

## **Human Rights: Meaning and Concept**

### **(A Comparative Study of Shariah and Law)**

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The term human right has gained much importance in our age. It has become common currency to the extent that, everyone speaks about it. However, in spite of its importance and common use, it is a fact that it is rarely known what the term stands for. Jurists and legal experts have used it in a different sense compared to the lay public. It has been rightly stated by Roscoe Pound that 'there is no more ambiguous word in legal and juristic literature than the word right'.<sup>(1)</sup>

Right means justice, ethical correctness, or consonance with the rules of law or the principles of morals. It is the opposite of wrong, unjust and illegal. It can also be defined as a power, privilege or immunity guaranteed under a Constitution, statute, decisional law or claimed as a result of long usage.<sup>(2)</sup>

Eugene Kamenka perceives the term as 'Rights are claims that have achieved a special kind of endorsement or success, by a legal system, wide spread sentiment or an international order'<sup>(3)</sup> The definition of right expressed by Salmond has been recognized by Pakistani courts in various decisions as in a case of Capt. Naqibullah vs. Chairman State Engineering Corporation.<sup>(4)</sup>

Privilege and remedy are forms of right. It can be either moral or legal. A moral or natural dignity is an interest recognized and protected by a rule of morality. It is an interest the violation of which would be a legal wrong and respect for which is a moral duty. For such duties a person is morally bound, without any legal sanction.<sup>(5)</sup>

A legal right, on the other hand, is an interest recognized and protected by a rule of law, an interest, the violation of which would be a legal wrong, and respect for which is a legal duty, and the law imposes a duty on the person who violates it and gives remedy to the person whose right has been infringed.<sup>(6)</sup>

Right has four essential elements on the basis of which it can be awarded to a person. The four elements are:

- i) The subject of right i.e. the right holder.
- ii) The object of a right i.e. the substance on which the right holder is having his claim.
- iii) The right to assert or demand, or enjoy or enforce it.

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65. Al-Qur'ān: 17:26-29; 25:67; *Abū Dawūd*, B41, H4758, 'Abdullah ibn 'Abbas
66. Al-Qur'ān: 6:151; 33:59; *Abū Dawūd*, B41, H4780, 'Āisha®; *Abū Dawūd*, B41, H4781, Abū Darda'.
67. Al-Qur'ān:73:10;46:3; *Bukhari* B2,V23, H387, Anas b.Mālik
68. Al-Qur'ān: 28:77; *Bukhārī*, B8, V75-76, H- 346, Anas; *Bukhārī* B8, V76, H453, Abū Hurayra
69. Al-Qur'ān: 49:9; 6:153; *Bukhārī*, B3, V49, H857. Umm'i Kulthūm bint 'Uqba
70. Al-Qur'ān: 2:257; 9:129; 65:3; *Muslim*, B35, Ḥadīth 6472, A'mash.
71. Al-Qur'ān: 3:77;10:41; 16:90;17:35; *Muslim*: B32, 6219, Abū Hurayra; *Abū Dāwūd*, B41, 4799, 'Umar.
72. Al-Qur'ān: 8:60; 9:41; 22:39-40; 22:60; *Bukhārī*, B4, V52, H65. Abū Mūsa; *Muslim*, B20, H4718, Jābir.
73. Al-Qur'ān: 6:162; 47:19; *Abū Dawūd*, B8, H1474, Nu'mān ibn Bashīr®; *Bukhārī*: B-8, V-75, H321. Anas
74. Al-Qur'ān: 3:77; 5:89; 6:152;16:91; 23:8-11; *Abū Dāwūd*, B41, H4953, Sufyān ibn Asīd al-Hadramī.

