

**WIFE BEATING: A MEASURE TO DEAL WITH MARITAL
DISHARMONY OR A LICENSE FOR MISCONDUCT**

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ABSTRACT

Wife beating is not a new phenomena rather it has been practiced from pre historic times till today. It is a kind of gender base violence practiced by husband in all over the world especially in Muslim societies. It is due to misunderstanding about the position of women in Islam, the presence of injustice and malpractices in contemporary Muslim societies. The reasons for denying women's rights in Pakistani society could be summed up as lack of education, ignorance about Islamic teachings, feudal and tribal cultural traditions, male dominated patriarchal attitudes, poverty, unemployment and misinterpretations regarding precise teachings of Qur'an and Sunnah. There are many misconceptions regarding the stance of Islam on wife beating as well. It is commonly understood that Islam gives permission for wife beating in the Qur'ānic verse 4:34. This article will describe the relationship between husband and wife in the light of Qur'ānic verse 4:34 and will explore the sanctions of wife beating and its dimensions. Furthermore, it will aim to remove misunderstandings and prejudged opinions related to the concerned issue, in the light of Qur'an and Sunnah.

Key Words: Wife beating, Marital disharmony, Shariah Compatibility, patriarchal social system, Qur'ānic Sanctions

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The cheats are today glorifying
Selfishness and hypocrisy.³⁸

Nazrul describes the better world that he seeks in his poem "Resurrection":

A new world reborn
Is soon to dawn.
These fetters of ancient scriptures
Wrought this utter ruin...
On a new foundation
A young world shall dawn...
Our rights we shall recover
With the unity of sufferers
All the world over.³⁹

As Abu Muhammad Habibullah phrases it, Nazrul had "innate catholicity and cosmopolitan humanism."⁴⁰ He was theistic, yet he rebelled against the corruption that he found in religion, and was essentially an optimist, "who believed in the perfectibility of man" as Syed Sajjad Hussain states.⁴¹ He wished to fight injustice in the world, and the exploitation of people in the name of God, especially by institutionalized religion.

What are the ideals of Kazi Nazrul Islam? In his own words, he came to argue against inequality, oppression, colonialism, tyranny, religious moral and political hypocrisy, and religious fanaticism. He was in favor of equality, freedom, justice, love, romance, idealism, unity and peace. He was a man of his own age, but these ideals are universal ones, for people have not greatly changed today from Nazrul's time. His words are as important today as they were in his own time.

³⁸ Ibid. p.

³⁹ 39.Huda Ibid. p.397. trans. Syed Mujibul Huq.

⁴⁰ Islam, Ibid, p.151.

⁴¹ Ibid, p.207.

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Half the world come to be believe in the virtue of toleration,
In your virtue of toleration
But we never learned that toleration, only heard it,
Only heard it in the Quran and the Hadith.³⁴

This prejudice and ignoring of suffering has acted as a sure, as he states in "Once again Hazrat, Send from Heaven the Message of Equality:"

Defying your command
We are universally disgraced
We despise the suffering humanity
Yet we say, "We submit to the will of God."³⁵

He puts this in the specific context of religious war, as he states, in "If the Flute Doesn't Play Any More":

The constant fighting between Hindus and Muslims, animosity between nations, and wars, the inequality between the mercilessly indebted and needy, and the monstrosity of greedily piling up crores and crores of rupees in the banks – these are what I came to eliminate... Don't look at me... as someone belonging only to the Muslims,,, [but] as a servant of the one and only indivisible God who is above Hindus and Muslims, above all the nations and creeds.... Please think of me as a restless youth who came to this world with a thirst for fulfillment, but it was his departed soul suffering from the pain of unfulfilment who came to you in your dreams and shed tears.³⁶

Though Nazrul does not see himself as limited to Islam, it is still a spiritual path with which he identifies himself. As he states:

Allah is my lord, I have no fear
My prophet is Muhammad, whom the world praises
With the Quran as my trumpet of life, what can terrify me?
Islam is my code of life, and Muslim is my name.³⁷

However, he is very disturbed at religious callousness and dishonesty. As he states in the poem "Man":

Hammer away at the closed doors
Of the mosque and temples
And hit with your shovel mightily
For, climbing on their minarets

³⁴ Ibid. pp.141 – 142.

