

An analytical and critical approach to the Cairo Declaration of Human Rights in Islam

Dr. Husayn Mihrpūr

1. An overview of principles and content of the Universal Declaration of Human Rights

Universal Declaration of Human Rights is to a large extent influenced by principles and concepts included in the Declaration of Citizens and Human Rights of France. This declaration puts emphasis on the identity and intrinsic dignity of man whose rights and basic freedoms are known to him with no reference to ascribing the origin of these rights to God. While God's name is mentioned in the introduction of human rights declaration of France, no reference is made at all to God in this declaration. While talking of the first article of the declaration, the Brazilian delegate proposed that the second part of the first article which reads "they are endowed with reason and conscience and should act toward one another in a spirit of brotherhood", be written as "God created everyone equal and granted the intellect and conscience...", but representatives of some other countries disagreed and said that there should be no mention of God and the divine laws in documents relating to the

United Nations and hence God's name was eliminated from the mentioned article.¹

Human rights in the universal declaration do not take its legitimacy and rightfulness from God's command, but from the will of the United Nation's General Assembly and based on consideration of public interests. The goal of the compilers of the declaration has come to be known as providing necessary grounds for social internationally, and respecting human rights as an indispensable means of preventing conditions in which man is compelled to recourse to force and oppression. In the introduction of the declaration one reads: whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, the human rights should be protected by the rule of law.

It can be said, however, that declaration of human rights is philosophically based on personal liberty and like human rights of France, believes that man is free on condition that he doesn't violate others rights. Practically, providing and appropriate social life requires that articles of declaration of human rights be observed. As an example during the devastating world wars I and II, it was proved that non-observance of these rights would lead to rebellion, riots and uprisings against force, oppression and discrimination, while peace and ease of international society's life in endangered. A declaration has practical and applied objectives and principally has nothing to do with man spiritual development and providing his eternal prosperity. Cited in the rights and freedoms of the declaration together with invitation to knowing and respecting them mean to enable the international community to live in peace and reconciliation and members of the international society enjoy, if possible, their inherent human rights. Thus, causes of insurgency and recourse to force are removed. The declaration can be said to consist of three parts: part 1, from Article 1 to Article 21, expresses the rights as well as political and civil freedoms of the individual. In this part, mans freedom and right, is more addressed and dealt with in comparison with human rights declaration of France.

Most important examples are the right to live, abolition of slavery and freedom, equality in enjoying the support of law, equality before court, the prohibition of arbitrary arrest, the prohibition of torture and ruthless and inhuman punishments, doctrine of innocence, the right of choosing spouse and complete agreement for marriage, freedom of thought, conscience and selecting or changing ones religion, freedom of speech and freedom of

¹ Adib Sāmī, *"Muslims and Human Rights"*, 1994, p. 35.

participating in the public affairs of the country. The important point in this part, however, is that without any discrimination these rights and freedoms should be applied to every member of man kind with no regard to race, language, sex, and religion. Difference in race, language, sex and religion should not cause any discrimination in enjoying these rights. It seems that like a man who can have the right of life and safety, legal identity, the right of choosing his residence, nationality, spouse as well as the right of ownership, a woman should also have such conditions, and being a woman should not limit her from enjoying these rights. Likewise a theist and atheist, Muslim and non-Muslim, God-worshipper and idol worshiper alike, enjoy equally from the mentioned rights, particularly the right of free speech and taking part in the country's public affairs and holding jobs, regardless of their religions and beliefs. If applying limitations is unavoidable, it should equally be applied to all, not to the followers of particular beliefs and cults only.

Part 2 of the declaration, extending from Articles 22 to 27, is about economic, social and cultural rights further explanation of which is dealt with in the international pact of economic, social and cultural rights ratified in the united nations general assembly in 1966.

Part three of the declaration is concerned with putting into order and limitations of these rights with which the declaration has dealt precisely and with circumspection. Article 29 deems limitation of such these rights allowable only when the rights of others, public order and moral circumstances are concerned. Putting the limitations into action is, meanwhile, dependent upon the laws made on the basis of three mentioned points of a democratic society.

Although the declaration has violated a good many rights and constitutional freedoms, it has not dealt with such rights as the right of nations self determination, and those of development at all. Further more as mentioned earlier, it has not a binding judicial nature and is regarded only as announcement of common terms acceptable to all nations. We hope that it will be accepted worldwide and become known one day as international legal regulations.

Having found its special place, universal declaration of human rights on which many comments are written, has come to be the basis of many declarations and treatises of human rights, creating much hope. Mr. Rene Cassin, one of the main compilers of the declaration has said:

It is the most important document man has achieved, it has produced in new era in the history of mankind, and it is the charter of freedom for the deprived and victims of cruelty and tyranny. It defines the limitations which

every powerful government should consider for the people under its rule, and above all, the declaration asserts that human rights should be guaranteed and protected by a legal regime.¹

2. International pacts of human rights

Simultaneous with ratification of universal declaration of human rights in 1948, when legal document was not regarded binding; the United Nations general assembly asked human rights commission to put the draft of human rights treaty and that of its executive acts high on its agenda. After a great deal of discussion and controversy, two treaties were drafted respectively named international treaty of political and civil rights and international treaty of cultural, social and economic rights, both of which were ratified on December 16, 1968 by the united nations' general assembly (Face Sheet. No. P. 4, and Blue Book of the United Nations and Human Rights, PP. 38 & 229). The content of the declaration of human rights is in fact, included in two sections: section I is the political and civil rights and section II is the cultural, social and economic rights which are brought respectively in international treaty of political and civil rights and treaty of cultural, social and economic rights. These contents, however, sometimes are written in more detail and probably with changes in the text, as well as with such additions as the right of self determination, right of determining government and political system, and that of utilization of natural resources.