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  42. *Ibid.*, p.168.
  43. Al-Qur'ān 2:30:
  44. Al-Qur'ān 2:143; 3:110; 2:213;16:120; 6:38
  45. Al-Qur'ān 2:143; 3:110,4:135, 21:92, 23:52.: *Bukhārī*, Book 8, Vol.73, H-55
  46. Al-Qur'ān 49:10: 8:63
  47. Al-Qur'ān 49:13
  48. Al-Qur'ān 3:103: *Muslim*, Book 32, Ḥadīth 6250, Salim; *Muslim*, Book 32, Ḥadīth 6223
  49. Al-Qur'ān 49:13
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  55. *Ibid.*, Pp.40-41; Also Al-Qur'ān: 2:177
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  57. Al-Qur'ān: 2:256; 6:68-70; 6:108;16:125;29:46; *Abū Dāwūd*, B-41, H-4850, Jābir ibn 'Abdullah.
  58. Al-Qur'ān: 4:86; 4:93; 5:8; 17:28; *Bukhari*, B-1, V-2, H10, Abu Musa; *Muslim*, B- 32, H-6219.
  59. Al-Qur'ān: 28:77; 10: 26; 3:159; *Bukhārī*, B-1, V- 2, H-10, Abū Mūsa.
  60. Al-Qur'ān: 9:71; 6:52; 5:2; 3:200; *Bukhārī*, B-3, V-43, H-626, Abu Musa.
  61. Al-Qur'ān: 42:43; 2:263; 24:22; 2:263.
  62. Al-Qur'ān: 2:261-262; 2:273-274; *Abū Dawūd*, B41, H4772, Abū Salamah; *Bukhārī*, B3, V47, H763, Asma.
  63. Al-Qur'ān: 53:39; 13:11; *Bukhārī*, B4, V52, H45; Abu Sa'īd al-Khudrī

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21. Al-Qur'ān 2:140; 2:144; 2:149; 2:187; 2:197; 2:216; 2:220; 2:232;2:246-247;2:143; 2:185; 2:218-219; 2:221; 2:225; 2:255-257; 2:261; 2:265; 2:268; 2:283; 2:148; 2:202; 2:212; 2:220; 2:224; 2:228; 2:240; 2:245;
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  35. Al-Qur'ān 2:29
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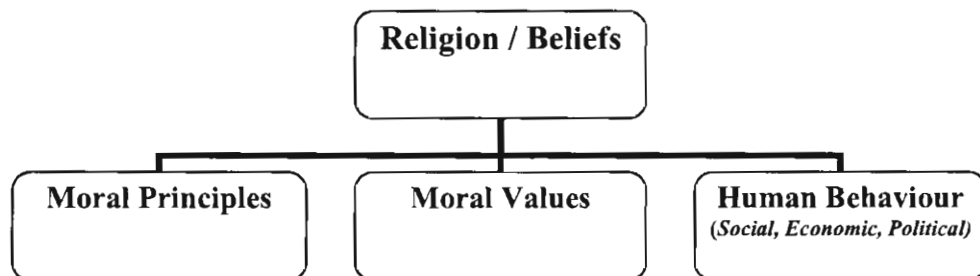
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3. Al-Qur'ān: 13/31; 21/33; 32/9; 12/13, 28/68
4. Al-Qur'ān: 2:28; 51:21; 2:246-248; 37:142.
5. Al-Qur'ān: 4:163; 40:78; 23: 51-52; 4:150-151.
6. Al-Qur'ān: 67:2; 73:20; 5:100; 6:32; 2:148; 19:76.
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13. Al-Qur'ān: 22:78
14. Al-Qur'ān 3:110 & Al-Qur'ān 2:143
15. Al-Qur'ān 3:164
16. Al-Qur'ān 23:52
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Supplication means humble and sincere appeal made to an authority. The authority to appeal and the power to approve request is only for Allah in Islam. It is a spiritual link between the Creator (Allah) and the Creation (Humans). Supplication is the strongest source of aspiration, confidence and refuge in the life of a Muslim during his spiritual, social, economic and political activities.<sup>(73)</sup>

Trustworthiness means moral uprightness. It is a quality, condition or characteristic of being fair, truthful and morally upright. This is a universal moral value applicable to an individual and nation. Adherence to this moral value brings respect, regard and prosperity in this world. The concept trustworthiness in Islam is much more in the sense that a Muslim is accountable to the Allah for not observing this moral value.<sup>(74)</sup>

