



LAW opinion

Human Rights in Islamic Law



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DR. ABM. MAHBUBUL ISLAM

Human right has been a burning issue in the contemporary world today. The western secular philosophy claims to be the pioneer and champion in initiating, promoting and protecting of human rights and vigorously condemns others of not observing it. On the other hand Islamic law does not only refute this notion of being untrue, immature and false but it claims that the human right is coherent with Islam itself and it is far ahead of the modern secular concept thereof. This short paper mainly aims at presenting some of the Islamic concept of human rights, briefly, so as to answer to the accusation on this regard. For doing so it is felt imperative to bring forward a little information about the secular concept of human rights as well.

Human Rights: what it is?

It is a power or authority that a citizen of a particular state enjoys under the purview of law. There are differences of opinion among the secular philosophers with regard to the inception of human rights. For example, according to sociological, naturalist and positivist theory; the right of man first born in a social practices and norms of individual in a society. Once such practices receive the recognition of concerned legal body or state then it transforms in to a law - hence a right.

Some of the early documents of the of human rights in secular west are Magna Carta (MC) 1215, Bill of Rights of England 1679, Bill of Rights of America 1791. It is claimed that the Magna Carta played a decisive role for ...individual rights for all. However, this notion is to be refuted here, firstly the MC was not the ancient document for human rights; secondly, it was a partial and defective document. Because it had simply secured the rights of the baron - the upper class citizen of England of that time. Moreover, it failed to address man and woman equal in many cases. As Article 34 of the document provides:

"No man shall be taken or imprisoned upon the appeal of a woman for the death of any one other than her husband.

United States of America (USA) claims to be the champion and self declared leader of human rights despite the fact that the first document of the said right appeared in the history of the USA in 1791 only with the declaration of Bill of Rights of America. The said right was also faulty for many reasons. Such as, it did not provide freedom of religion. The right to freedom of reli-

gion was approved only with the 10th amendment of its constitution. Prior to that, it provided a sect of Christianity, of Puritans, as the state religion and non observance of that religion was made subject to capital punishment. As the Virginian Code provides:

"Any one who speaks maliciously against the doctrine of Christian faith shall be punished with death for blaspheming God and His religion".

Islamic Concept of Human Rights

Human rights in Islam is as ancient as the Islam perse. It is at least 1326 years ahead of the Universal Declaration of Human Rights in 1948. Al Quran and al Sunnah are the main sources of human rights. However, an official declaration of human rights was promulgated by the prophet Muhammad Sln., in the year 623 when he declared the Charter or Constitution of Madina. Dr. Hamidullah, an Indian origin Muslim settled in French, claimed that this is the first written Constitution of the World. The charter of Madina has been the practical demonstration of al Quran and al Sunnah. This has been evident that the journey of Islamic Constitutional government and human rights therein is as early as the Islamic political system is.

As regards the beginning of human rights in Islam M. Makki, an Omani representative in the United Nations wrote:

"The basic concept and principles of human rights have, from the very beginning, been embodied in Islamic law."

This is about the first journey of human rights, now it is deemed fit to say about some rights that Islam guaranteed for the humanity.

There is quite big number of rights that Islamic law identified and guaranteed. Some of them would be presented here without much explanation. Here are very brief analyses about the rights mentioned and guaranteed in Islam. I would bring one or two evidences only from al Quran or Hadith so as to prove that the root of these rights are available in the form of revealed texts.

Right to Life

Life is the most precious thing in human life. No body, in Islam, is allowed to kill himself or another person without any just cause. As Allah Ta'ala says: "Nor take life which Allah makes sacred except for just cause and if any one is slain wrongfully, We give his heir authority to demand retaliation.

Right to be Free from Persecution

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LAW week

Chaos in court over Faizee's taking bench

Additional Judge Faiz Mahmud Faizee's joining the High Court bench witnessed a chaotic scene at his courtroom as two groups of lawyers shouted at each other making opposing statements on whether he should continue performing judicial tasks. The Supreme Court Bar Association (SCBA), meanwhile, decided to continue its boycott of Faizee's court that had started five months ago. The decision was taken after an inconclusive meeting with the chief justice yesterday. The pro-boycott lawyers chanted slogans at the courtroom in Faizee's presence while the pro-government lawyers said they would like to see Faizee to continue his judicial tasks. After a 160-day break, Faizee joined court Sunday following the High Court's verdict in a contempt case against two newspapers for running stories on the alleged tampering with the judge's LLB certificate. The court punished the two newspapers. SCBA president Abdul Baset Majumder came to the spot and delivered a speech in presence of Faizee. He said, "We met the chief justice yesterday and he will sit again with all the former SCBA presidents this afternoon." Majumder urged Faizee to refrain from sitting at the court for the time being for the sake of peaceful environment. Faizee however expressed his desire to undertake judicial tasks. -The Daily Star, April 2.