Political and civil rights treaties comprise an introduction and 53 articles, 27 of which are concerned with expressing the rights and freedoms and the rest are on organizational problems. Cultural, social and economic treaty, on the other hand, consists of 37 articles. The governments ratifying it have decided in gentlemen's agreement to be bound in carrying out its contents both in legislation and practice., and in giving the progressive report to the committees mentioned in the treaty periodically usually once every three years (for more explanation look at Human Rights in the International Documents, Blue Book of the United Nations and Human rights, from P. 323). Iranian government has recognized both treaties in 1354 AHS before the revolution and bound to comply with them. Universal declaration of human rights together with its two treaties is called universal human rights charter.

¹ Droit De L'homme. Ibid. p. 87.

3. Human rights in religious view

It is not a wrong idea perhaps, to say that the real defenders and precursors of such fundamental concepts of human rights as man's inherent identity, the idea that he is born free, and his equality before the law and freedom as well as the abolition of discrimination are divine religions and the prophets. The significant discrepancy between religious standpoint of human rights and philosophical one is that religion is concerned with the individual as a man, his personal fate, prosperity and corruption, regardless of his relationship with others, while not leaving him alone. To religion, prosperity and spiritual promotion of every individual person is an aim. Religion is not indifferent to anti-person actions and to corrupt behavior and belief of man. Religion is concerned with the eternal prosperity of man, achievable through monotheism, obeying divine laws, practicing worship and religious practices, and of course, sound social behavior and observing the rights of others. From the school of human rights point of view, a person is not blamed for not believing in God, or worshipping and deeming sacred stone, wood, or any other things or for practicing any immoral activity not directly offending others and nobody should, therefore, limit him. In religions view, on the contrary, no one is left alone, but he should be guided and warned of the consequences of atheism. Although in religions viewpoint, human beings are identical in the essence of their nature. Monotheists and those obeying divine commands are not regarded as atheists, idol worshipers and those disobeying Gods commands. A person rejecting God values, following Satan and his own carnal desires, is regarded by the Qur'an as astray and are likened to dog. Those who don't open their eyes and ears, and don't see divine truths are likened, in Qur'an's view, to the animals and even worse.¹

One important aspect of the Prophet's mission was guiding mankind and inviting them to monotheism and spiritual purification. This, however, does not necessarily mean that in the view of religion, private lives of the people are allowed to be intervened in. It doesn't mean to make them believe in monotheism by means of governmental force, and punish them for their non-monotheistic beliefs. What religion means, on the whole, to express is that religions consider important improvement of individuals private lives, having appropriate monotheistic belief, proper personal morality and practicing necessary divine worships.

¹ See *Sūrah al-A'rāf* 7:176-179.

4. Social dimension of religious view

Another responsibility of divine prophets and monotheistic religions is related to the aspect of life in this world and administering their social lives. On this, the best advocate of principles of freedom, equality of rights, de-discrimination and carrying out justice are teachings of the divine religions. The feature Qur'an depicts of the prophets consists of the defenders of freedom of thought, reasoning, proclaimers of justice who defend the rights of the downtrodden and are against tyranny and discrimination. The picture of the prophets enemies are depicted as arrogant rulers, unreasoning, dictating, who are for discrimination and class privilege among which there exist sometimes religious administrators. Idolatry, which essentially is strongly disapproved of in the divine faiths and particularly in the Qur'an and against which campaigns have been made, is the symbol of ignorance, radical blind bias, class privilege and tyranny. That is to say that the philosophy of the prophets mission is taken to be keeping justice and equality on which the Holy Qur'an says: *"We verily sent Our messenger with clear proofs, and revealed with him the Scripture and the Balance, that mankind may observe right measure."*¹

The Qur'an reckons Pharaoh as one who calls himself superior on earth, dividing the nation into various classes, one who believes in class discrimination and a certain group is suffering his oppression. *"Lo! Pharaoh exalted himself in the earth and made its people castes. A tribe among them he oppressed, killing their sons and sparing their women."*²

Moses the divine prophet is sent by God on duty to clean the tyranny and save the oppressed and downtrodden. In *Sūrah Tāhā*, Moses and his brother are called to: *"Go, both of you, unto Pharaoh. Lo! He hath transgressed (the bounds). And speak unto him a gentle word, that peradventure he may heed or fear."*³

A major part of Jesus' mission was to fight against corruption of Jewish clergymen, since they misused the religion of God as a means of money making and coveting, while disregarding religious truths, ruling over people with hypocrisy. In characterizing these, the Qur'an says: *"O ye who believe! Lo! many of the (Jewish) rabbis and the (Christian) monks devour the wealth of mankind wantonly and debar (men) from the way of Allah. They who*

¹ *Sūrah al-Hadīd* 57:25.

