

## **Right to Life as a Human Right (A Comparative Study of Sharia'h and Law)**

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### **ABSTRACT:**

*Right to Life is considered as one of the primordial Human Rights. The importance of right to life can be judged simply on this basis that there are diversified views of the leaders of the world regarding almost every issue about human Rights concern. However, they agree in principle that the individuals (lives) irrespective of their race, color, language and nationality, should be saved and protected and they should be honored and respected.*

*Even a cursory glance at the contents of the Islamic ideology indicates that the Qura'n and the Sunna'h have dealt in depth with nearly every aspect of human rights and in particular the right to life.*

*The present study investigates different aspects and dimensions of 'Right to life' in the light of Islam, along with its comparison with law and western approaches to it.*

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Life is the supreme human right and a base for other human rights, as none of the other rights would have any value or utility without it. If there is no life there is nothing left to human dignity. Only when life exists can we be concerned with how to make it worth living and prevent it from being undermined by various acts and omissions that endanger it. The protection of life is therefore, an essential pre-requisite to the full enjoyment of all other human rights. In short, the protection of human

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rights cannot be achieved without respect for the right to life and the dignity of a person.<sup>1, 2</sup>

In other words we can say that the term 'life' does not mean only the right of animal existence. It has many dimensions including the right to the safety of life, right to a basic standard of life. This may also cover the right not to be injured or degraded, the right to his privacy, the right not to treat unjustly or with cruelty; all this depends on the existence of rights.

Every person has a right to survive mean right to live, i.e., every person has the right to have home for shelter, food to eat, approach to all basic necessities of life and protection to one's life.

Life is among the biggest bounty granted by Allah. The existence of life itself is a trust for every human being to utilize it, and it is the basis of rights and duties, for there is no liability born by a dead body or thing. That is why life is so much regarded and protected from being interrupted or discontinued by human intervention.

### 1.1 Right to Personal Security and Safety:

Everyone has the right to life and security of person. No one shall be held for slavery or for servitude. No one shall be subjected to torture or cruelty. No one shall be meted out inhuman or degrading treatment. No one shall be subjected to arbitrary arrest detention or exile. There is a compendium of economic, social and cultural rights; the right to work, the right to a fair wage, the right to leisure, the right to social security, the right to found a family and much besides<sup>3</sup>.

مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ

فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا ۖ وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا<sup>4</sup>

*Because of that We ordained the children of Israel that if any one killed a person not in retaliation of murder, or (and) to spread mischief in the land; it would be as if he killed all mankind, and if any one saved a life, it would be as if he saved the life of all mankind.*

The rights to personal security and safety are protected by all the universal and regional declarations and the constitutions of the world. Universal Declaration of Human Rights and the European Convention on Human Rights declare that everyone has the right to life. The UDHR declares that: *Everyone has the right to liberty and security of person* (Article 3) and, *No one shall be subjected to arbitrary arrest or detention* (Article 9)<sup>5</sup>.

However, the European Convention also specifies those situations which involve the death of a person during which the deprivation of life shall not be regarded as inflicted in contravention (Article 2). In this regard, the International Covenant on Civil and Political Rights contains three very important statements: first, *every human being has the inherent right to life*. Second, *this right shall be protected by law*. Third, *No, one shall be arbitrarily deprived of his life* (Article 6(1)).

It further states: *A person cannot be arbitrarily deprived of his or her life in a situation of public emergency* (Article 4 (2)) and *sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women* (Article 6)

Commission on Human Rights states:

- No one shall be arbitrarily deprived of his life. Everyone's right to life shall be protected by law.
- In countries where capital punishment exists, sentence of death may be imposed only as a penalty for the most serious crimes pursuant to the sentence of a competent court and in accordance with law not contrary to the principles of the Universal Declaration of Human Rights or the Convention on the Prevention and Punishment of the Crime of Genocide.
- Any one sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
- Sentence of death shall not be carried out on a pregnant woman (Article 6).