BTTB Cellphone Writ petition filed against licence transfer

A writ petition was filed challenging the legality of the transfer of cellular phone operating licence of Bangladesh Telegraph and Telephone Board (BTTB) to another company 'Teletalk Bangladesh Ltd' and the allocation of radio frequency in favour of the company leading to its commercial launch. Mesbahuddin Ahmed, an associate professor of the Department of History at Dhaka University, and Nasimul Ghani, an employee of the BTTB and Organising Secretary of Telejogajog Sramik Karmachari Union, filed the writ petition with the High Court Division of the Supreme Court. The petitioners sought a rule upon the respondents to show cause as to why the transfer of the licence and allocation of the frequency should not be declared illegal. They also urged the court to stay operations of Teletalk and using the frequency allocated by the BTRC. The respondents are Bangladesh Telecommunication Regulatory Commission (BTRC), its chairman, BTTB and its chairman, secretary of the Ministry of Post and Telecommunications and Teletalk Bangladesh Ltd. -Daily Prothom Alo, April 12.

Govt to enact anti-dumping law

The government is going to enact an anti-dumping law in order to protect the interests of local industries. Chairman of the National Board of Revenue (NBR) Khairuzzaman Chowdhury told a pre-budget discussion. "The government will enact an anti-dumping law," he said asking the leaders of Dhaka Chamber of Commerce and Industry (DCCI) to give a list of items that are being dumped. DCCI leaders at the pre-budget meeting also alleged imported goods are flooding the Bangladesh market, posing threat to local industries. The chamber leaders also stressed the need for bringing parity in facilities enjoyed by entrepreneurs in the export processing zones and outside the zones. Speaking at the meeting at the chamber auditorium in Dhaka, DCCI President Sayeeful Islam demanded continuation of tax holiday in the next budget. -The Daily Star, April 11.

Act tough to recover grabbed lands

Prime Minister Khaleda Zia said the government has identified illegal land grabbing as a national problem and ordered the administration to take effective measures to recover public and private lands from grabbers, and go for stern action against them.

"We have already formed committees at national and district levels to recover illegally grabbed lands of the government, autonomous bodies, private institutions and people as well as to take proper steps against the illegal occupants," she said. Inaugurating a three-day annual conference of deputy commissioners (DCs) at the Cabinet Division, the prime minister asked the DCs to take tougher action against the land grabbers.

"You must tackle with a heavy hand any obstructions to government activities and attacks on institutions or officials. You have to discharge all your responsibilities with neutrality ignoring all sorts of pressure and intimidation," Khaleda said. -The Daily Star, April 10.

Ex-HC judge files petition against chief justice

An unconfirmed additional judge of the High Court (HC) filed a writ petition challenging the legality of Chief Justice Syed JR Mudassir Husain's holding office 'violating the Constitution'. The HC Division Bench of Justice Shah Abu Nayeem Mominur Rahman and Justice Moinal Islam Chowdhury briefly heard the petition filed by Abdus Salam Mamun, the judge.

The bench adjourned for a week the petition's admissibility. The petitioner accused the chief justice (CJ) of victimising and depriving the petitioner of becoming a confirmed judge 'despite understanding given to him'. Mamun and 10 others were appointed additional judges to the High Court in July 2002 for a two-year term. After the end of their terms, all the additional judges, barring petitioner Mamun, were confirmed as High Court judges. However, Mamun's tenure as an additional judge was extended by another six months, but he was not confirmed even at the end of the extended period. Mamun in his petition alleged 'inaction' of the chief justice in confirming him as a judge. It is 'tantamount' to violation of Article 95 of the Constitution, he said and claimed that the chief justice has no authority to continue in his office. -UNB, April 10.

Corresponding with the Law Desk

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LAWSCOPE



Bad law

Chief Justice (at a High Court Sessions): "I cannot allow you to address bad law to the jury.
Mr. F. Johnston: "That I leave to your lordship".

Read Them

Judge: "If your view be sound I had better go home and burn my books."
Mr. E. Norton: "No, no my lord. Go home and read them." Presumption of law
Judge: "I have never known the law to be that."
Sir. Ty Bahadur Sapru: "You lordship, there is no presumption that a judge should know law."

Lawyer requires

Judge: "I am unable to understand your argument."
Mr. B. Ayyangar: "Yes, yes, your lordship. It requires a lawyer to understand it."

Respectfully

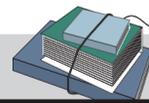
Judge: "I cannot teach you law or manners."
Mr. Oswald: "I respectfully agree, my lord, you could teach nobody neither."

Ignorance of law

Judge: "Mr. counsel, every man is presumed to know the law."
Counsel: "Yes, your honour, I am aware that every shoe maker, tailor, mechanic, and illiterate labourer is presumed to know the law -- yes, every man is presumed to know it -- except the judges and we have a court of Appeal to correct their mistakes.

Courtesy: Justice Mohammad Gholam Rabbani.

