Allah has preferred him over those who have sent forth evil. Thus Islam condemns all kinds of superiority over others and affirms only one way of preference of some over others, that which is base on piety and taqwa.

The Messenger instructs the believers giving others equal treatment without any discrimination. As it is stated in the following tradition:

أَفِيئُوا الْخُدُودَ فِي عَلَى الْقَرِيبِ وَالْبَعِيدِ وَلَا تُبَالُوا فِي اللَّهِ لَوْمَةً لَأَنَّهُمْ.

Give equitable punishment to the remote and the near and have no fear of the reproach of people in enforcement of limits set up by God.⁵⁰

The hadith instructs the believers to be just to their friends and foes alike, and to be just at all levels, without any discrimination of race, color, language, social status and creed. It requires justice which needs to create a state of equilibrium in the distribution of rights and duties.

The concept of equality mostly suffers disparities created by the ruling authorities. The political and social inequalities are manifested in a number of ways. Inequalities between the strong and weak, the rich and the poor, landowners and landless laborers, capitalists and workers, educated and uneducated, employed and unemployed, men and women, modern and backward is very common. But the Messenger of Allah (S.A.W.) applied this principle of equality and justice in its true letter and spirit, during his life time. Once, a woman belonging to a noble family of Madina was arrested in connection with a theft. The case was brought before the Messenger (S.A.W.) and he was requested that she might be spared from punishment of theft. The Messenger (S.A.W.) replied:

إِنَّمَا أَهْلَكَ الَّذِينَ قَبْلَكُمْ أَنَّهُمْ كَانُوا إِذَا سَرَقَ فِيهِمُ الشَّرِيفُ تَرَكَوهُ وَإِذَا سَرَقَ فِيهِمُ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ وَإِنَّ اللَّهَ لَوَ أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ سَرَقَتْ لَقَطَعْتُ يَدَهَا.

*The nations that lived before you were destroyed because they punished the common men for their offences but let their dignitaries go unpunished for their crimes. I swear by Him who holds my life in His hand that even if Fatima, the daughter of Muhammad (S.A.W.) had committed this crime I would have amputated her hand.*⁵¹

The Messenger of Allah made himself an example for the implementation of justice in its true letter and spirit. Not only as being the Messenger and head

of the state, he refused to enjoy any immunity but offered himself for justice and retaliation. As it is stated in the following hadith of the Messenger of Allah:

قَالَ سَوَادُ بْنُ عَمْرٍو : أَتَيْتُ النَّبِيَّ -صلى الله عليه وسلم- وَأَنَا مُتَخَلِّقٌ بِخُلُوقٍ فَلَمَّا رَأَى قَالَ لِي : « يَا سَوَادُ بْنُ عَمْرٍو خَلُوقٌ وَرِسٍ أَوْمٌ أَنَّهُ عَنِ الْخُلُوقِ؟ ». وَنَحَسَنِي بِعَضِيبٍ فِي يَدِهِ فِي بَطْنِي فَأَوْجَعَنِي فَعُلْتُ يَا رَسُولَ اللَّهِ الْفِصَاصَ قَالَ الْفِصَاصَ فَكَشَفَ لِي عَنْ بَطْنِهِ

It is stated by Sawad ibn Amr that One day I was having a colorful perfume on my body. When I went in the presence of the Prophet (S.A.W.), he exclaimed dislike and hit me on the belly with his stick. I said: O Messenger of Allah (S.A.W.). I shall retaliate. Thereupon he uncovered his belly⁵².

The wording of the other hadith is as under:

قَالَ عَدَلٌ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الصَّفُوفَ يَوْمَئِذٍ فَتَقَدَّمَ سَوَادُ بْنُ عَمْرٍو أَمَامَ الصَّفِّ فَدَفَعَ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِدَحِ فِي بَطْنِ سَوَادِ بْنِ عَمْرٍو فَقَالَ لَهُ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اسْتَوِ يَا سَوَادُ فَقَالَ لَهُ سَوَادُ أَوْجَعَنِي ، وَالَّذِي بَعَثَكَ بِالْحَقِّ نَبِيًّا ، أَفِدِنِي فَكَشَفَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَطْنِهِ ثُمَّ قَالَ اسْتَقِدْ فَأَعْتَنَّهُ وَقَبَّلَهُ