Each of the four Geneva conventions of 1949 deals with a particular group of 'protected persons'; the wounded and sick in armed forces in the field (Convention I); the wounded and sick and shipwrecked members of armed forces at sea (Convention II); prisoners of war (Convention III) and civilians in time of war (Convention IV). These four conventions (as supplemented by Additional Protocols I and II in 1977) prescribe as minimum standard procedural safeguards which must be adhered to in death penalty cases in times of war or armed conflict, including specific provisions for armed conflicts which are not international.

Article 3 which is common to all four Geneva Conventions prohibits 'at any time and in any place whatsoever violence to life and person, in particular murder of all kinds' of people 'taking no active part in the hostilities' in armed conflict. In respect of people who do not take

a direct part or who have ceased to take part in hostilities during an armed conflict, article 4 of the Additional Protocol II prohibits violence to life 'at any time and in any place whatsoever'. Article 75 of Additional Protocol I prohibits violence to life in particular murder against all people (whether or not they are protected persons).

American Convention on human rights describes that every human being has the right to life (Article 1) and *No one shall be arbitrarily deprived of his life* (Article 4(1)). The Convention further states that the Article 4 is not suspended during the time of war or other public emergency threatening the life of the nation (Article 27(1)).

Though the right to life is the primordial right in the Western perspective as it has been enshrined in the above mentioned international and regional instruments. However, it is not an absolute right. The deprivation of life during armed conflicts may, subject to certain conditions, be lawful. Examples are the pursuit of legitimate self-defense under Article 51 of the Charter of the United Nations or the carrying out of enforcement measures under Article 42 of the Charter <sup>6</sup>.

The English Magna Carta of 1215 is claimed to be the earliest national statute prohibiting deprivation of life. It provides that no free man shall be taken or imprisoned, or deceased of his free hold, or liberties, or free customs, or be outlawed, or exiled, or be otherwise destroyed; nor will we pass upon him, nor condemn him, but by the lawful judgment of his peers, or by the law of the land <sup>7</sup>.

The first ten amendments known as American Bill of Rights, guarantee certain rights to the people, including the right to life, liberty and security of person.

The German Constitution also recognizes this right to life by stating as: Everybody has the right to life and physical integrity. It is pertinent to mention here that the German Constitutional Court is the only court in a major liberal democracy which has accepted the anti-abortion argument under the cover of right to the protection of the life of a fetus and it has therefore, struck down attempts by the underage to legitimize abortion. The Irish court has expressed similar views and would doubtless take the same action, in the absence of a constitutional amendment allowing abortion<sup>8</sup>.

The Pakistani law also recognizes such right to life and declares that *No person shall be deprived of life or liberty saves in accordance with law* (Article 9). The word 'life' in Article 9 covers all facts of human existence<sup>9</sup>. Any assault on the body of a person, e.g., whipping, torture, blind folding, fettering, house arrest, solitary confinement, preventing a person from reading a book (religious or non-religious), is an invasion of liberty, and in the absence of a law or rule having the force of law authorizing it, such act would be violative of Article 9<sup>10</sup>.

### **1.2 Right to Justice and Fair Trial:**

The right to justice comes from the belief that society should be based on the rule of law. The rule of law requires that:

- Human rights must be protected by law
- Disputes about rights must be capable of being submitted to a competent, impartial and independent authority for adjudication.
- Authorities, when considering disputes, will apply procedures that will ensure full equality and fairness to all the parties.
- Disputes will be determined in accordance with clear, specific and pre-existing laws which are known and openly proclaimed<sup>11</sup>.

The rule of law is a fundamental building block for a fully functioning of democratic system and for the full and effective protection of human rights. The rule of law is also fundamental to economic security, as it ensures that both the public and private sectors have a stable and reliable legal systems for resolving commercial and other disputes, as well as clearly established rules by which business can be conducted. All are equal before the law and are entitled without any discrimination to equal protection of the law<sup>12</sup>.