³⁵ Ibid. p.142.

³⁶ Ibid. p.223.

³⁷ Kazi Nazrul Islam: A new Anthology, ed. Rafiqul Islam (Dhaka: Bangla Academy, 1990/1397), p.87.

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He speaks of the pain of poverty, starvation, insult, illness and death.

He says in "The Rebel:"
I'm the madness of the recluse
I'm the sigh of grief of a widow
I'm the anguish of the dejected
I'm the suffering of the homeless
I'm the pain of the humiliated
I'm the afflicted heart of the lovesick.³⁰

In the "Nobility of Sorrow" (or Life Science) he states:

To feel the pain of others is to realize the nobility of sorrow.

There is no motive or selfishness in it. The pain is such that it is felt through the remembrance of one's own pain. So amazing is the way of the soul that in the empathic realization of the pain of others there is an intimately felt touch of joy, like a refreshing long stream of a fountain flowing through the heart of a red stone.

It is the same kind of sorrow which the prophets felt through the hearts of global humanity.... It is the same realization which elevates human beings to godliness.³¹

On our fourth theme, contribution to a better world with less sorrow and more tolerance, he states that, as the Rebel, he will only rest "when the anguished cry of the oppressed shall no longer reverberate in the sky and air."³² He also states:

I sing of equality
In which all barriers and estrangements are dissolved
And in which Hindus, Buddhists,
Muslims and Christians are united
I sing of equality.³³

He speaks of Muhammad (P.B.U.H):

We have forgotten your message of toleration
And have turned instead to religious blindness
Therefore, your blessings no longer
Shower upon us from heaven.....
You did not want this disgraceful
Fighting in the name of religion.....

³⁰ Ibid. pp. 185-186.

³¹ Ibid. p.27.

³² Ibid. p.33.

³³ Ibid. p.27.

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Human suffering and needs
The rich Muslims are constantly immersed
In pleasure and luxury.....
When will we regain our humanity
By loving fellow human beings? ²⁵

Such love is part of religion, as he says in "Eid Mobarak:"

Says Islam, we are all for one another
We are all brothers and shall
Shall joy and sorrow equally. ²⁶

This is not only for the members of religion, but for all people of all religions, as Nazrul states in "There Smiles the Eid-ul-Azha Moon":

Forget your sectarian quarrels today
Welcome all as your dear guests
Let kind words and sincere love
Be your most precious offering to your guests. ²⁷

Love is part of God's blessings, as he states in "Bless us oh Lord":

Let others love us and let us love others.
Let there be no hatred no malice or
Physical pain or mental agony
Let the earth be another paradise oh Lord.
We will explore you in the light
Of the knowledge your have given
Your strength will aid our work. ²⁸

On the issue of our third theme, compassion for human suffering, Nazrul is especially articulate. In his poem "coolies and Laborers," he speaks of sharing pain:

And if one human being is hurt, then
Let teach of us of the whole
Humanity feel the pain equally
If one human being is humiliated, then
Let it be considered humiliation
Of the whole humanity. ²⁹

²⁵ *Poetry of Kazi Nazrul Islam*, ed. Mohammed Nurul Huda. (Dhaka: Nazrul Institute, 1997), p.140., trans. Sajed Kamal.

²⁶ Huda, *Ibid*, p.469, trans. Bashudha Chakravarty.

²⁷ Huda, *Ibid*, p.973, trans. Abu Rushd.

²⁸ Huda, *ibid*, p.46.

²⁹ Kamal. *Ibid*. p.46.