² *Sūrah al-Qaṣaṣ* 28:4.

³ *Sūrah Tāhā* 20:34.

hoard up gold and silver and spend it not in the way of Allah, unto them give tidings (O Muhammad) of a painful doom."¹

It is true that divine religions generally and Islam in particular claim to be universal, seeking to be all-inclusive and prevailing over all other schools: "He it is who hath sent His messenger with the guidance and the religion of truth, that may cause it to prevail over all religion, however much the idolaters may be averse."²

*"And made the word of those who disbelieved the nethermost, while Allah's word it was that became the uppermost. Allah is mighty, wise."*³

Still the main social aim of Islam is to set up system of justice and abolish discrimination and tyranny against all the humanity. It never means to introduce a privileged religious group which are privileged only due to their connection with religion, and capable of behaving discriminately toward others. In a good many verses of the Qur'an, justice, telling the just, putting into action justice even though to the disadvantage of one, are emphasized. For example; the following verse says: "O ye who believe! Be steadfast witnesses for Allah in equity and let not hatred of any people seduce you that ye deal not justly. Deal justly, that is nearer to your duty."⁴

It also goes ahead: "O ye who believe! Be ye staunch in justice, with nesses for Allah, even though it be against yourselves or (your) kindred, whether (the case be of) a rich man or a poor man, for Allah is nearer unto both (than ye are). So follow not passion let ye lapse (from truth) and if ye lapse or fall away, then Lo! Allah is ever informed of what ye do."⁵

Although, in religious government, leadership and management of society is principally on the prophet, the pious and religious intellectuals, who are to be respected and obeyed, the most free and democratic governments are believed to be correct religious ones in which people democratically select, freely criticize and give opinions, and intervene and monitor the affairs. The most conspicuous characteristic Qur'an ascribes to Islamic nation, making them better than other nations, is invitation to good conduct and prevention of reprehensible deed whose general meaning is that people can and should enjoin the government in good conduct and forbid them from reprehensible deed by criticism. "Ye are the best community that

¹ *Sūrah at-Tawbah* 9:34.

² *Sūrah at-Tawbah* 9:33.

³ *Sūrah at-Tawbah* 9:40.

⁴ *Sūrah al-Mā'idah* 5:8.

⁵ *Sūrah an-Nisā'* 4:135.

hath been raised up for mankind. Ye enjoin right conduct and forbid indecency."¹

Instead of showing off their chastity and competence to the people and expecting from them unquestionable obedience, pious governors and even the prophets and Imāms remind people, at times, of the possibility of making mistakes and ask people to express their own useful suggestions as well as critical views. The clearest instance of this problem is a word of Imām 'Alī who by criticizing his followers addresses them:

"Do not treat with me as you treat oppressor governors. Do not flatter me and do not withhold telling the just word and do not think that it bothers me to listen to it. Then, tell your criticism and notifications, because I am a human being and human beings are subject to error."²

It can be said that during the powerful government of the Holy Prophet, and caliphate of the First Four Caliphs especially Imām 'Alī's government, which has been to this time, the most democratic kind of government, people lived in all aspects, in a free and reasonable society and played the most active roles in running the affairs of the country, and were able to give most easily their ideas and suggestions. Neither the increasing power, nor the great spiritual status of the prophet, Imāms and Caliphate, prevented people from giving frankly their opinions. On the contrary, as observed in Imām 'Alī's words, if the people behaved in a different manner, they would be reproached. Islamic governments, unfortunately, was soon handed to absolute governors and dictators who for consolidation of their influence and power, in addition to using force and power, sanctified their caliphate and guardianship, rendering it a taboo. They behaved in a way that people in the Islamic stat felt entitled to nothing but to absolute obedience, and dare to say nothing and give no opinions. Accordingly, is it said that religious autocratic government is the worst kind of autocracy, since it causes love of autocracy to be firmly rooted as a belief in peoples spirit, whereas this government is not in fact a religious one but is autocratic and dictator, who with the misuse of religion and incorrect understanding of religion and of some religious concepts, intend to consolidate their own absolute power. Reflection upon the method of Imām 'Alī's government, alone, especially considering his governmental instructions given in a letter to Mālik al-Ashtār, his governor selected by him for Egypt region, is enough to help us see how in a religious

¹ *Sūrah Al-e 'Imrūn* 3:110.

² *Nahj al-Balāghah*.

government, man's freedom and rights are taken into account and should be respected. The rights of non-Muslims and the necessity of keeping away from tyranny are taken into consideration as well. While advising his governor to observe the rights of the nation, he says:

"Be careful you don't hang on to them like a wild wolf and don't disregard their rights, since they are either your religious brethren or are of your kind."¹

It means that, altogether, human beings and the rights of men should be respected.