Equality and fairness are not just about having laws and processes that appear to treat everyone equally or in the same way (sometimes called ‘formal equality’), but they are also about what happens in practice in everyday life (sometimes called ‘substantive equality’). The goal of the rule of law and the right to justice is fair outcomes for everyone<sup>13</sup>.

Islam establishes justice by enforcing the proper fulfillment of rights and duties. Quranic standards of justice transcend all discrimination. This high level of objectivity could hardly be sustained in a situation of bipolarity between right and obligation, for emphasizing one over the other would likely compromise the objectivity of justice.

A comprehensive approach to justice requires rights and obligations to be integrated into the essence of justice. The Quran’s Unitarian approach is to view rights and obligations as naturally integral to justice while subsidiary to the essence of justice. Islam’s approach to balancing the right of God and the right of the individual is objective in the sense that it seeks to protect the interests of both the individual and the community under the umbrella ‘concept of justice’<sup>14</sup>.

The Messenger (SAW) said:

يأيها الناس اسمعوا وأطيعوا المسلم أخو المسلم، لا يظلمه، و لا يجل من مال امرئ إلا ما أعطى  
عن طيب نفسه.<sup>15</sup>

*O people! Listen unto my words and understand me. Be aware that all Muslims are brothers unto one another. You are one brotherhood. Nothing which belongs to another is lawful unto his brother, unless freely given out of goodwill. Guard yourselves against committing injustice.*

Islam wants to create a society based on a deep sense of moral responsibility and justice in order to preserve human dignity accorded to man by Allah<sup>16</sup>.

In his first official speech, Abu Bakr said:

أيها الناس إني قد وليت عليكم ولست بخيركم فإن أحسنت فأعينوني وإن أسأت فقوموني،  
الصدق أمانة، والكذب خيانة، والضعيف فيكم قوي عندي حتى أرجع عليه حقه إن شاء الله،  
والقوي فيكم ضعيف عندي حتى آخذ الحق منه إن شاء الله<sup>17</sup>

*O People.; I have been appointed ruler upon you, while I am not the best of you. If you see me with truth, help me, and if with falseness set me right. The strong among you, in my opinion, is the weak until I snatch the right from him and the weaker among you, in my view, is the strong, unless I redress his wrong.*

No distinctions in dignity and fundamental rights between one man and another as race, sex, blood relations or wealth. The Quran also stresses that it is the fundamental duty of the Messengers of Allah to

protect the rights of all people and to establish a society in which the rights of all people are guaranteed on the basis of equity and justice:

لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنْزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ<sup>18</sup>

*We sent Our Messengers with Clear Signs and sent down with them the Book and the Balance of right and wrong that people may stand forth in justice.*

وَالسَّمَاءَ رَفَعَهَا وَوَضَعَ الْمِيزَانَ أَلَّا تَطْغَوْا فِي الْمِيزَانِ وَأَقِيمُوا الْوَزْنَ بِالْقِسْطِ وَلَا تُخْسِرُوا الْمِيزَانَ<sup>19</sup>

*And the sky has He raised high, and He has set the Balance (of Justice), in order that you may not transgress (due) balance. So establish weight with justice and fall not short in the balance*

Islam legislates that no one may be wrongfully arrested or detained or imprisoned unless his guilt is proved in an open court. Islam does not permit to arrest a person or put into a prison only on the basis of suspicion and without proper court proceedings and without providing the accused a reasonable opportunity of defense.<sup>20, 21, 22, 23</sup>

Islam also prohibits all punishments which are injurious to the dignity of man, like any physical or moral damage to the prisoner, any attempt to use him as an object of commercial transaction, or of any form of experiment<sup>24</sup>.