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Who are they, hating human beings
Yet kissing the Quran, the Vedas, The Bible?
Snatch away those books from them
The hypocrites pretend [to be] worshipping those books
By killing the human beings who have, infect,
Brought those books into existence!.....
All the holy scriptures and houses or worship
Are not as scared as that one tiny human body.²¹

Human beings have their own divinity, which is largely unrecognized, as he states:

Friend, you're full of greed
With a blinder of selfishness over your eyes.
Otherwise you'd recognize the god
Serving you as a coolie".²²

In his poem, "God," Nazrul speaks of this:

Don't shudder Hero, don't be intimidated
By the scholars of the scriptures.
They're not God's "private secretaries."
We are all His manifestation
He is present in us all.²³

As for our second theme, the value of wisdom and love within the human heart, Nazrul States in "I Sing of Equality:"

Open your heart - within you lie all the scriptures
All the wisdom of the ages.
Within you lie all the religions, all the prophets
Your heart is the universal temple
Of all the gods and goddesses.²⁴

He also speaks of the important of love, in the poem "Coming to this World for the Poor, the Downtrodden, the Destitute, Hazrat"

Today there is no one to think about

²¹ *Kazi Nazrul Islam: Selected works*, edited and translated by Sajed kamal. (Dhaka: Nazrul Institute, 1999), p.48.

²² *Kazi Nazrul Islam: Selected works*, edited and translated by Sajed kamal. (Dhaka: Nazrul Institute, 1999), p.50.

²³ *Poetry of Kazi Nazrul Islam*, ed. Mohammed Nurul Huda. (Dhaka: Nazrul Institute, 1997), p.255.

²⁴ *Poetry of Kazi Nazrul Islam*, ed. Mohammed Nurul Huda. (Dhaka: Nazrul Institute, 1997), p.43.

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emphasis on lasting human values." The traditional definition of humanism emphasizes the dignity and worth of all people, a commitment to the search for truth, and faith that people can build a better world. It values art and beauty, as well as personal independence.

However, the term has been redefined and sensationalized by Christian's fundamentalists as "secular humanism," which is different from traditional humanism. 'Secular humanism refers to a belief in scientific knowledge rather than religious revelation, and emphasizes pragmatism rather than romanticism or idealism. Sometimes it is given political dimensions as in the 'one world government' and 'new world order' ideas that came from the Bahais a century ago. For fundamentalists, secular humanism is equivalent to unbelief, and its concern for morality is ignored – indeed, it is said to be unconcerned with ethics. It is a 'humanism' which has little or nothing to do with the humanities. Indeed, it finds the humanities ultimately irrelevant.

The term 'humanism' can thus be confusing, because it is used to mean very different things in the modern media. In this paper, Nazrul's humanism refers to the original Renaissance or dignity and worth of all people. We might also not than Nazrul was an excellent twentieth century example of the ideal of the "renaissance man", a person who had many skills and abilities. Nazrul was a songwriter, a musician, a director, an actor, a poet, 29 plays and operas, and numerous essays and speeches. He fits perfectly the ideal of a cultured man of many talents.

We look at the themes that are found in traditional humanist writings, there are four important ones that I list here:

1. The dignity and worth of each human being.
2. The value of human love, creativity and wisdom.
3. Compassion for human suffering.
4. The desire to contribute to a better world, with less suffering and more tolerance.

Those can be found in Nazrul's writings. For example, on the theme of dignity and worth of each person he writes.

I sing of equality
There is nothing greater than a human being
Nothing nobler. . . "²⁰

He also writes in the poem "Human Beings" of the selfish hypocrites:

²⁰ *Kazi Nazrul Islam: Selected works*, edited and translated by Sajed kamal. (Dhaka: Nazrul Institute, 1999), p.27.

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safeguards against the arbitrary exercise of power and corruption. As all categories of human rights are indivisible and interdependent, civil and political rights can only be meaningfully enjoyed when economic and social rights are fulfilled. Therefore, the prerequisites of good governance are *inter alia* recognition and realization of the rights of the people and respect for the rule of law.

2.2 No Human Rights without Good Governance and Rule of Law

There can be no human rights without good governance and rule of law. The most fundamental condition for exercising our civil and political rights is that we should be alive to do so, and this requires both physical security and access to necessities of life: to the means of subsistence, to shelter, clean water, sanitation and basic health care.¹⁹ Although in theory human rights cannot be taken away or given by governments, the picture is different in practice. Unless there is good governance that ensures transparency, responsibility, accountability, participation and responsiveness to the needs of the people, there will be no human rights for the people of a given society even though they are theoretically entitled to such rights. Human rights violations primarily take place for government's failure to perform its responsibilities to its citizens. Responsibility means the duty of the government to respect, protect, promote and fulfill the rights.

