

## **Analyzing the Provisions of Universal Declaration of Human Rights In the context of Islamic Law**

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### **Abstract**

The matter of human rights is the issue of significant concern all over the world. The aftermath of World War II urged the United Nations (UN) to sponsor the rights backed by the constitutional and the international law, obliges all nations to protect the human rights. The prevailing image of the friction is the contorted one, although the discord exists between the Constitution of Pakistan 1973 and some provisions of Universal Declaration of Human Rights (1948) because of its variability with the basic Islamic principles. The UDHR is perceived as the Secular, individualistic and western orientation of human rights and divergent from the Islamic values and Shariah. As the common objective is to secure the human rights and their relationship has direct impact on the development of human life. This article attempts to shed light on the common grounds that are properly accorded and the discord of UDHR with the Constitution of Pakistan in the light of Islamic principles.

**Keywords:** Human rights, Constitution, Secular, Shariah, discord, Udhhr, UN

### **Introduction:**

The Concept of inherent dignity and rights have roots in antiquity but modern human rights have their origin in European enlightenment. The American Declaration of independence and French revolution escalated this process. And later aftermaths of World War-II Culminated in the form of UN Charter (1945) and Universal Declaration of Human Rights (1948). The

UN General Assembly by its Resolution 217 A (III) adopted the UDHR On December 10, 1948. For the first time, it establishes, the basic human rights to be universally protected. In Human Rights law, the UDHR is considered as the spiritual parent and the inspiration, and is most cited document in human rights in world. The UDHR is enshrined in the many human rights instruments, treaties, and constitutions of many states (such as Pakistan). Certainly, Islam is a comprehensive way of life which has covered holistic framework that addresses various dimensions of human existence (spiritually, socially, economically). Islam is inherently in conformity with the human rights, but the source of human rights in Islam is from Allah (Quran & Sunnah). And when we speak about the human rights in Islam these are conferred by Almighty to His creatures and not those granted by human beings, and no individual, and no constitution has the authority to withdraw the rights conferred by the Allah. ( **Maududi, A. A.**)

### **Significance:**

This article demonstrates that UDHR has most of the rights which align with the principles and injunctions of Islam. However, the UDHR primarily reflects the western view of secular rights, emphasizing individualistic orientation and lacks accommodation for Islamic principles. On the other hand, Islam is the divinely-revealed religion and is an ideal code of human rights, and these rights and obligations are towards the one another and for which every individual is accountable before Allah. Islam aims to bestow a human with dignity and honor and by eliminating exploitation, injustice protects the human rights conferred by the Allah Almighty.

### **ISLAM and Universal Declaration of Human Rights**

The fundamental principle of Shariah is that all humans have rights vested in them, in some cases it is their religious duty to fulfill their genuine needs and make conceivable efforts to promote their interest and achieve success and happiness. The purpose of shariah is to endow humans with the honor and dignity and eradicate exploitation, oppression and injustice from the society. By abiding the limits that Allah has decreed, shariah guarantees the right well-being of the Ummah as a whole in society.

The UDHR is comprised of 30 articles that encompass the most fundamental rights and freedoms of people all over the world. Article 1, 2 of UDHR refers to the inherent equality and brotherhood as the base of freedom, justice, and peace in the world. Islam recognize universal brotherhood and equality, As mentioned in Quran:

“O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women. And fear Allāh, through whom you ask one another, and the wombs.”

“The believers are but one brotherhood<sup>3</sup>” Article 3 and 11 of UDHR set out the rights of individuals i.e. Right to life, liberty, prohibition of slavery, proscription of torture and other degrading treatment, the right to equality before law, the right to fair trial.

“whoever takes a life unless as a punishment for murder or mischief in the land it will be as if they killed all of humanity; and whoever saves a life, it will be as if they saved all of humanity.”

With regards to slavery, the notion of dividing the individuals into superior and inferior categories is deemed abhorrent in Islam.

As: “O humanity! Indeed, We created you from a male and a female, and made you into peoples and tribes so that you may get to know one another. Surely the most noble of you in the sight of Allah is the most righteous among you.”

Islam serve as deterrent against cruelty and inhumane behavior. The Holy Prophet (PBUH) said: Allah would punish those who torment people in this world (without any genuine reason).<sup>6</sup> The fair treatment and access to justice in Islam transcends from the race, color, creed and religion as Quran gives the commandment of being just to your foes alike as to your friends:

“O believers! Stand firm for justice as witnesses for Allah even if it is against yourselves, your parents, or close relatives. Be they rich or poor, Allah is best to ensure their interests. So do not let your desires cause you to deviate from justice.”

UDHR pertains to the rights of individuals within the civil and political spheres of society. These include inter alia the right to privacy, freedom of movement, the right to a nationality, the right to marry and have family, right to own property. Islam also secures all these rights as Allah explicitly mentioned in Quran:

“O believers! Avoid many suspicions, for indeed, some suspicions are sinful. And do not spy, nor backbite one another. Would any of you like to eat the flesh of their dead brother?”