### **Conclusion:**



The sociological foundations of Islam can be understood by the above diagram. It illustrates that it is a religion which produces certain moral principles; then these principles create certain moral values; it is the values which control or govern the social, economic and political behavior of an Islamic society. Such social order, transcending as it does geographical boundaries and the barriers of race, color and language, is appropriate for all parts of the world; on its foundations can be raised the universal brotherhood of man. In societies based on race or nationality only those people can join who belong to a particular race or nation, but in Islam anyone who accepts its creed and moral standards can become a member, possessing equal rights with everyone else. Those who do not accept this creed, while obviously not being received into the community, are treated with tolerance and humanity and guaranteed all the basic human rights.

one by other. The concept of Muslim sociology, economics and political system becomes worthless without adherence to this moral value.<sup>(64)</sup>

Moderation is a principle moral value of the economic system of Islam. It is applicable to all. The result of holding this moral value is always fruitful. Adoption of this principle is essential for economic cooperation among Muslims.<sup>(65)</sup>

Modesty & Chastity is a value, which has a strong relation with the religious, social and economic system of Islam. All such activities are prohibited, which harm the moral fiber of Islamic society. There should be no economic cooperation in such activities.<sup>(66)</sup>

Persistence is the quality of continuing steadily despite difficulties. This is the moral value, which brings success in all human affairs. Social, economic and political hardships are the part of human's life. Persistence, steadfastness and discipline are its solution.<sup>(67)</sup>

Prosperity is the condition of enjoying wealth, success, or good fortune. It becomes a moral value of a Muslim because prosperity of both lives is the fundamental objective of Islam. A prosperous Muslim is the deep-seated desire of Islam. Encouragement to pursue economic benefits of both worlds can be seen in these citations.<sup>(68)</sup>

Reconciliation means ending of conflict or renewing of a friendly relationship between disputing people or groups in case of hostilities at individual and collective level. Muslim should adhere to this moral value during social, economic and political conflicts.<sup>(69)</sup>

Reliance: The concept of reliance has a different perception in Islam. Reliance (*Tawakkal 'A-lal-Allah*), means absolute dependence, confidence and trust on Allah Almighty in all kinds of individual and collective activities. This concept emerges from an unshakeable Faith on *Allah, Subhāna hū wa t'āla*.<sup>(70)</sup>

Responsibility is a state, fact or position of being accountable to somebody for deeds. The concept of responsibility in Islam has two folds implications on the behavior of a Believer. A Muslim is accountable for his social, economic and political deeds not only to the society where he dwells but also equally accountable to Allah on the Day of Judgment. This concept of morality keeps a Muslim vigilant in all kind of his activities.<sup>(71)</sup>

Self-Defense is a universally accepted moral right. It means that a person has a legal right to defend himself, his family and property against a physical attack by reasonable force. It also means combat techniques to defend a country by its natives against physical attack. Defending of ideologies by means other than physical war or actions are also defined under this term. The meaning of self-defense in Islam is not only to defend territorial boundaries but also to defend religious, social, economic and political moral values.<sup>(72)</sup>

**MORALS OF ISLAM:**<sup>(56)</sup>

**Attitude towards Non-Muslims:** It is an opinion or general feeling during interaction with the non-Muslims with a positive conscious attitude pertaining to social, economic and political differences or dealings. It is a liability of a Muslim to be aware of the 'Truth' and should always stand for it with piety, fairness and justice.<sup>(57)</sup>

**Communal Etiquettes:** Generally, it is a set of rules of acceptable behavior which governs the behavior of a Muslim in society. In specific situations it dictates a social, economic and political performance. Communal etiquettes of Islam reflect unity, discipline, respect and affiliation between people during assemblies.<sup>(58)</sup>

**Compassion** means kindness, concern, benevolence and sympathy for the suffering of other humans and the desire to help them. It is a moral value of Islam which results in the beautiful rewards of this world and the Hereafter. On one hand, it is a source of attaining spiritual peace and happiness of heart and mind and on the other, a source of creating peace and socio-economic harmony in the society.<sup>(59)</sup>