2.3 No Rule of Law without Human Rights and Good Governance

Key constituent elements of rule of law, among others, are individual liberties and equality. Rule of law which is the foundation of good governance creates an enabling environment for uninterfered enjoyment of human rights by the people by preventing unguarded exercise of government powers.

Nazrul, is it accurate to say that he is immune to human pain because he is a Muslim? I would say quite the opposite he shares the pain of humanity, and becomes the situations that cause it. This is why he is a poet of both love and revolutions. I shall give examples from his poetry of his concerns for the joys and sorrows of humanity.

However, some confusion may arise from the varied meanings of the term.

"Humanism". There are several different definitions of the term. It was originally associated with a philosophical and literary movement which developed during the Renaissance in Western Europe, which emphasized the study of the classics, or the humanities. It also represented a rebellion against the rigidity of the church of its day, emphasizing the role of the arts and sciences, and having a "general

¹⁹ David Beetham. Democracy and Human Rights: Civil, Political, Economic, Social and Cultural in Dr. Mizanur Rahman (edited) Human Rights and Empowerment, ELCOP., 2001, Dhaka, p.24.

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implementation of human rights. Human rights are fundamental to our nature without which we cannot expose ourselves as human beings.

Human rights enable people and communities to develop and exercise our human attributes and qualities – physical, mental and spiritual.

Human rights are inherent – people are born with them and human rights do not have to be given, bought, earned or inherited. They are universal and apply to every one in the world irrespective of race, sex, religion, ethnicity and political or other opinion. Human rights are inalienable and cannot be taken away – people still have human rights even if the law of a country seeks to deny them.¹⁷

2. Interface of Rule of Law, Good Governance and Human Rights

Human rights, good governance and rule of law are not synonymous, yet it is often difficult to precisely demarcate the crossing point between them. The concept of rule of law is a set of principles governing the legality of power, whereas good governance through certain defined standards enables citizens to enjoy human rights – civil, political, economic, social and cultural. Adherence to the rule of law keeps the operation of governance on the right track and offers sanctions against those who choose to undermine it. Rule of law thus provides theoretical foundation for the good governance as it provides an instrument to prevent arbitrary exercise of powers as well as remedy for harms and injuries caused by misuse and abuse of power.¹⁸ Human rights on the other hand are measures to test the legitimacy of the governance. Human rights standard is thus one of the criteria and indicators of good governance. An accountable, responsive and transparent government which respects the rule of law is less likely to disregard the rights of its citizens, and far more likely to address the needs of those in society who often suffer lack of respect of their rights, including women, the poor, vulnerable groups, disaster victims minorities. The relation between the concepts of good governance, rule of law and human rights is entwined and inseparable. One of them essentially obtains from other an inspiration and legitimacy for workability.

2.1 No Good Governance without Rule of Law and Human Rights

There can be no good governance without guaranteeing the enjoyment of human rights. Minimum core contents of good governance are transparency, responsibility, accountability, participation of the people and responsiveness to the needs of the people. Unless there are provisions for civil and political rights that help ensure transparency, responsibility, accountability, participation and responsiveness of the government to the need of the people there will be no

¹⁷ Amnesty International Siniko: Towards A Human Rights Culture in Africa. 1998, pp.3-4.

¹⁸ Yubaraj Sangroula, *Supra*, p.26.

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- (v) development of society as a whole by education and health care;
- (vi) exclusive accountability to a freely elected legislature.¹⁶

this definition epitomizes good governance as a means to achieve welfare and fulfill basic needs of citizens. Good governance has, therefore, important bearing on economic and social development and is critically important for fulfillment of social needs and protection of human rights civil, political, economic, social and cultural. Sir Kenneth Stowe further asserts that judicial independence is a prerequisite to establishment of good governance. An independent and impartial judiciary is also treated as indispensable for upholding rule of law and safeguarding the rights of the individuals.