Islam also allows and encourages mobility among the believers to ensure maintenance and well being of their families.

As “Say, O Prophet, Travel throughout the land”.<sup>9</sup> “some will be travelling throughout the land seeking Allah’s bounty, and some fighting in the cause of Allah”.

Islam extensively addresses the issue of asylum, guaranteeing safety, dignity, and care for the Musta’men (asylum-seeker). “And if anyone from the polytheists asks for your protection, O Prophet, grant it to them so they

may hear the Word of Allah, then escort them to a place of safety, for they are a people who have no knowledge.”

The Prophet PBUH said: “No doubt your blood, property, and your honor (chastity), are sacred to one another as is the sanctity of this day of yours in this month of yours. It is incumbent on those who are present to inform those who are absent.”

Article 18 ,21 of UDHR recognize the religious and spiritual rights of individuals such as freedom of belief and religion, freedom of opinion and expression, right to assemble, the right to democracy. Islam also rejects the imposition of coercion or compulsion in religious matters, everyone is at liberty to profess their own faith.

“Let there be no compulsion in religion” Islam entitles every individual to participate collectively or individually in social, religious, cultural and political of his community and to establish institutions and group for righteous affairs. “Let there be a group among you who call others to goodness, encourage what is good, and forbid what is evil it is they who will be successful.”

Article 22 – 27 of UDHR addresses an individual’s social, economic rights. They encompass the right to social security/welfare, the right to work, right to rest and leisure, right to social service and adequate living standard, the right to education, and the right to participate in cultural life of community. Islam laid down the sphere of social security extended to the right to food, shelter, clothing and medical attention regardless of age, color and race, gender and religious faith. 8 Surah Al-Hujurat, 49:12 9 Surah Ar Rum 30:42

Surah Ali’Imran 3:104 Allah's Messenger PBUH said, "You see the believers as regards their being merciful among themselves and showing love among themselves and being kind, resembling one body, so that, if any part of the body is not well then the whole body shares the sleeplessness (insomnia) and fever with it."

The Prophet PBUH said, "None of you will have faith till he wishes for his (Muslim) brother what he likes for himself." The Holy Prophet PBUH said: “Slaves or Servants are your brothers, and Allah has put them under your command. So, the one under whose hand Allah has put his brother, should feed him of what he eats, and give him dresses of what he wears, and should not ask him to do a thing beyond his capacity. And if at all he asks him to do a hard task, he should help him therein.”

The Prophet PBUH said: "Seeking knowledge is a (sacred) duty upon every Muslim."1Islam and UDHR: Exploring differences The reluctance to Implementation of international human rights standards in certain regions of the Muslim and Arab worlds is particularly conspicuous, especially concerning the array of rights related to the religion. In terms of Universal Declaration of Human Rights (UDHR), the core of the resistance is centered on the issues pertaining to the prohibition of discrimination on the basis of

religion (Article 2), the proscription of discrimination on base of sex (preamble, Article 2, Article 16), and of right to freedom of thought, religion and conscience (Article 18). In Islam and the Challenge of Human Rights, Abdulaziz Sachedina argues that the UDHR is failed to establish the space for Islam, and further stated that there are serious shortcomings in UDHR, namely that it is expresses an unduly secularistic view and is overly individualistic. He found that its individualism is at the root of the problem and it is culturally insensitive to Muslim social values. The most frequently invoked inconsistencies of Islam with the UDHR are:

- Contrary to the principles laid down in Preamble and Article 2, Islam distinguishes among the Muslims and non-Muslims as the Allah says: “Is the one who is a believer equal before Allah to the one who is rebellious? They are not equal!”<sup>19</sup>
- Islam also establishes a distinction on the basis of sex, while UDHR put emphasis on the identity of sexes (Article 02).
- o In matters related to the succession & inheritance, Allah says: “Allah commands you regarding your children: the share of the male will be twice that of the female.”<sup>20</sup>
- 15 Sahih al-Bukhari 6011 16 Sahih al-Bukhari 13 17 Sahih al-Bukhari , Sunan Ibn Majah 224 19 Surah As Sajdah 32:18 20 Surah An-Nisa, 4:11
- o In the matters relating to the marriage and divorce (Article 16), men and women have different rights, As, polygamy is allowed by: “if you were to marry them, then marry other women of your choice—two, three, or four.”<sup>21</sup>
- But polyandry (plurality of husbands) is unlawful in Islam.
- 22 A woman does not have the right to divorce her husband, such a right is not granted to her directly. There are, however, provisions like tafwid, takhyir, and tamlik through she may be granted such right at time of marriage contract.<sup>23</sup>
- o A Mohammedan male may contract a valid marriage with kitabia (Jews/Christian) woman, while a Mohammedan woman cannot contract a marriage with a kitabi (Jews/Christian) male.<sup>24</sup>
- o Male is appointed as caretaker of woman:

“Men are the caretakers of women, as men have been provisioned by Allah over women and tasked with supporting them financially.”

o There is a testimonial difference between man and a woman in Islam as mentioned: “Call upon two of your men to witness. If two men cannot be found, then one man and two women of your choice will witness—so if one of the women forgets the other may remind her.”