It is stated that on the occasion of the Battle of Badr, when the Prophet (S.A.W.) was straightening the rows of the Muslim army he hit the belly of Sawad ibn Ghazzia (a soldier) in an attempt to push him back in line. The soldier complained O Messenger (S.A.W.), you have hurt me with your stick. The Messenger (S.A.W.) immediately bared his belly and said: I am very sorry, you can revenge by doing the same to me. The soldier came forward and kissed the abdomen of the Messenger (S.A.W.) and said that this was all that he wanted.⁵³]

The Caliph Umar said, *I have myself seen the Messenger (S.A.W.), taking revenge against himself by penalizing himself for some shortcoming or failing.*⁵⁴

The above mentioned ahadith and saying of the Caliph Umar establishes that the Messenger of Allah has set unprecedented examples by offering himself for retaliation. This can be found in the Muslims history only, whereas the rest of the history is totally devoid of it.

All the Righteous Caliphs acted upon these injunctions of the Qur'an and Sunnah, during their Caliphate. The extent to which they paid regard to this right of human beings can well be gathered from various instances of their history.

Once Hazrat Umar while addressing his audience said:

إني لم أستعمل عليكم عمالي ليضربوا أبشاركم، وليشتموا أعراضكم، ويأخذوا أموالكم، فمن ظلمه عامله بمظلمة فلا أذن له عليّ، ليرفعها إلي حتى أقصه منه، فقال عمرو بن العاص: يا أمير المؤمنين، أ رأيت إن أدب أمير رجلاً من رعيته أتقصه منه؟! فقال عمر: وما لي لا أقصه منه، وقد رأيت رسول الله صلى الله عليه وسلم يقص من نفسه.

Gentlemen, officers are appointed not to harass you or seize your properties. They are appointed to teach you the way of the Messenger (S.A.W.). Therefore, if any officer has acted otherwise let me know so that he should be compelled to make good. Amar bin Aas (the governor of Egypt) rose up and said: would you punish an officer who beats a person for enforcement of discipline? Hazrat Umar replied: Yes, I swear by Him who holds my life in His hand that I will certainly punish him for I myself saw the Messenger(S.A.W.) punishing such officers. Take warning! Do not deprive them of their rights lest they be compelled to do wrong.⁵⁵

During the caliphate of ‘Umar, Muhammad the son of Amr ibn al-Aas, the Governor of Egypt, whipped an Egyptian.

أتى رجل من أهل مصر إلى عمر بن الخطاب فقال يا أمير المؤمنين عائد بك من الظلم قال عدت معاذاً قال سأبقت ابن عمرو بن العاص فسبقته فجعل يضربني بالسوط ويقول أنا ابن الأكرمين فكتب عمر إلى عمرو يأمره بالقدوم عليه ويقدم بانه معه فقدم فقال عمر أين المصري خذ السوط فاضرب فجعل يضربه بالسوط ويقول عمر اضرب ابن الأكرمين قال أنس فضرب فوالله لقد ضربه ونحن نحب ضربه فما أفلح عنه حتى تمنينا أنه يرفع عنه ثم قال عمر للمصري ضع على ضلعة عمرو فقال يا أمير المؤمنين إنما ابنه الذي ضربني وقد اشتفيت منه فقال عمر لعمرو مذكم تعبدتم الناس وقد ولدتم أمهاتهم أحراراً.

The (sufferer) Egyptian went to Medina and lodged his complaint with the Righteous Caliph, who immediately summoned the Governor and his son to Medina. When they appeared before him in Medina, the Caliph handed a whip to the Egyptian complainant and asked him to whip the son of the Governor in his presence. After taking his revenge when the Egyptian was about to hand over the whip to ‘Umar, he said to the Egyptian, Give one stroke of the whip to the honorable Governor as well. His son would certainly have not beaten you if it were not for the false pride that he had in his father high office. Then he turned to Amr ibn al-Aas and said; O Amr, when did you start to enslave the people, though they were born free of their mothers⁵⁶.