The UN Commission on Human Rights (Now UN Human Rights Council) has identified, *inter alia*, the following key elements of good governance:

- (i) transparency – it means that people know what is going on in government;
- (ii) responsibility – the term indicates that the government has the duty to respect, protect, promote and fulfill the rights, guaranteed both in national and international instruments, of those who are on its territory;
- (iii) accountability – this means that government must be accountable or their actions and should be sanctioned when they violate people's human rights by abusing their power;
- (iv) participation and
- (v) responsiveness – it means that government responds to the needs of the people by ensuring that the enjoyment of their human rights is fulfilled.

Despite diversity in conceptualization, manifested elements of good governance are: an enlightened, professional civil service, absence of corruption in government, transparency and accountability of administration, the supremacy of the rule of law, democratic decision – making, an independent judiciary, effective protection of human rights, appropriate devolution and decentralization of government powers, freedom of information, constitutional legitimacy of government, appropriate levels of military spending, engaged civil society and so on.

1.3 Human Rights

Human rights have been defined in a number of different ways. A precise definition of human rights is neither possible nor necessary for the operation and

¹⁶ Stowe, K., Good Piano Won't Play Bad Music, Administrative Reform and Good Governance, quoted in Mohamed Mohabbat Khan, Governance in Bangladesh, *Journal of Administration and Diplomacy*, Vol. 3, No. 1 and 2, January – December, 1995, p.2.

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- iii) the competence of governments to formulate appropriate policies, make timely decisions, implement them effectively and deliver services;
- iv) the respect for human rights and rule of law, guarantee of individual and groups rights and security, establishment of a framework for economic and social activity and creation of conditions which allow and encourage popular participation.

This definition of good governance focuses on people's freedom to unrestricted access to and participation in political or policy making process and puts limitation on governmental discretionary powers and in turn, it give the perception of 'minimalist state' in contrast to police state. People's right to participation in government is mainly expressed through the uninterfered exercise of the right to form and operate political associations. The concept of good governance is thus primarily founded on peoples' freedom to choose political ideologies and form and operate political association. Ultimately, the right to form and operate political associations is related with the process of the right to self-determination. Therefore, concept of good governance is essentially related with the 'people's right to self-determination', which connotes the following understanding:

- the governmental power is controlled by the constituents of the governments;
- the welfare of the people is prime responsibility of the state and as such the state is service delivering institution;
- the power to rule is an inherent power of the people and centralization of power by the government is an anti-democratic notion; and
- the devolution of power is an expression of autonomy of governance; hence the decentralization should be understood as an autonomy.¹⁵

To define and clarify the meaning of good governance, Sir Kenneth Stowe presents following six characteristics:

- (i) political freedom, including free speech and freely elected parliament;
- (ii) constitutional and judicial protection for the rights of the individuals;
- (iii) maintenance of the rule of law by an independent judiciary;
- (iv) maintenance of stable currency;

¹⁵ Yubaraj Sangroula, concept of Rule of Law, Human Rights, and Good Governance: Mutually Reinforcing Concepts in Human Rights and Good Governance, Edited by Dr. Mizanur Rahman, Published by Empowerment through Law of the Common People (ELCOP), POP. 249-25.

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1.2 Good Governance

Good Governance, passionately desirable state of affairs, has different connotations to different people. Governance can simply be defined as the manner in which public affairs are conducted, public resources are managed and human rights realized. Good governance involves carrying out the functions of the government without abuse and corruptions and with due regard to law.¹¹

The United Nations Development Programme (UNDP) views good governance as – “the exercise of economic, political, and administrative authority to manage a country’s affairs at all levels. It comprises mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences”.¹²

According to the Resolution of the Council of European Community on Human Rights, Democracy and Development, good governance specifically address the quality of governance and covers the following general principles: sensible economic and social policies, democratic decision making, adequate governmental transparency and financial accountability, creation of market friendly environment for development, measures to combat corruption, respect for rule of law and human rights, reduction of excessive military expenditure and freedom of press and expression.¹³

The Overseas Development Administration (ODA) of UK has emphasized on the following four components of good governance¹⁴:

- i) the legitimacy of government, which depends on the exercise of participatory process and the consent of those who are governed;
- ii) the accountability of both political and official elements of government for their actions, depending on the availability of information, freedom of media, transparency of decision making and the existence of mechanisms to call individuals and institutions to account;

¹¹ Peter Langseth, The role of a National Integrity System in Fighting Corruption. 1997 in David McQuoid-Mason. Human Rights and Good Governance: Some Lessons from South Africa, p.4, paper presented in International Human Rights Summer School, organized by Empowerment through Law of the Common People. (ELCOP) 2004.