**Cooperation** is a shared effort by individuals and groups of a society to achieve a common social, economic and political goal. Cooperation in righteous deeds is a high moral value of Islam. The Muslims are instructed to cooperate with each other in all matters, which are righteous.<sup>(60)</sup>

**Forgiveness:** Needless to say that human do make errors or mistakes because it is the part of their nature. It is a social phenomenon present in all human societies. But at the same time, forgiveness is also the part of human nature. For this reason, forgiveness is measured as a very high social value in Islam. It creates peace and harmony in the society.<sup>(61)</sup>

**Generosity** is a multidimensional term used for all kinds of noble and moral activities of a human for another fellow human. Often equated with charity as a virtue, generosity is widely accepted in society as a desirable habit. In times of natural disaster, relief efforts are frequently provided, voluntarily, by individuals or groups acting unilaterally in making gifts of time, resources, goods, money, etc. For a Muslim, it means spending time, money or labor for others without asking a reward from the people but from his Allah.<sup>(62)</sup>

**Hard-work** improves the socio-economic status at individual and collective level. The encouragement for hard work to change the socio-economic conditions and the consequences of not following this moral value is declared in Qur'an & Sunnah.<sup>(63)</sup>

**Justice & Fairness** plays are the basic principles of all transactions. It is immoral and sinful to possess wealth by fraud, dishonesty and other evil practices. The concept of brotherhood itself negates the idea of exploitation of



Summarizing the preceding discussion, it is evident that these concepts can only be practiced through the solidarity of faith and unanimity of views termed as *Bunyānun Marsūs* (a solid cemented structure) by the Holy Qur'ān.<sup>(52)</sup> Intellectual unanimity creates conformity in the working approach. AKHLĀQ (Morality/Ethics) should be regarded as the 5<sup>th</sup> religious foundation. Morality is defined as: a moral discourse, statement, or lesson; a doctrine or system of moral conduct; conformity to ideals of right human conduct.<sup>(53)</sup> These definitions are similar in temperament to the concept of morality in Islam, with the exception of the reward of Hereafter. The concept of morality in Islam centers on the fundamental beliefs, which have been discussed in detail in the preceding sections.

The dimensions of morality in Islam are numerous, far-reaching, and comprehensive. The Islamic morals deal with the relationship between Man and Allah, Man and his fellowmen, Man and the other elements and creatures of the Universe, Man and his innermost self. The Muslim has to guard his external behavior and his manifest deeds, his words and his thoughts, his feelings and intentions. In a general sense, his role is to advocate what is right and fight against wrong, seek what is true and abandon what is false, cherish what is beautiful and decent, and avoid what is indecent. Truth and virtue are his goal. Humbleness and simplicity, courtesy and compassion, are his second nature. To him arrogance and self-importance, harshness and unconcern, are distasteful, offensive, and displeasing to Allah.<sup>(54)</sup> More specifically, the Muslim's relationship with Allah is one of love and obedience, complete trust and thoughtfulness, peace and appreciation, steadfastness and active service. This high-level morality will, undoubtedly, nourish and reinforce morality at the human level. In his relationship with fellow men, the Muslim must show kindness to the kin and concern for the neighbor, respect for the elderly and compassion for the young, care for the sick and support for the needy, sympathy for the grieved and cheer for the depressed, joy with the blessed and patience with the misguided, tolerance toward the ignorant and forgiveness of the helpless, disapproval of the wrong and rise for the negligible. Moreover, he must respect the legitimate rights of others as much as he does his own. His mind must be occupied with constructive ideas and serious pursuits; his heart must beat with compassionate feelings and good will, his soul must radiate with peace and serenity; his counsel must be sincere and courteous.<sup>(55)</sup>

The limitation of this paper does not permit to discuss the '*Morals of Islam*' in detail. Therefore, we shall briefly describe some important morals of Islam, in alphabetical order. Needless to say, that these morals are identical to the universally accepted morals, with the only exception of their interpretation found in different religions.

it follows that all believers are repositories of the Caliphate [*Khilāfah*]. The Caliphate granted by Allah to faithful is popular vicegerency and not a limited one. There is no reservation in favor of any family, class or race. Every believer is a Caliph of Allah in his individual capacity. By virtue of this position he is individually responsible to Allah. The Holy Prophet said: 'Everyone of you is a ruler and everyone is answerable for his subjects.' Thus one Caliph is in no way inferior to another.<sup>(42)</sup>

The preceding argument explicates that Man is the vicegerent of Allah on this earth, and all the resources of this world are at his disposal as a trust.<sup>(43)</sup> This concept is pertinent to every Muslim individual, but in its collective meaning, it applies to the whole Muslim Ummah. Attainment of such conceptual maturity will undoubtedly create a just and caring society and a politically, socially, economically and religiously stable nation.