In short, it can be said that apart from the important aspect of religious teachings and guidance, there is neither a great difference nor a clear disagreement between the criteria put forth by religious teachings and what the social scientists came to at the dawn of enlightenment and the dark night of the Middle Ages. One as a result should not panic at the emphasis and regard given to such freedoms as freedom of thought, faith, and that of role and intervention of people in the affairs of the government. If we fathom the social aspect of the prophets' mission as well as practical traditions of the prophet and Imām 'Alī ('a) and explore well their methods of government and probe different verses of the Qur'an, including those inviting the people to see the common things, and reflect upon the meaning of such verses as 62 of *Sūrah al-Baqarah*, "*Lo! Those who believe, in that which is revealed unto thee Muhammad, and those who are Jews and Christian and Sabaeans whoever believe in Allah and the last Day and doeth right surely their reward is with their Lord and there shall no fear come upon them neither shall they grieve,*" we will find out that the principles underlying the human rights of France declaration of human rights and those of world declaration of human rights are not dissimilar to religious principles. It may be concluded that the reason why principles of freedom of religion is emphasized is not as an opposition to religion but is in fact a reaction against ethnicity and racism of religions dominant in particular in the medieval Europe.

5. World of Islam's attitude toward problem of human rights

The world of Islam has passed three stages in treating the problem of human rights, which has been given form in France declaration of human rights and later in world declaration of human rights, stemming from the

¹ *Nahj al-Balāghah*.

political philosophy of the west on freedom of thought and faith and formation of population.¹ The first stage was rejection of it because the freedoms contained in the declaration of human rights, particularly freedom of religion, and freedom in changing it and propagating any kind of cults and sects are against *shari'ah* which thinks Islam the just religion, not accepting any other religion, holding conversion and apostasy great sins. On this the Qur'an says: "*Lo! Religion with Allah (is) the Surrender (to His will and Guidance).*"²

And also: "*And whose seeketh as religion other than the Surrender (to Allah) it will not be accepted from him, and he will be a loser in the Hereafter.*"³ Also:

"*And whoso becometh a renegade and dieth in his disbelief: such are they whose works have fallen both in the world and the hereafter. Such are rightful owners of the fire; they will abide therein.*"⁴

The second stage or way of treating is justifying or accounting for it in which some scholars of the Islamic world, by accepting the principle proclaimed in the declarations of human rights, tried to compare them with Islamic rules and endeavored to prove that these rules and rights exist in the best possible and conspicuous way in Islamic teaching.

The third stage, inspired by the declaration of human rights, was to compile independently principles and rules accepted in Islam and to declare it as a declaration. Over 7 declarations or plans relating to the Islamic human rights have up to now been issued by the Islamic council of Europe, Kuwait summits, and organization of Islamic countries conference., while more than five models of Islamic constitutions have been issued, among which the constitution published by "The Islamic Research society of al-Azhar" in 1978 can be mentioned. Most of the declarations have been issued within the last 20 years from 1978 onwards.

Organization of Islamic countries conference has published three declarations of human rights, respectively named: declaration of constitutional rights and duties of man in Islam, published in Mecca in 1979, proposal of a document on human rights in Islam ratified and issued in 1981, by the Summit of heads of the organization in Ṭā'if, and Cairo declaration of human rights in Islam approved in the 19th conference in 1995 of foreign ministers of the members of Islamic conference countries organization held

¹ Antonio Casse, *International Law in a Disunited World*, trans. Dr. Kalantaryan, p. 337.

² *Sūrah Āl-e 'Imrān* 3:19.

³ *Sūrah Āl-e 'Imrān* 3:85.

⁴ *Sūrah al-Baqarah* 2:217.

in Cairo. This proposal is in fact the newest and probably the most comprehensive and formal declaration of Islamic human rights which will be discussed later on.

6. Investigation of Cairo Declaration of Human Rights in Islam

Ratification of the declaration and its legal nature

Based on the material available on the Islamic human rights, experts of legal and judicial problems of the organization of Islamic countries conference introduced and worked on a plan the last draft of which was ratified in the summit of law specialists held in Tehran on December 26th to 28th, 1989. This draft was to pass its final ratification in the 19th summit of foreign ministers of the Islamic countries conference organization, the cited summit was held in the Egyptian capital Cairo on January 31st to August 5th, 1990. The summit ratified Tehran's draft with some modifications and revisions through a statement numbered 19/49p in which it is asserted: being aware of man's status as God's successor on earth, and with regard to the importance that a human rights document can have in guiding the member countries in all aspects of life, and by investigation of the reports related to the mentioned document, particularly the report of law experts summit in Tehran, the 19th conference of foreign ministers of the organization of Islamic countries conference, agrees through issuing Cairo declaration of human rights in Islam to use as a general guideline on human rights, the cited declaration for the member countries.