¹² Fakuda – parr and Richard Ponzio, Governance: Past, Present, Future-Setting the Governance Agenda or the Millennium Declaration, UNDP Paper, 2002. p.1.

¹³ For detail see Resolution of the Council of the European Community on Human Rights, Democracy and Development, 1991, EC Bulletin.

¹⁴ Overseas Development Administration (ODA), Good Governance, Technical note No.10, London quoted in Mark Turner and David Hulme, Governance, Administration and Development: Making the State Work. Kumarian, Press, 1997, p.231.

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human rights sphere the scope of rule of law has much widened. Rule of law now, therefore, does not mean merely the rule by democratic law but is essentially includes the establishment of desired social, economic and educational conditions without which democratic law, liberty, civil and political rights remain as myths to the people.⁸ For the rule of law to have content, it must be the instrument for achievement of social, economic and other rights. Rule of law is thus not a mere mechanical concept rather it is a dynamic concept which should be employed not only to safeguard and advance the civil and political rights of the individual but also to establish favourable social, economic and cultural conditions under which the worth and dignity of human persons can be realized.⁹ Committee IV of the Congress of New Delhi held in 1959 eloquently pointed out that the rule of law relates to¹⁰ -

- a) the function of the legislature in a free society under the rule of law is to create and maintain the conditions which will uphold the dignity of man and woman as an individual. The dignity requires not only recognition of his civil and political right but also establishment of the social, economic, educational and cultural conditions which are essential to the development of his/her personality.
- b) the rule of law depends not only on the provisions of adequate safeguard against abuse of power by the executive, but also on the existence of effective government capable of maintaining law and order and ensuring adequate social and economic conditions of life for the society.
- c) An independent judiciary and a free legal profession are indispensable for a free society under the rule of law.

Rule of law now, therefore, means rule by law which helps ensure opportunities for a full life to people especially to poor, deprived, women and children. Rule of law, which is not capable of removing major sources of unfreedom and creating favourable conditions for the enjoyment of basic rights of the people – civil, political, economic, social and cultural – cannot be regarded as rule of law, even if the law is made following apparent democratic process.

⁸ Md. Abdul Halim, Constitution, Constitutional Law and Politics: Bangladesh Perspective, 1998, p.352.

⁹ Wade, E.C.S., and Bradley, A.W., Constitutional Law, 8th ed., p.75.

¹⁰ Quoted by Md. Abdul Halim, Supra, p.353.

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Although one of the basic precepts of rule of law is government by law and not by man, rule of law yet does not mean any government under any law. Rule of law means the rule by a democratic law – a law which people must understand that it is in their interests, as well as in that of the community as a whole,⁶ a law which is passed in a democratically elected parliament after adequate debate and discussion both inside and outside the parliament. Professor Irving Younger suggests that judges should evolve the doctrine that “no law is validly enacted unless legislators voting for it have read it”. The observation of Justice Bhagwati in *Bachan Singh vs. State of Punjab* is worth noting here:

Law in the context of rule of law does not mean any law enacted by legislative authority, however arbitrary despotic it may be, otherwise even in dictatorship it would be possible to say that there is rule of law because every law made by the dictator howsoever arbitrary and unreasonable has to be obeyed and every action has to be taken in conformity with such law. In such a case too even where the political set up is dictatorial it is law that governs the relationship between men and state, but still it is not rule of law as understood in modern jurisprudence, because in jurisprudential terms, the law itself in such a case being an emanation from the absolute will be the dictator, it is in effect and substance the rule of man and not of law which prevails in such a situation. What is necessary element of rule of law is that the law must not be arbitrary or irrational and must satisfy the test of reason and the democratic form of policy seeks to ensure this element by making the framers of the law accountable to people.⁷

Changed Meaning and Concept of Rule of Law after the Adoption of International Bill of Rights.