### **UMMAH, AKHUWWAH, WAHDAH:**

The concept of *Akhuwwah* (Brotherhood), *Ummah* (Nation), and *Wahdah* (Unity) should be considered as the 4<sup>th</sup> religious foundation.

The term '*Ummah*' connotes that all the Muslims of this World are One Nation.<sup>(44)</sup> This concept reminds a Muslim of his collective status and behavior. This also rememorizes the Muslims of Pakistan of their status which demands a unified behavior in their religious, social, economic and political affairs. The citations of Qur'ān and Ḥadīth in the footnote further elaborate this concept.<sup>(45)</sup>

The word '*Akhuwwah*' designates all the believers as brothers. It also connotes that, to Allah, social status, national superman-ship, and racial origin are insignificant. Before Him, all men are equal and brothers of one another.<sup>(46)</sup> A Muslim has to believe in the unity of mankind with regard to the source of creation, the original parentage, and final destiny. The source of creation is Allah Himself. The original common parentage is that of Adam and Eve.<sup>(47)</sup> To this first parentage, every human being belongs and of it he partakes. As for the final destiny, there is no doubt in a Muslim's mind that it will be to Allah, the Creator, to Whom all men shall return.<sup>(48)</sup>

The word '*Wahdah*' refers to the Unity of Muslim Community.<sup>(49)</sup> According to Nisbet, the concept of community means all forms of relationship that are characterized by a high degree of personal relationship and intimacy, emotional depth, moral commitment, social cohesion, and continuity in time. It may be found in locality, religion, nation, race occupation, or (common cause).<sup>(50)</sup> Broom states: "In another basic sense, a community or nation is a comprehensive group with two chief characteristics: (1) It is a group in which the individual can have most of the activities and experiences that are important to him. (2) The group is bound together by a shred sense of belonging and a feeling of identity".<sup>(51)</sup>

required to be a true Muslim. Now, the question is *how do they work in controlling the behavior?* The aforesaid three components of Faith produce a set of human values, which control the individual behavior of a Muslim in his social, economic, and political activities. These values impart the sense of accountability in a Muslim and eventually create transparency in all his deeds. A true Muslim, fearing the consequences of accountability in the life after death, will always remain vigilant to the injunctions of Allah and the Prophet. Hence, each action of every true Muslim, governed by the spirit and sense of accountability, will undoubtedly initiate a series of reactions that will develop a harmonious and settled society leading to a flourishing and stable nation.<sup>(32)</sup>

SHARĪ'AH (Islamic Law) should be regarded as the 2<sup>nd</sup> religious foundation. *Sharī'ah* is a precise body of law which guides in all spheres of human life i.e. physical, metaphysical, individual, collective, religious, social, economic and political.<sup>(33)</sup> It is a code of conduct or action for the Muslims, which is based on two main sources: The Holy Qur'ān and the Sunnah.<sup>(34)</sup> The rationale of Islamic Law called *Maqāsid al-Sharī'ah* is *Falāh* (welfare). Its objective is to facilitate and create stability in this worldly life of the Muslims.<sup>(35)</sup> It means that all human activities should be directed towards the achievements of *Falāh* (welfare). *Falah* is a comprehensive term, which denotes all-sided welfare of this life as well as that of the Hereafter.<sup>(36)</sup> *Falāh* must not be confused with the term welfare as used in the sense of secular economics. Economic welfare is just one instrument to achieve the objective of *Falāh*.<sup>(37)</sup> The purpose of Islamic Law is to control the social, economic and political behavior of a Muslim.<sup>(38)</sup> The Muslim in fact, not merely in profession — is the person whose deeds are determined by the *Sharī'ah*, or law of Islam. Some of these laws have to do with his own person, such as those which pertain to rituals, seeking to affect either his state of consciousness or his body. --- The former, are not meant to produce the hollow, disembodied spirituality - --. On the other hand, those which seek to affect his body are material by nature. To fulfil them is to act economically, ---. His moral merit on that front is directly proportional to his success in seeking Allah's bounty.<sup>(39)</sup>