As it is observed, organization of Islamic conference, ratified the Islamic human rights document not as a binding treaty or convention but as a declaration expressing common understanding of Islamic human rights, and the changes as well as some omissions and additions gave it air of world declaration of human rights. Several expert meetings and working groups have, so far, been held for discussing the declaration and the ways in which member governments can cooperate in order to put into action its articles, although it has been limited to declaration only up to now. The ratified declaration consists of twenty-five articles and an introduction, which begins with: reaffirming the civilizing role of the Islamic *ummah* which God made the best nation that has given mankind: it is also in the original text member states of organization of Islamic countries conference declare the following:

Different Arabic, English and French versions of the declaration, especially the English text published by the organization of Islamic countries conference in Geneva, begin thus and only the Persian version of the declaration, attached to the Arabic, English and French versions published by

the organization, begins with a longer introduction, having some additional page beginning with *"O mankind! Lo! We have created you male and female, and have made you nations and tribes that ye may know one another. Lo! The noblest of you, in the sight of Allah is the best in conduct."*¹ As well as the sentence: "member states of the organization of Islamic conference, by believing in God, creator of the world and the Lord of the universe..." It is not clear, though, why this addition exists in the Persian text while the other versions lack it. However, the English version received from the bureau of the organization in Geneva, attached to the resolution number 19/49p will be referred to as the main source.

7. General characteristics of the Islamic human rights declaration

Declaration of Islamic human rights is principally in the mode of universal declaration of human rights, stressing inherent respect and dignity of man mentioning some of the essential rights and freedoms, which are to be recognized and put into action. Some of the principles brought in the world declaration are also present in this declaration, sometimes similar in meaning and sometimes with some differences. A number of the rights, not or briefly mentioned in the world declaration and cited later in the pact of civil, political and economic rights, as well as that of cultural rights and in such separate conventions as children's rights and declaration of right of development, are brought in declaration of Islamic human rights as well. Some of the rights, meanwhile, are particularly emphasized and clearly asserted in the declaration of Islamic human rights which, among other things, prohibition of colonialism and the right to fight against it, the right of confronting aggressing of human life, the right of living in uncorrupted environment far from moral corruptions, having religious security in addition to other securities of life and family, and a mention of necessity of keeping human respect even after man's life and respecting his dead body, and finally prohibition of hostage-taking can be mentioned.

8. Equality in duty and responsibility or in rights

The main and general difference between Islamic human rights declaration and the universal declaration of human rights is that the latter, as was cited, has nothing to do with religion. For universal declaration of human rights, applied and practical aspects are important and the reason why in the preamble and article 1, it refers to the dignity and inherent identity of

¹ *Sūrah al-Hujurāt* 49:13.

man as well as his being born free, is that based on it, the declaration is expressing the rights to be implemented for all with no discrimination, giving no pretext for riot and rebellion and therefore, peace and security of life are not endangered. It, consequently, has nothing to do with provision of such matters as developing religious faith, protecting faith and correct idea, nor does it impose duties, because, altogether, a man living in a society and under the rule of a government is liable to binding laws of the government. Nonetheless, what compilers of the universal declaration of human rights were concerned about was the obscurity and subsequently, non-observance of human rights. The writers of the declaration felt bound to explain and clarify the principles. A comparison between article 2 of the universal declaration and article 1 of the Islamic declaration shows well the existing difference. Article 2 of the universal declaration reads: every one is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status... while article 1 of Islamic declaration refers to equality of human dignity for all and equality of responsibility and duty, while asserting the prohibition of discrimination in bearing responsibility and not in enjoying rights. Part 1 of this article says: All human beings form one family whose members are united by submission to God and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, color, language, sex, religious belief, political affiliation, social status or other considerations. Then it further adds: True faith is the guarantee for enhancing such dignity along the path to human perfection. It means that despite the fact that all human beings are equal in being the best creatures, those with right idea, have acquired more dignity and have taken over others on the acquired respect. Universal declaration, on the contrary, has nothing to do with this problem, not rejecting or approving of this matter. It insists, however, that no distinction should be made between two individuals with two different opinions, one correct, and the other corrupt, and they should be treated equally in being entitled to the right to life, right to own property, and participation in the government of the country and the right to equal work, etc. This cannot be implied by article 1 of Islamic declaration and the declaration is not so clear on this, although article 24 later says: All the rights and freedoms stipulated in this Declaration are subject to the Islamic *shari'ah* (the Islamic law), by which one can understand the declaration's meaning of difference and limitation in this regard.

9. The right to select and change religion

Another important general characteristic of the declaration is related to the right to select and change religion. Universal declaration stresses the right to select any religion and belief and right to change religion. Article 18 says:

“Every one has the right to freedom of thought, conscience and religion; this right includes freedom to change religion or belief, and freedom either alone or in community with others and in public or private to manifest his religion or belief in teaching, practice, worship and observance”.

Emphasis on this kind of freedom is also present in the documents prepared after the universal declaration of human rights, as in article 18 of international pact of political and civil rights; the ideas of the universal declaration are repeated with a little change in words in order to avoid assertion of permitting conversion and apostasy:

Article 18 of international pact of political and civil rights

Part 2 of the same article also states that:

Article 18-2 of international pact of political and civil rights

This idea is also available in article 1 of the declaration of the abolition of religious discrimination ratified by the United Nations general assembly on November 25, 1981.¹

¹ Blue books of United Nations and human rights, p. 291, it is noteworthy that reference to the right to change belief and religion in declarations and documents of the human rights has always been controversial. While article 18 of declaration of human rights which is about the right to freedom was put forward, Lebanese representative in the united nations suggested that the right to change religion be added and he stated the special conditions of his country which has come to be a shelter for many people who have been persecuted because of changing their faith, were the reasons of his suggestion. Other Muslim countries, however, showed strong reaction against the proposition, particularly delegates of such countries as Saudi Arabia, Iraq and Syria. Saudi representative referred to the misuse of religious missionaries who were the pioneers of economic and political invasion of the European countries to Islamic countries, and suggested that only the right to freedom of faith be state with no mention of the right to change belief.