When the Islamic State was flourishing in its pristine glory and splendour, the common people could equally lodge complaints against the caliph of the time in the court and the case of Jabalah ibn al-Aiham, the ruler of Ghassan in this connection is a classical example. He whom ordered by Caliph ‘Umar in Mecca to conciliate a Bedouin whom he had hurt, otherwise retaliation would be taken upon him in the ordinary process.⁵⁷

The Righteous Caliphs did not only maintain these standards of equality among their subjects and officers but themselves submitted to these standards. Hazrat Umar and Hadrat Ali appeared in the courts of Qadi(judge) during their caliphate when they were used against by some ordinary citizens. Once there was a dispute between Caliph Umar and Ubai bin Ka'b. Ubai loaded a suit in the court of Zayd bin Thabit. Hazrat Umar appeared as defendant. Zayd accorded him honour. Umar was very displeased at this partiality and addressing Zayd said, ‘if an ordinary man and Umar are not equal in your eyes, you cannot be considered fit to be a judge.⁵⁸

As far as the non- Muslim citizens of the Islamic State are concerned, the rule of Islamic Shariah (law) about them has been very well expressed by the Caliph Ali in these words: *They have accepted our protection only because their lives may be like our lives and their properties like our properties.*⁵⁹

IMPLICATIONS

In the western perspective the concept of equality is loaded with very high social and political rhetoric. In the past or to be stated more specifically since the French Revolution, it has served as one of the leading ideals of the body politic and is being aired at present as well for the same purpose. However, for all practical purposes it is just a loud thought having no roots in reality.

The term equality is used in different senses and connotations.⁶⁰ Thus the notion is self-contradictory. To say that men are equal does not mean that they are identical. Equality implies similarity rather than ‘sameness.’⁶¹

By applying the idea of formal equality the moral principle of justice is seriously injured, which advocates treating all the people equally irrespective of their social, political and economic status in life.

The basic idea of equality and Rule of Law means that no one is exempted from the application of law and that every man is subject to the jurisdiction of the ordinary law of the state, but history is evident that the Babylonian,

Egyptian, Indian and Greek civilizations were either hierarchical in their setup, or authoritarian or paternalistic in their pattern, character and nature. A class system was prevailing in the Greek civilization. Plato in his vision of an ideal state divided a society into three classes. The justice of the state consisted in each of the three classes doing the work of its own class community.

From very ancient times states have acknowledged the special rights of foreign representatives. Diplomats, the heads of the states, world organizations and international personalities all are immune from the application of general law of the state, in one pretext or other.

Under the International law, ambassadors and diplomats of foreign countries together with members of their staff and families are exempted from proceedings under the law of the land to which they are accredited

Islam does not recognize any privileges but holds all believers equal in honor and esteem. The Messenger of Allah by his conduct and sayings changed olden concept of equality. He did not discriminate between rich and poor, low or high; he always treated them alike. He selected and appointed people on the basis of their personal capabilities and qualifications irrespective of their social and economic status, as Zaid (a slave) was appointed commander of many military campaigns and men of very respectable tribes fought under his command. Ibn Umm Makhtum was blind and poor but was greatly honoured and esteemed in Islam.

The high degree of equality established by the messenger of Allah and his companions has no parallel in human history. Messenger's life is full of instances which indicate the high quality of his life.

In short the Messenger of Allah by setting his own example of equality in all areas of human activity, as the head of the state, as a judge, as a commander as a religious leader, as a father and as a husband, materialized the conceptual idea of equality and gave it a practical form. He proved by his persistent and consistent conduct that as a human being, he stood equal with every other member of the state and had no legal right to claim any superiority over others. Setting himself as an example he taught others that as human beings, they all stand on the same level and deserve the same rights in law.

Notes and References

¹ According to Muslims faith this Book, the Qur'an, is undoubtedly from God, based wholly on Truth, revealed on His last Messenger Muhammad (SAW), for the guidance of mankind see Tafheem ul Quran Chapter 2, Al-Baqara

² The word *sunnah* (سنة ['sunna], plural سنن *sunan* ['sunan], Arabic) is derived from the root (سن [sa-n-na] Arabic), meaning smooth and easy flow (of water) or direct flow path. The word literally means a clear and well trodden path. In the Islamic terminology it is the path which has been laid down by the character, manners, ritual habits, deeds, example and legislative actions of the Messenger of Allah Muhammad (AW). According to Quran it is incumbent on the Muslims to make the Messenger's life as their role model and follow him—see Quran 3:164&3:21; Islahi, Amin Ahsan (1989 (tr:2009)). *Difference between Hadith and Sunnah, Mabadi Tadabbur i Hadith (translated as: Fundamentals of Hadith Intrepretation)* (in Urdu). Lahore: Al-Mawrid; Nasr, Seyyed H. *Sunnah and Hadith, World Spirituality: An Encyclopedia History of the Religious Quest*. 19 vols. New York: Crossroad. 97-109