### **KHILĀFAH (Vicegerency or Caliphate of Man):**

This concept should be conceived as the 3<sup>rd</sup> religious foundation.<sup>(40)</sup> Islam uses the term 'Vicegerency' (*Khilāfah*) instead of sovereignty. Since, according to Islam, sovereignty belongs to Allah alone. Anyone who holds power and rules in accordance with the laws of Allah would undoubtedly be the vicegerent of the Supreme Ruler and would not be authorized to exercise any powers other than those delegated to him.<sup>(41)</sup> The second point stated in verse 24:55 of Qur'ān is that the power to rule over the earth has been promised to *the whole community* of believers; it has not been said that any particular person or class among them will be raised to that position. From this

Faith or *Īmān* has three important components i.e. *Tawhīd* or Unity of Allah, *Risālah* or Prophecy of Muhammad), and *Ākhirah* (the life after death). TAWHĪD (Unity of Allah) is the 1<sup>st</sup> component of the Faith,<sup>(21)</sup> which means that there is only One Supreme Lord of the universe. He is Omnipotent, Omnipresent, and Sustainer of the world and mankind.<sup>(22)</sup> Unity of Allah sums up the Islamic way of life and presents it in a nutshell, the essence of Islamic civilization. It is the one term which describes the *process* of the Islamic transformation of an individual or a society. In human history it presents the crux of prophetic mission, having been the sheet-anchor of all revealed religions. It is specially suited to describe the characteristic and abiding contribution of the last of the prophets, Muhammad (peace be upon him) in history.<sup>(23)</sup> The Principle of *Tawhīd* also lays the foundation of Islamic social order, which teaches man that his social, economic and political activities must be guided by the principles from a single common source. This single common source reveals its principles through the Qur'ān, which are elaborated by Sunnah.<sup>(24)</sup>

*RISĀLAH* (Prophet-hood of Muhammad) is the 2<sup>nd</sup> component of the Faith.<sup>(25)</sup> *Risālah* which literally means "Apostleship", in technical terms it means the office of an Apostle or Prophet who was sent by Allah to mankind to convey His religious injunctions. Another name for the Prophet-hood is "*Nubūwah*".<sup>(26)</sup> The sending of these prophets from Allah is a clear manifestation of a strong link between Heaven and Earth, between Allah and man.<sup>(27)</sup> It means that man is reform-able and in him there is much good. The purpose of prophet-hood is to confirm what man already knows or can know, and to teach him what he does not or cannot know by his own means. It is also to help man to find the Straight path of Allah, to do the right and leave the wrong. Prophet-hood Allah's love for His creations and His will to guide them to the right way of belief and behavior.<sup>(28)</sup>

*ĀKHIRAH* (Hereafter)<sup>(29)</sup> is the 3<sup>rd</sup> component of the Faith. It serves as an important force to control the human behavior of a Muslim.<sup>(30)</sup> Without this faith he cannot become a true believer. In its absence the faith in Allah becomes meaningless because the Afterlife is actually an implication of the many attributes of Allah i.e. Justice, Wisdom, Kindness, Recognition of Virtue and Supremacy. In the absence of this concept of resurrection and reward becomes meaningless. Since, in this world, very often the moral consequences of human actions do not come as opportunity when everyone will get due reward for his actions, it will result in a situation which would negate the Justness, the Wisdom, the Compassion and the Supremacy of Almighty Allah.<sup>(31)</sup>

In the light of above explanation, it now stands established that the three components of Faith i.e. *Tawhīd*, *Risālah* and *Ākhirah* are equally