The Egyptian representative, however, remarked, the use of this condition (the right to change faith), unwontedly encourages religious intrigue known well in the west, whose aims are to make apostate the Muslims of the east.

These very discussions are also made when article 18 of international pact on civil a political rights was being discussed. Egyptian and Saudi representatives insisted that the phrase, the right to change religion and belief, be removed. With suggestion of the representative of Brazil and the Philippines, finally, it was agreed that the right to change belief and faith, be replaced by the phrase: having or accepting a faith. In bringing the declaration of abolition of religious discrimination in 1981, once again these discussions and controversies were made. This time, ambassador of the Islamic republic of Iran, which had

Now let's see how the Islamic declaration of human rights treats this problem:

In expressing Islamic view on human rights, is one entitled to select any religions without any fear of persecution and deprivation of some essential rights, no worrying about announcing or openly expressing it? The declaration, unfortunately, has not held any idea on this problem. Article 10 of the declaration has stated something that is in fact an example of article 18 of the universal declaration of human rights. Asserting that Islam is the religion of nature, this article says:

Islam is the religion of unspoiled nature. It is prohibited to exercise any form of compulsion on man or to exploit his poverty or ignorance in order to convert him to another religion or to atheism. Whether or not it is possible to force an individual to convert to Islam, or is a Muslim entitled to change his religion is not clarified in this article. As we know, apostasy and conversion from Islam, is strongly condemned and according to current judicial decrees and judgments, the apostate is sentenced to death, his wife divorced, having to keep 'iddah [waiting period], and his properties distributed among his heir.¹

However, articles 10 and 1 are ambiguous in that people aren't free in changing from Islam to other faiths and religions or to apostasy it is justly criticized that why a document intending to express essential rights and freedoms, from Islam's point of view and compare them to the rights presented in the universal declaration of human rights has not clearly and openly dealt with this problem. It would be to the point, had judicial experts of different Islamic schools worked on such fields and clarified if the government can interfere with peoples beliefs and persecute people on the grounds of corruption of belief and apostasy and renouncing religion(and not because of operations against the government), and then deprive them of some rights. While from Islam's standpoint, adopting any belief should be accompanied by clear-sightedness and reason, far from blindly imitation and

been formed by the victory of the Islamic revolution joined the opponents of this freedom and disagreed with the mention of the right to change faith. Iraqi ambassador, representing Islamic countries conference organization, declared the right to reserve any regulations and laws against Islamic law. Egyptian ambassador declared that the atmosphere dominant in this declaration is religious toleration and it should well be known that under the pretext of this declaration and freedom of religion no one can interfere with home affairs of any country. See *Les Musulman Face Aux Droit De L'homme*, p. 104.

¹ *Sharh al-Lum'ah*, vol. 5, p. 230.

principally, "There is no compulsion in religion,"¹ and even the Holy Prophet is addressed by the Qur'an that he cannot force people to believe; your duty is only to guide and enlighten them.² Rejection or confirmation of this problem had to, after deep investigation of jurisdictional foundations and coming to an Islamic viewpoint, be clarified and a position held clearly in the declaration.

10. The source of government's power

Another problem is the difference of the source of power and government between the two declarations. In part 3 of article 21, universal declaration of human rights asserts: the will of the people shall be the basis of the authority of government; this will be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote, are by equivalent free voting procedures.

This article is based upon a socio-philosophic assumption that man can basically determine his social destiny and no one, as superior, has domination and control over another. However, since man is naturally civilized and social, he is required to control his social life through cooperation and agreement and in this regard, members of every society participate in regulating and arranging the affairs of their society by taking part in the elections and casting ballots, voting for individual, who as their representatives, have the executive and administrative power, and whenever they deprive them of their vote, they will have no legitimacy to continue governing, constitutional law of the Islamic republic of Iran, has, in a sense, accepted such an idea for the period of the absence of the infallible Imām at least. Principle 56 says:

"Absolute sovereignty over universe and man is due to God, and He alone has made man dominant over his own social destiny. No one can deprive man of this divine right or give it to a certain group or individual. And the nation applies this God-given right accordingly to the principles which follow."

These rights are applied through electing parliament members, taking part in referendum for confirmation of important laws, electing president and participating in different councils and even electing the members of Assembly of Experts whose chief responsibility is to select and determine the

¹ *Sūrah al-Baqarah* 2:256.

² See, for instance, *Sūrah Yūnus* 10:99, 108.

leader. Refer to the principles 58, 59, 60, 62, 107, 108, 114 of the constitutional law of Islamic republic of Iran. Islamic declaration of human rights, regards the power of the government as a trust, given to the governor or the governing corps, and it is necessary not to misuse the trust. Autocracy, dictatorship, and any other kinds of misuse of power, are regarded breach of trust and are, hence, forbidden, when the trustee violates trusteeship, he loses his legitimacy. Part 2 of article 23 of the Islamic declaration states: authority is a trust and abuse or malicious exploitation thereof is absolutely prohibited, so that fundamental human rights may be guaranteed.