It is not the deprivation of right but rendering testimony is primarily a duty not a right, and women have been spared the burden of this duty.<sup>27</sup>

- The article 18 of UDHR explicitly allows the apostasy (rida), which is the matter of grave concern in Islamic law. Islam do not condone any coercion or compulsion
- regarding the matters of religion, but once someone embraces Islam with due diligence then they are not allowed to change their faith and spread teachings against Islam. As mentioned, “Whoever changed his Islamic religion, then kill him.”<sup>28</sup>
- The article 19 supports unrestricted

freedom of expression and opinion, while in Islam the freedom of opinion and expression is allowed in such a manner that it must not be contrary to the injunctions set out by the shariah.<sup>29</sup> These restrictions are instituted to prevent masses from insulting the sacred scriptures and publicizing the blasphemous materials. <sup>21</sup> Surah An-Nisa, 4:03 <sup>22</sup> Mohammedan Law (D.F.Mulla's) p.285 <sup>23</sup> Islamic Jurisprudence (Imran Ahsan khan Nyazee) p.138 <sup>24</sup> Ibid. p.287 <sup>25</sup> Surah An-Nisa, 4:34 <sup>26</sup> Surah Al-Baqarah 2:282 <sup>27</sup> Islamic Jurisprudence (Imran Ahsan khan Nyazee) p. 137 <sup>28</sup> Sahih al-Bukhari 6922 <sup>29</sup> Cairo Declaration on human rights in Islam,1990 (Article 22) Universal Declaration of Human Rights and Constitution of Pakistan The constitution of Pakistan comprises 25 rights wherein 15 pertains to the civil and political rights whereas rest of the 10 are social and economic rights. Article 3 Elimination of Exploitation Article 4 Rights of individuals to be dealt in accordance with law, etc. Article 9 Security of a person Article 10 Safeguards as to arrest and detention Article 10A Right to fair trial Article 11 Slavery, forced labor, etc. prohibited Article 12 Protection against retrospective punishment Article 13 Protection against double punishment and self-incrimination Article 14 Inviolability of dignity of man, etc. Article 15 Freedom of movement, etc. Article 16 Freedom of assembly Article 17 Freedom of association Article 18 Freedom of trade, business or profession Article 19 Freedom of Speech, etc. Article 20 Freedom to profess religion and to manage religious institutions Article 21 Safeguard against taxation for purposes of any particular religion Article 22 Safeguards as to educational institutions in respect of religion, etc. Article 24 Protection of property rights Article 25 Equality of citizens Article 25A Right to education Article 26 Non-discrimination in respect of access to public places Article 27 Safeguard against discrimination in services Article 28 Preservation of language, script and culture Article 33 Parochial and other similar prejudices to be discouraged Article 34 Full participation of women in national life Article 35 Protection of family, etc. Article 36 Protection of minorities Article 37 Promotion of social justice and eradication of social evils Article 38 Promotion of social and economic well-being of the people All these rights are reserved in the constitution of Pakistan and also part of UDHR. However, Pakistan came into being on the name of Islam and is named as Islamic Republic of Pakistan. The underpinning of Pakistan's nationalism is Islam and the cornerstone was established with the enactment of Objective Resolution in 1949. And it proclaimed that Sovereignty belongs to the Allah Almighty and authority to be exercised by the people within limits prescribed by Him (Allah) as a sacred trust. <sup>30</sup> Article 2A (Objective Resolution) of Constitution of Pakistan 1973 Further constitution of Pakistan 1973 declares that Islam will be the state religion of Pakistan. <sup>31</sup> And All existing laws shall be brought in conformity with Injunctions of Islam. <sup>32</sup> As, the article 2,16,18,19 of UDHR are inconsistent with the Islamic Shariah, therefore such provisions are not added in the constitution of

Pakistan. The statutes like Muslim Family law Ordinance (MFLO) 1961, The dissolution of Muslim Marriage Act 1939, The Blasphemy Laws<sup>33</sup> are applicable in Pakistan, because Islam is the state religion and no law or any freedom which transgresses the injunctions of Islam will be enacted or enforced in Islamic Republic of Pakistan.

### **Conclusion:**

This article demonstrates that UDHR has most of the rights which align with the principles and injunctions of Islam. However, the UDHR primarily reflects the western view of secular rights, emphasizing individualistic orientation and lacks accommodation for Islamic principles. On the other hand, Islam is the divinely-revealed religion and is an ideal code of human rights, and these rights and obligations are towards the one another and for which every individual is accountable before Allah. Islam aims to bestow a human with dignity and honor and by eliminating exploitation, injustice protects the human rights conferred by the Allah Almighty. The UDHR does not put consideration to the religious values, and this document does not possess the universality and is not for whole humanity because it has excluded the section of humanity i.e. religious people. So, there is a need of developing a document which does not neglect any section of humanity and also protect and secure the religious values.

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