³ S.M. Haider, *Islamic Concept of Human Rights*, The Book House, Lahore, 1978, p. 226, 228

⁴ Ivor Jennings, *The Law and the Constitution*, London, 5th Edition, 1958, Pp.50

⁵ Harol J. Laski, *A Grammar of Politics*, George Allen & Unwin Ltd., London, 1967, Pp. 154

⁶ Jibendra Kishora vs. Province of East Pakistan, PLD 1957 S 9; Naseem Mahmood vs. Principal King Edward Medical College PLD 1965 Lahore 272, Sheikh Shamsul Haq vs. Province of East Pakistan PLD 1950 Dacca 75; Mst. Parveen Zohra vs. Province of West Pakistan PLD 1957 Lahore 1071

⁷ S.M. Haider, *Islamic Concept of Human Rights*, The Book House, Lahore, 1978, Pp. 16

⁸ Garrett Ward Sheldon, *The Encyclopedia of Political Thought*, Viva Books Ltd., Hyderabad, India, 1st Edition, 2005, Pp.232

⁹ B. Jowett, *The Dialogues of Plato*, Oxford University Press, London, 3rd Edition, 1892, Vol.3, Pp.6; Edgar Bodenheimer, *Jurisprudence*, Harvard University Press, 3rd Edition, 1978 Pp. 8; V.D. Mahajan, *Jurisprudence*, Mansoor Book House, Lahore, 2008, Pp.690; Tr. Jowett, *Dialogues of Plato*, New York, Vol. 2, 1937, p. 591-897; William Seal Carpenter, *Foundations of Modern Jurisprudence*, Appleton Century Crofts, USA, 1958, p.29-32; Roscoe Pound, *Justice According to Law*, *Columbia Law Review*, Vol. 13, p. 696- 713 (1913); 14 *Col. L. Rev.* 1-26, 103-121 (1914); Karl R. Popper, *The Open Society and its Enemies*, Princeton Press, Chicago, 1953; Jerome Hall, *Plato's Legal Philosophy*, *Studies in Jurisprudence and Criminal Theory*, New York, 1958, p. 48-82; Carl J. Friedrich, *The Philosophy of Law in Historical Perspective*, Chicago, 1963, p. 13-19; Huntington Cairns, *Legal*

Philosophy: From Plato to Hegel, Baltimore, 1949, p. 29-76; Nayyar Shamsi, Human Rights and Islam, Reference Press, Ansari Road, New Delhi, 2003, p.5-7

¹⁰ B. Jowett, The Dialogues of Plato, Oxford University Press, London, 3rd Edition, 1892, Vol.3, Pp.6; Edgar Bodenheimer, Jurisprudence, Harvard University Press, 3rd Edition, 1978 Pp. 8

¹¹ Nayyar Shamsi, Human Rights and Islam, Reference Press, Ansari Road, New Delhi, 2003, p.5-7.

¹² Franz Neuman, *The Rule of Law*, Berg Publishers Ltd, U S A, 1935, Pp. 117; Peter Jones, *Rights*, Macmillan Distribution Ltd, England, 2009, p.46, 72 & 74; Edgar Boden Heimer, *Jurisprudence: The Philosophy and the Method of the Law*, Harvard University Press, Cambridge, England, 3rd Edition, 1978, Pp. 17

¹³ Roscoe Pound, *Justice According to Law*, Columbia Law Review, Vol. 13, p. 696-713 (1913); 14 Col. L. Rev. 1-26, 103-121 (1914); Peter Jones, *Rights*, Macmillan Distribution Ltd, England, 2009, p.46, 72 & 74; W.W. Buckland, *The Roman Law of Slavery*, Cambridge University Press, Cambridge, England, 1908, Pp. 7; W. Friedmann, *Legal Theory*, Stevens & Sons Ltd., London, 5th Edition, 1967, Pp.24; P. d'Entrevies, *Natural Law: An Introduction to Legal Philosophy*, Hutchinson & Co., Publishers, London, 2nd Edition, 1970, Pp.25; J.W. Harris, *Legal Philosophies*, Butterworths, London, 2nd Edition, 1997, p.7, 8; Surya Prakash Sinha, *What is Law*, Paragon House, New York, 1st Edition, 1989, Pp.57; Edwin Shorts, *Human Rights Law in UK*, Sweet & Maxwell, London, 2001, Pp.3; Dennis Patterson, *A Companion to Philosophy of Law and Legal Theory*, Blackwell Publishers Ltd., Oxford, UK, 1996, Pp.224