It is not, however, asserted in this article to whom and by whom and how this trust is given. Is it bestowed by God, or people themselves, through their own selection, have handed this trust to the governor or governing corps. It is possible that this article is rendered ambiguous and unclear intentionally so that it can be interpreted in both ways, because of the difference which appeared between Sunnī and Shī'ah schools after the holy prophet. The content of this article was more extended in the draft. Following the mentioned part A, it was written: whether this trust is believed to have come from God, as the Shī'ites believe, or from people, as some of the Muslim schools believe, or both after which the interpellation by people and their interrogation had been discussed.

11. Clear abolition of slavery

As we know the abolition of slavery has appeared in article 4 on the universal declaration. What is important, however, is that firstly in the Islamic declaration, all kinds of slavery and servitude are forbidden as in international pact on civil and political rights, and secondly, despite the fact that even today a kind of slavery relating to the apostates captured by troops of Islam during war is known permissible (for more explanation read *Islam and Human rights* by the same author published in the *Journal of Foreign Policy of Foreign Ministry*, 10th year, no. 1, spring 1375) and defended by some of the religious experts, the declaration has absolutely forbidden it, and this of course is worthy and admired.

12. Recognition of copyright

Another right recognized in the Islamic declaration, which is in itself, a great change is the recognition of copyright, or the use of scientific, literary, artistic and technological productions. This right is recognized and written in part 2 of article 27 of the universal declaration: every one has the right to the

protection of the moral and material interests resulting from any scientific, literary or artistic production of which is the author.

Recognition of this right, however, has always been and is controversial from an Islamic viewpoint. Some of the jurists, like the late Imām Khomeinī, apparently negate the stated right, believing that what has become to be known as copyright, is not considered canonical right... And therefore, publishing a book and writing "all rights reserved" does not bring any rights from *sharī'ah* aspect, nor does it direct to the obligation of others."¹ Hence, the others can copy it and imitate it, and no one can prevent them. Some, are doubtful about its legitimacy, on the grounds that no annals on the validity of such a right exists in religion, saying that even during the life of the holy legislator, there existed such things as compilation and invention, but no rights were granted to the benefit of the author, inventor and researcher, and the legislator himself, has not granted such right as well.²

Some of the jurists, however, have considered it a reasonable right the observance of which is necessary.³ There, still exists controversy over its legitimacy and much thought on joining the conventions related to artistic, literary and related rights in Islamic and jurisdictional circles. This declaration is a step forward in recognizing and regard for this right among the human rights in which Islam believes. Article 16 states: Everyone shall have the right to enjoy the fruits of his scientific, literary, artistic or technical production and the right to protect the moral and material interests stemming there from, provided that such production is not contrary to the principles of *sharī'ah*.

13. Equality of rights of men and women

One important subject in human rights is the problem of equality of the rights of men and women or the discrimination in enjoying the rights with regard to sex. As reminded earlier, article 2 of the universal states the right to enjoy the freedoms and rights of this declaration irrespective of any factor including sex, following the universal declaration, pact on political and civil rights, convention of elimination of discrimination against women, the fourth international women's conference, and tens of other declarations and resolutions, all emphasize the fact that difference in sex, should not be a factor of discrimination in enjoying the rights and freedoms, that is to say, no one should, due to being a woman, enjoy less rights, freedoms, and values.

¹ Imām Khomeinī, "*Tahrīr al-Wasīlah*", vol. 2, p. 625.

² Hamīd Āyatī, "*The Rights of Thought Creations*", p. 17, quoted from Āyatullāh Šāfi.

³ *Ibid.*, p. 70, quoted from Āyatullāh Muntazirī and Āyatullāh Makārim Šīrāzī.

Clear examples of these equality include: the rights to freely select a husband, enjoy authority equal to men's for marriage, the responsibility of married life, dissolution of marriage, and also the right to be provided with equal facilities for education, holding jobs, intervening in the government of their country, achieving ownership, and independence in being on one side of a contract or deal, etc.

In expressing one of these examples, article (16-1) of the universal declaration says: men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage, and at its dissolution. The Islamic declaration has emphasized the equality in human dignity of men and women. Article 6 of the Islamic declaration thus states:

(a) Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage; and

(b) The husband is responsible for the support and welfare of the family.

Article 5 of the Islamic declaration considers equal rights for men and women and asserts that race, color and nationality should not limit marriage, however, no reference is made to religious considerations, since marriage of a Muslim with an infidel is not allowed and the Muslim women can, by no means at all, marry an infidel man.

14. Accordance with Islamic law

Another special characteristic the Islamic declaration has, is that all the cited freedoms and rights are required to be in accordance with the Islamic law (*shari'ah*), as in article 24 it is stated that: All the rights and freedoms stipulated in this Declaration are subject to the Islamic *shari'ah*.