After the cataclysmic events of the Second World War international human rights law began to develop in a coherent and recognizable way. Since the latter part of 1940s there has been a spectacular development of human rights regime both substantive and procedural. Myriad of human rights instruments including Universal Declaration of Human Rights (UDHR), 1948 and two international covenants on human rights – International Covenant on Civil and Political Rights (ICCPR) and the International Covenant of Economic, Social and Cultural Rights (ICESCR) – were adopted by the international community in 1966. These three important human rights instruments, in addition to the human rights provisions of the UN Charter and the Optional Protocol to the ICCPR, form part of the International Bill of human rights. In the context of this modern development in

⁶ *Merkur Island Shipping Corporation Vs. Laughton and Others*, [1983] 2AC 570.

⁷ *Bachan Singh Vs State of Punjab*, AI 1982 SC 1325.

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subjection of all classes, Irrespective of their rank or condition, to the ordinary law of the land and jurisdiction of the ordinary tribunals; and (c) Individual liberties. Although Dicey's theory has been criticized from many angles, yet his emphasis on subjection of every person to the ordinary laws of the land, the absence of arbitrary power and legal protection for certain basic human rights remains undisputed theme of the doctrine of the rule of law.²

From the vantage point of the liberalism the rule of law has three elements: first, the state as a whole must be regulated by law; second, the separation of power is implied within the doctrine in order to prevent dictatorship or absolutism and third, the principle of equality.³ In liberalism, therefore, the concept of rule of law emphasizes on responsible government and a separation of powers which will result in a judiciary which is independent of other organs of the government. An independent judiciary is a *sine qua non* for ensuring equality and protection of individual's rights. Rule of law from this perspective is inextricably linked to good governance and human rights as it purports to prevent misuse as well as abuse of official powers and enables citizens to fulfill their life-plans according to law. Lord Denning says – "There are two aspects of the rule of law: on the one hand it prevents the exercise of power arbitrarily, and on the other provides resource to law when power is exercised arbitrarily."⁴ The rule of law is thus a bedrock of the concept of good governance as well as justice as it acts both as preventive and curative weapons against the arbitrary exercise of governmental powers.

The formalistic perception of the rule of law adopted by the conservative and liberal theorists has come under serious attack from a Marxist perspective. While liberalism and conservatism portray law as neutral between persons and classes and attempt to establish that rule of law favours maximum liberty for all, Marxism insists that law represents the interests of the powerful within society. Marxism thus views the rule of law, as advocated under conservatism and liberalism as a means of subterfuge: it is a mere pretence which hides injustice. Law, from a Marxist perspective, is the reflection of economic power within society, a power which is used to exploit the powerless. Therefore, the traditional formalistic concept of rule of law, in the eye of Marxism, becomes a grand slogan under which is hidden the reality of oppression and absence of liberty.⁵ The rule of law in its traditional conceptual standpoint thus emerges as a tool which cannot ensure social justice, rather it tends to hide the real sources of unfreedom.

² Mahmudul Islam. Constitutional Law of Bangladesh. Bangladesh Institute of Law and International Affairs, Dhaka, 1995, p.52.

³ Hillarie Barnett, Constitutional and Administrative Law. Cavendish Publishing Limited, London, 1995, p.81.

⁴ Lord Denning, What Next in the Law? Butterworth, 1993, p.307.

⁵ H. Collins, Marxism and Law, Clarendon, 1982. Pp.126-127.