¹⁴ Karel Vasak, *The International Dimensions of Human Rights*, Greenwood Press West Port, Connecticut, USA, Vol.1, 1982, Pp.12

¹⁵ The Works of John Locke, London, 12th Edition, 1824, Pp.342

¹⁶ Abdul Qader Oudah, *Criminal Law of Islam*, International Islamic Publishers, Karachi, Vol. 2, 2nd Edition, 1994, p.1,2

¹⁷ Articles 8, 10 UDHR; Articles 6(1), 13, ECHR

¹⁸ A.H. Robertson, *Human Rights in the World*, British Council, Manchester University Press, Oxford, 1st Edition, 1972, Pp.15

¹⁹ Scott Davidson, *Human Rights*, Open University Press, Buckingham, UK, 1993, p.8, 9, 91 & 93; Articles 6, 7, Universal Declaration of Human Rights

²⁰ R.F.V. Heuston, *Essays in Constitutional Law*, Steven & Sons, London, 1961, Pp. 42; O. Hood Phillips and Kackson, *Constitutional and Administrative Law*, Sweet & Maxwell, London, 8th Edition, 2001, Pp. 133

²¹ Re Boaler, 1915 1 KB 21 36; Chester vs. Bateson, 1920 1 KB 829; R. vs. Metropolitan Police Commissioner, 1968 1 All ER 763 770; Ivor Jennings, *The Law and the Constitution*, London, 5th Edition, 1958, Pp.266; *Halsbury, Laws of England*, Butterworths, London, 3rd Edition, p. 337, 338

²² Article 25, Constitution of Pakistan 1973

²³ 2000 PLC CS 847; PLD 1978 Lah. 523; PLJ 2001 SC 759; 2000 SCMR 1956; 2000 PLC 41; PLJ 2001 SC 759; PLD 2000 Lah. 508; 2000 SCMR 1956; 2000 SCMR 1557; 1999 PLC CS 1116 1996 SCMR 8180; 2000 PLC CS 467; 1999 SCMR 467; 1999 SCMR 1072

²⁴ PLD 2000 SC 26

²⁵ PLD 1975 SC 506; 1988 MLD 2098; PLD 1975 SC 506; 1988 MLD 2098; 1991 SCMR 1041

²⁶ Malcolm N. Shaw, *International Law*, Cambridge University Press, UK, 4th Edition, 1997, p.492, 532, 534; Joel Kriger, *The Oxford Companion to Politics of the World*, Oxford University Press, Oxford, 1993, Pp.271

²⁷ Vinod K. Lall, *Encyclopaedia of International Law*, Vol. 4, Anmol Publications Ltd. New Delhi, India, 1st Edition, 1997, Pp.42

²⁸ Malcolm N. Shaw, *International Law*, Cambridge University Press, UK, 4th Edition, 1997, p.492, 532, 534; Abdul Qader Oudah, *Criminal Law of Islam*, International Islamic Publishers, Karachi, Vol. 2, 2nd Edition, 1994, p.4,5; Grigorii I. Tunkin, *UN Conference on Diplomatic Intercourse and Immunities*, March 9, 1961, Pp.76

²⁹ Articles 22, 29, 30(1), 30(2), Vienna Convention

³⁰ Malcolm N. Shaw, *International Law*, Cambridge University Press, UK, 4th Edition, 1997, p.492, 532, 534

³¹ X vs. die Polnische Landesdarlehnskasse, *Court of Conflicts*, Russia, March 12, 1921, *Juristische Wochenschrift*, L 1921, II, p. 1481, December 15, 1923; *ibid.*, LIII (1924), II, p. 1388; *Banque ottomane et Societe financiere d'Orient vs. Philippe*, Civil Tribunal, Refereeine, December 30, 1930, *Journal du Droit International*, LVIII (1931), p. 1040