LAW lexicon



Solicitor

A lawyer that restricts his or her practice to the giving of legal advice and does not normally litigate. that court room. In England and some other Commonwealth jurisdictions, a legal distinction is made between solicitors and barristers, the former with exclusive privileges of giving oral or written legal advice, and the latter with exclusive privileges of preparing and conducting litigation in the courts. In other words, solicitors don't appear in court on a client's behalf and barristers don't give legal advice to clients. In England, barristers and solicitors work as a team: the solicitor would typically make the first contact with a client and if the issue cannot be resolved and proceeds to trial, the solicitor would transfer the case to a barrister for the duration of the litigation. Lawyers in some states, such as Canada, sometimes use the title "barrister and solicitor" even though, contrary to England, there is no legal distinction between the advising and litigating roles. Canadian lawyers can litigate or give legal advice (as is the case in the USA, where lawyers are referred to as "attorneys").

Sovereign

Has two meanings. The first one is a technical word for the monarch (king or queen) of a particular country as in "the Sovereign of England is Queen Elizabeth." The other meaning of the word is to describe the supreme legislative powers of a state: that they are totally independent and free from any outside political control or authority over their decisions. The people of Quebec, for example, has, at times, supported governments which have proposed that Quebec become a "sovereign" state; that all legislative authority of the government of Canada over their territory cease and that the government of Quebec be enabled to regulate in any matter at all; and that the government of Quebec represent itself internationally.

Standing committee

A term of parliamentary law which refers to those committees which have a continued existence; that are not related to the accomplishment of a specific, once-only task as are ad hoc or special committees. Standing committees generally exist as long as the organisation to which it reports. Budget and finance or nomination committees are typical standing committees of a larger organisation.

Stare decisis

A basic principle of the law whereby once a decision (a precedent) on a certain set of facts has been made, the courts will apply that decision in cases which subsequently come before it embodying the same set of facts. A precedent which is binding; must be followed.

HUMAN RIGHTS advocacy



MALAYSIA

Toward human rights-based policing

Malaysian police are being offered a critical opportunity to increase their effectiveness and restore public trust with the upcoming publication of an official review. A pattern of human rights abuses such as fatal shootings, torture and deaths in custody will be addressed in the review.

The Malaysian prime minister recognised that there were serious problems, and in a significant step, set up a Royal Commission of Inquiry to address these. "The Commission's findings are eagerly awaited by the Malaysian people, NGOs, and internationally," said Tim Parritt, South East Asia researcher at Amnesty International. "We trust they will be made public, and lead to urgently needed reforms."

One victim of police abuse was 19 year-old Tharna Rajen, an ethnic-Indian Malaysian waiter. The inquest into his death in custody is still ongoing. After being arrested on suspicion of being involved in 'gang fights' while on the way to his local shops, he was held in a succession of police lockups over 66 days. He told his brother police had hit him and beaten him with a rubber hose on the soles of his feet. His family were only belatedly told of his detention, and on visiting him his mother found him cold, in pain, and constantly vomiting. Finally, he was admitted to hospital, and handcuffed to his bed. He died there on 21 June 2002.

Tharna Rajen's case illustrates a number of common issues in policing that are highlighted in the report, not least that officers are rarely held accountable for their abuses. Remand hearings, allowing detention to be continued, have been described as 'rubber stamp' exercises, with magistrates often viewing them as a formality rather than an



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opportunity to check the actions of the police. Police often fail to inform relatives or lawyers when remand hearings are due, or that suspects are being detained. There is a pattern of torture and ill-treatment being inflicted on suspects in custody, especially during interrogation.

"Too often human rights are seen by police to get in the way of their job," said Tim Parritt. "But when you get down to fundamentals, police exist to maintain social order in the communities they serve, protecting citizens' human rights from infringement by others. This concept needs to be restored to the heart of police culture in Malaysia."

Amnesty International submitted its report to the Royal Commission in January. It seeks to contribute to the Commission's work by examining

past patterns of violations and making recommendations for improvement by putting human rights at the core of policing.

"Professional policing and respect for human rights are interdependent," said Tim Parritt. "There needs to be a Code of Conduct specific to the police, which reflects key human rights principles. A culture of accountability and transparency is vital to ensure this Code is respected in practice. Such a culture should be nurtured through internal disciplinary procedures, and equally importantly, by an external independent police complaints body acting as a safeguard."

Police organisations are most effective when they enjoy the cooperation of the community they serve. A key way to gain community support is

by ensuring police respond promptly to calls for help, no matter who makes them -- whether women, children, or people from ethnic minorities.

"This is a historic opportunity for Malaysia to become a model of policing for the region -- a model where the police are accountable to society as well as to the government, where police work effectively within their neighbourhoods because they have won the respect of local people for their equal protection of every group within that neighbourhood," said Tim Parritt. "Human rights are not an obstacle to effective policing, but on the contrary, vital to its achievement."

Courtesy: Amnesty International.