Indication of this article thus, especially despite difference which exists between different Islamic faiths and schools is liable to criticism; because it is probable that some of these rights and freedoms may not be in accordance with some Islamic schools. Some, for example, may think copyright, not in accordance with Islam, etc. How is it possible, therefore, to recognize and declare the already mentioned right as human rights from Islam's view in the declaration once there is no doubt on their accordance with Islamic laws? These rights can be declared Islamic human rights only when there is no doubt as to their accordance with the Islamic law and through a common understanding of them. However, it can simply be stated that the interpretation and generalization should not be in ways which are against the Islamic law.

15. Innovations of Islamic declaration of human rights

Some of the rights stated in the Islamic declaration are not mentioned in the universal declaration. A number of these innovations exist in other international documents like pact on civil and political rights, international pact of economic, social and cultural rights, and convention of elimination of discrimination against women. They also exist in documents related to amicable human rights during war, appeared in international regulations of war and Red Cross. The already mentioned rights can be observed in articles 7, 3, 12, 20, etc. what is especially new, however, in this declaration, and of which no mention is made in the universal declaration and other international human rights documents arranged under the supervision and teaching of the westerners, is article 11-2 which his the right to struggle against exploitation. This article says: "Colonialism of all types being one of the most evil forms of enslavement is totally prohibited. Peoples suffering from colonialism have the full right to freedom and self-determination. It is the duty of all States and peoples to support the struggle of colonized peoples for the liquidation of all forms of colonialism and occupation, and all States and peoples have the right to preserve their independent identity and exercise control over their wealth and natural resources." Another special right written in Articles (17-1) and (18-1) refer to provision of religious and spiritual conditions. Article 17 states:

"Everyone shall have the right to live in a clean environment, away from vice and moral corruption, an environment that would foster his self-development; and it is incumbent upon the State and society in general to afford that right." While article 18 asserts: "Everyone shall have the right to live in security for himself, his religion, his dependents, his honor and his property."

It can be claimed, on the whole, that other rights and issues appeared in the Islamic declaration, are stated in one way or another, in the universal declaration or other human rights complementary documents inspired by the universal declaration. Apparent feature of the Islamic declaration is that it connects each one of these rights to their Islamic and religious origins while making sure of their agreement with canonical law. That, altogether, indication and mention of these rights are inspired and affected by the universal declaration cannot be denied.

Conclusion

Cairo declaration of human rights was an effort made by the Islamic world in order to show their Islamic identity world wide and to introduce Islam's view on the rights people can enjoy and governments should guarantee. As observed in this short research, no significant difference exists between criteria of the universal declaration and those of the Islamic declaration. A number of rights overlooked in the universal declaration, were dealt with in the Islamic declaration, the implementation of which involves complications and details, that is, regard to spiritual growth and perfection and boosting morality, spirituality and human rights on which the Islamic declaration has put emphasis, and of which no mention is made in the universal declaration of human rights. The main difference between the two declarations is related to the religions role; the universal declaration has nothing to do with religion, it neither negates and rejects it, nor shows any regards toward its justness or unjustness. It believes all people are free in adopting, selecting, and changing whatever belief and religion they wish and holds this freedom one of the most essential rights of human beings. It propagates the idea that not only should people be free in adopting any religions, with nobody compelling them into admitting a particular religion or into not changing the belief to which one is known to belong, but also believing in a religion should not cause any discrimination, in putting into action the declared rights. The only limitation in applying these rights and freedom is the law. In every democratic society, based on respect for the rights of others, public order and maintaining correct moral requirements, only these factors can effect limitation (Article 29). In the Islamic declaration, however, the important role is played by religion by means of which the rights and freedoms included in the declaration are evaluated; and if they accord, they are recognized as human rights. Recognized as one of the human rights, is the right to have correct Islamic belief and faith conforming with the nature, and in order to apply this right, required ways should be paved, no body being compelled into giving it up. But, changing Islam is not recognized as a right and hence, is not permissible. Moreover, while believing in the equality of all human beings in the human honor, not taking into account the factor of religion in identifying this reality, the declaration has not asserted the equality in implementation of these rights and freedoms of all people irrespective of their religious tendencies, and here less the difference between the two declarations. Islamic declaration of human rights should clearly and without irrelevant considerations, clarify its own position, so that Islam's views are illuminated. The human rights originated from

universal declaration, have proved a universal religion, showing indifference to and disregard for religion and human rights of Islamic declaration, based upon a certain, religion, Islam, should announce clearly its position in order to be able to prove its capacity of becoming universal and internationally applied. This requires much effort. True that the universal declaration has not been successful in achieving its goals, not able to put an end to discrimination in any field, and prevent the violation of freedoms and rights and even western governments as its defenders and creators, have sometimes, acted particularly toward third world countries with negligence and no regard for applying its article, but, this doesn't guarantee in itself, the success of Islamic declaration of human rights. Much effort and innovations are required in this regard. It would be a great achievement, if with the aid of establishing executive committees, we could find necessary approaches for applying the articles of declaration especially those related to civil and social rights and the right to take part freely in the governments of their countries and convince the Islamic governments to apply them. We hope organization of Islamic countries conference will take necessary actions in this regard.