³² Abdul Qader Oudah, *Criminal Law of Islam*, International Islamic Publishers, Karachi, Vol. 2, 2nd Edition, 1994, p.4,5; Grigorii I. Tunkin, *UN Conference on Diplomatic Intercourse and Immunities*, March 9, 1961, Pp.76; Articles 22, 29, 30(1), 30(2), Vienna Convention; X vs. die Polnische Landesdarlehnskasse, *Court of Conflicts*, Russia, March 12, 1921, *Juristische Wochenschrift*, L 1921, II, p. 1481, December 15, 1923; *ibid.*, LIII (1924), II, p. 1388; *Banque ottomane et Societe financiere d'Orient vs. Philippe*, Civil Tribunal, Refereeine, December 30, 1930, *Journal du Droit International*, LVIII (1931), p. 1040; Sections 73, 84, *The Pakistan Army Act. 1952*; *Shahida Zahir Abbass vs. President of Pakistan* PLD 1996 SC 632

³³ *Bowman vs. Lewis*, 1880 101 US 22 30; *Mallet vs. N. Carolina*, 1901 181 US 589

³⁴ Cranch 116 (1812)

³⁵ M. Cherif Bassiouni, *The Individual Human Rights and Habeas Corpus Islam*, Jamiyatul Falah Publications, Karachi, July 1972, p.552, 553 & 548; Mehboob

Pervez Awan, Civil Liberties Human Rights Constitutional Protections, Federal Law House, Rawalpindi, 1st Edition, 2003, Pp.11

³⁶ Abu al-Ala Mawdoodi, Al-Tawhid, Vol.4, No.3, The Islamic Foundation, London, Rajab-Ramadan, 1407, April-June, 1987, p.68-70, 82

³⁷ Abu al-Ala Mawdoodi, Al-Tawhid, Vol.4, No.3, The Islamic Foundation, London, Rajab-Ramadan, 1407, April-June, 1987, p.68-70, 82; Alex Haley, Autobiography of Malcolm X, Ballantine Books, New York, 1965, Pp. 340

³⁸ Abu al-Ala Mawdoodi, Al-Tawhid, Vol.4, No.3, The Islamic Foundation, London, Rajab-Ramadan, 1407, April-June, 1987, p.68-70, 82; Alex Haley, Autobiography of Malcolm X, Ballantine Books, New York, 1965, Pp. 340; Muhammad Encyclopedia of Sīrah, Vol.2, The Muslim School Trust, London, 2nd Edition, 1985, p. 364, 365; A.K. Brohi, A Faith to Live by, National Hijra Council, Barqsons Printers, 1st Edition, 1984, Pp. 69; Muhammad Sharif Chaudhry, Human Rights in Islam, All Pakistan Islamic Education Congress, Lahore, 1993, Pp.34, 46

³⁹ M. Cherif Bassiouni, The Individual Human Rights and Habeas Corpus Islam, Jamiyatul Falah Publications, Karachi, July 1972, p.552, 553 & 548; Muhammad Sharif Chaudhry, Human Rights in Islam, All Pakistan Islamic Education Congress, Lahore, 1993, Pp.34, 46

⁴⁰ Muhammad Hamidullah, Muslim Conduct of State, Sh. Muhammad Ashraf Lahore, 7th Edition, 1977, Pp.135

⁴¹ Tahir Mahmood, Islamic and Comparative Law Quarterly, Vol.3, No. 2, Indian Institute of Islamic Studies, New Delhi, India, June 1983, p.124 & 126

⁴² Tahir Mahmood, Islamic and Comparative Law Quarterly, Vol.3, No. 2, Indian Institute of Islamic Studies, New Delhi, India, June 1983, p.124 & 126

⁴³ Muhammad Encyclopedia of Sīrah, Vol.2, The Muslim School Trust, London, 2nd Edition, 1985, p. 364, 365

⁴⁴ Tahir Mahmood, Islamic and Comparative Law Quarterly, Vol.3, No. 2, Indian Institute of Islamic Studies, New Delhi, India, June 1983, p.124 & 126

⁴⁵ Muhammad Sharif Chaudhry, Human Rights in Islam, All Pakistan Islamic Education Congress, Lahore, 1993, Pp.34, 46