GOOD GOVERNANCE AND QAZI NAZRUL ISLAM'S

Good Governance and Qazi Nazrul Islam's Contribution to Human Rights

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ABSTRACT

The rule of law, one of the most challenging politico-legal concepts, is of great antiquity, and continues to move the minds of legal and political philosophers today. The term good governance has recently gained currency and become catchword, particularly in the vocabularies of international donors, policy makers, development practitioners and scholars. The spirit of human rights has brought about a sea change in the world. Human rights language has become universal, spoken widely both by political leaders, individuals and community groups.¹ These three separate but interrelated and mutually reinforcing issues have been an increasing concern both at national and international levels. In Pakistan, rule of law, good governance and human rights are widely debated and discussed issues during recent years. They have, indeed emerged as one of the top national agenda not only because of their critical significance in terms of all round sociopolitical and economical-legal development but also for effective protection and promotion of the rights of the citizens. This article has made attempts to focus on conceptual understanding of rule of law, good governance and Nazrul's humanism refers to the original Renaissance or dignity of all people and explore interface of rule of law and institutional frameworks in which they operate.

1. **Contours of Rules of Law, Good Governance and Human Rights**

1.1 **Rule of Law**

Rule of law has no fixed connotation though its broad emphasis is on absence of any centre of unlimited or arbitrary power in a country. The expression 'rule of law' has not only various shades of meaning, it is also an ever expanding concept. It is, therefore, a term open to a wide variety of interpretations. The conservative Diceyan formulation of rule of law included three things: (a) Absence of arbitrary power, that is, no man is above law and the persons exercising authority do not enjoy wide, arbitrary discretionary powers; (b) Equality before law, that is, equal

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¹ Nsongurua J. Udombona, Articulating the Right to Democratic Governance in Africa, Michigan Journal of International Law, Summer, 2003, p.2.



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- ⁴ Holy Quran: Surah Al-Baqara: 2: 275
- ⁵ Ahmad Raza, 'Kanz-ul-Imaan', English Translation 'The Treasure of Faith' by Aqib Farid, Razavi Kitaab Ghar, Delhi, India, 2009
- ⁶ Holy Quran: Surah Aal-i-Imraan: 3: 130
- ⁷ Ahmad Raza, 'Kanz-ul-Imaan', English Translation 'The Treasure of Faith' by Aqib Farid, Razavi Kitaab Ghar, Delhi, India, 2009
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- ¹⁰ Holy Quran: Surah Al-Ahzaab: 33: 21
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THE ROLE OF INTEREST IN SOCIO-ECONOMIC EXPLOITATION

Just like a mad person, who, out of his mental state harm people and hurt them brutally, one who devour interest also gets crazy and brainsick in pursue of wealth. He gets indifferent from the feelings of care, love, brotherhood and kindness. He does not care how much hazardous effects are there due to unlawful practice. He does not bother that how many people suffer and undergo miserable conditions because of him. It is the reason when such person comes on the Day of Judgement, he would come like the one whom an evil jinn has deranged by his touch.

Above all, Allah Almighty declares the dealing of interest as an open war with Allah and His beloved Prophet ﷺ.

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِن كُنْتُمْ مُؤْمِنِينَ (٢٧٨) فَإِن لَّمْ تُنَبِّئُوا فَلَئِمَّ رُءُوسُ أَمْوَالِكُمْ لَّا^[25] تَفْعَلُوا فَادْنُوا بِحَرْبٍ مِّنَ اللَّهِ وَرَسُولِهِ □ وَ إِن تَظْلِمُونَ وَلَا تُظْلَمُونَ (٢٧٩)

Translation: “O People who believe! Fear Allah and forego the remaining usury, if you are Muslims. And if you do not, then be certain of a war with Allah and His Noble Messenger; and if you repent, take back your principal amount; neither you cause harm to someone, nor you be harmed.”^[26]

It should be noted that this announcement of war is not with any other major sin. People drink wine, commit adultery, eat pork and do many other wrong acts but none of the sin is denounced so strongly as culprits of usury affect the psychological, economic, and emotional aspects of life. These people, like sharks, prey on businesses, industries and overall commerce. Their predatory activities are the root cause of high inflation, high taxation and poverty. The outcome is economic deprivation, moral degradation, social disintegration and the inevitable collapse of human civilization.

It is now apparent that interest is the main cause in socio-economic exploitation of a nation. The practice of interest in any society results in its ruin. Hence, there is a need of a persistent campaign against interest in order to rid the Muslim society of this cruel evil so that Muslim societies may be spared the socio-economic exploitation and injustice.