⁴⁶ Jagmohan Singh, Right to Speedy Justice for under Trial Prisoners, Deep & Deep Publications, New Delhi, 1997, p.10,11; Tahir Mahmood, Islamic and Comparative Law Quarterly, Vol.3, No. 2, Indian Institute of Islamic Studies, New Delhi, India, June 1983, p.121, 123 & 125

⁴⁷ Quran: 49.13

⁴⁸ Farida Khanam, Life and Teachings of the Prophet Muhammad (S.A.W.), Goodword Book Ltd., New Delhi, India, 1st Edition, 2003, p. 119-121; Afzal Iqbal, Dimensions of Islam, Islamic Book Foundation, Lahore, 1st Edition, 1984, p.81, 82; A. K. Brohi, A Faith to Live by, National Hijra Council, Barqsons Printers, 1st

Edition, 1984, Pp.70;Shaukat Ali, Administrative Ethics in a Muslim State, Publisher United Ltd., Lahore, Pp. 210

⁴⁹شعب الإيمان للبيهقي - حديث:4904

⁵⁰سنن البيهقي الكبرى 9 / 104 حديث 18684

⁵¹صحيح بخاري، كتاب الحدود ، حديث 3216

⁵²سنن البيهقي الكبرى 8 / 48

⁵³مغازي الواقدي 57/1

⁵⁴ Abu al-Ala Mawdoodi, Al-Tawhid, Vol.4, No.3, The Islamic Foundation, London, Rajab-Ramadan, 1407, April-June, 1987, p.81, 82

⁵⁵مسند أحمد 41/1، سنن أبي داود 183/4

⁵⁶فتوح مصر وأخبارها 234/4

⁵⁷ Muhammad Sharif Chaudhry, Human Rights in Islam, All Pakistan Islamic Education Congress, Lahore, 1993, Pp.34, 46;Tahir Mahmood, Islamic and Comparative Law Quarterly, Vol.3, No. 2, Indian Institute of Islamic Studies, New Delhi, India, June 1983, Pp. 122; Muhammad ibn Khalf Wakee, Akbar al Qadaat, Al Maktabah al Tijariah al-Kubra, Cairo, Egypt, 1st Edition, 1363 AH/ 1947, Pp.109; Muhammad ibn Jarir Abu Jaffar, Tarikh e Tabari, Dar ul Kutab al Ilmiyyia,Beirut, Lebanon, 1st Edition, 1407 AH;Abu al-Ala Mawdoodi, Al-Tawhid, Vol.4, No.3, The Islamic Foundation, London, Rajab-Ramadan, 1407, April-June, 1987, p.81, 82;Muhammad Hamidullah, Muslim Conduct of State, Sh. Muhammad Ashraf Lahore, 7th Edition, 1977, p.138, 139;Parveen Shaukat Ali, Human Rights in Islam, Aziz Publisher, Lahore, Pp.230

⁵⁸ Muhammad Sharif Chaudhry, Human Rights in Islam, All Pakistan Islamic Education Congress, Lahore, 1993, Pp.34, 46; Tahir Mahmood, Islamic and Comparative Law Quarterly, Vol.3, No. 2, Indian Institute of Islamic Studies, New Delhi, India, June 1983, Pp. 122; Muhammad ibn Khalf Wakee, Akbar al Qadaat, Al Maktabah al Tijariah al-Kubra, Cairo, Egypt, 1st Edition, 1363 AH/ 1947, Pp.109; Muhammad ibn Jarir Abu Jaffar, Tarikh e Tabari, Dar ul Kutab al Ilmiyyia,Beirut, Lebanon, 1st Edition, 1407 AH

⁵⁹ Abu al-Ala Mawdoodi, Al-Tawhid, Vol.4, No.3, The Islamic Foundation, London, Rajab-Ramadan, 1407, April-June, 1987, p.81, 82; Muhammad Hamidullah, Muslim Conduct of State, Sh. Muhammad Ashraf Lahore, 7th Edition, 1977, p.138, 139; Parveen Shaukat Ali, Human Rights in Islam, Aziz Publisher, Lahore, Pp.230

⁶⁰ Dworkin 2000, p. 2

⁶¹ Dann 1975, p. 997; Menne 1962, p. 44 ff.; Westen 1990, pp. 39, 120, Tugendhat & Wolf 1983, p. 170