The injunctions of the Holy Quran are very clear on this point, such as:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَىٰ أَنْفُسِكُمْ أَوِ الْوَالِدِينَ وَالْأَقْرَبِينَ إِن يَكُنْ غَنِيًّا أَوْ فَقِيرًا فَاللَّهُ أَوْلَىٰ بِهِمَا فَلَا تَتَّبِعُوا الْهَوَىٰ أَنْ تَعْدِلُوا وَإِن تَلَوُّوا أَوْ تَعْرِضُوا فَإِنَّ اللَّهَ كَانِ

بِمَا تَعْمَلُونَ خَيْرًا<sup>25</sup>

*O you who believe stand out firmly for justice, as witness to Allah, even though it is against yourselves, or your parents, or your kin, the rich or poor; Allah is better protector to those; so follow not the lusts (of your hearts) lest you avoid justice; and if you distort your witness or refuse to give it, verily, Allah is ever Well-Acquainted with what you do.*

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ

نَعِيمًا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا<sup>26</sup>

*Verily! Allah commands that you should render back the trusts to those whom they are due; and that when you judge between men, you judge with justice.*

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَا تَجْرِمَنَّهُمْ سِنَانٌ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا

اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ<sup>27</sup>

*O you who believe stand out firmly for justice, as witness to Allah, and let not the enmity and hatred of others make you to depart from justice; be just; that is nearer to piety; and fear Allah .Verily Allah is Well-Acquainted with what you do*

Along with Quran, the Messenger (SAW) also emphasizes on justice.

عن أنس رضي الله عنه، قال: سئل النبي صلى الله عليه وسلم عن الكبائر، قال:

الإشراك بالله، وعقوق الوالدين، وقتل النفس، وشهادة الزور<sup>28</sup>

It is narrated by Anas that the Messenger was asked about the great sins. He said, they are;

- a) to join others in worship with Allah.
- b) to be undutiful to one's parents.

- c) to kill a person (which Allah has forbidden to be killed)
- d) to give a false witness.

Maulana Maududi commenting on the ayat of the Qura'n on justice states as:

*What has been prohibited and condemned is that a man be arrested and imprisoned without proof of his guilt in an open court and without providing him an opportunity to defend himself against those charges. If the Government suspects that a particular individual has committed a crime or he is likely to commit an offence in the near future then they should give reasons for their suspicion before a court of law and the culprit or the suspect should be allowed to produce his defense in an open court<sup>29</sup>.*

In this regard, Imam Malik expresses his views as:

*In Islam no man may be imprisoned without justice Thus, no man can be arrested without any specific charge against him; and no charge can be made without proper investigation into the facts. Without trial no one may be punished and in the trial every one would have the right to defend him. No one may be held responsible for any crime committed by others including relatives like father, son, etc.[<sup>30</sup>].*

The Messenger (SAW) did not use to arrest or detain a person on a mere allegation. It is related in the hadith that once the Messenger (SAW) was delivering a lecture in the mosque, when a man rose during the lecture and said: *O Messenger of Allah, for what crime have my neighbors been arrested?* The Messenger (SAW) heard the question and continued his speech. The man rose once again and repeated the same question. The Messenger (SAW) again did not answer and continued his

speech. The man rose for a third time and repeated the same question. Then the Messenger (SAW) ordered that the man's neighbors be released. The reason why the Messenger (SAW) had kept quiet when the question was repeated twice earlier was that the police officer was present in the mosque and if there were proper reasons for the arrest of the neighbors of this man, he would have got up to explain his position. Since the police officer gave no reasons for these arrests the Messenger (SAW) ordered that the arrested persons should be released<sup>31, 32, 33</sup>.

The Caliph Umar once said, *In Islam no one can be imprisoned except in pursuance of justice*. On another occasion, Hazrat Umar addressed Amr-bin-Al'as, the governor of Egypt and said:

فقال عمر لعمرؤ مذكم تعبدتم الناس وقد ولدتهم أمهاتهم أحرارا<sup>35, 34</sup>

*O Amr, why you have started making the people slaves when their mothers had given them birth as free persons*

The attitude and activities of the Kharijis in the days of the Caliph Ali are well-known to the students of Muslim history. They used to abuse the Caliph openly, and threaten him with murder. But whenever they were arrested for these offences, 'Ali would set them free and tell his officers: *As long as they do not actually perpetrate offences against the State, the mere use of abusive language or the threat of use of force are not such offences for which they can be imprisoned*.

The Imam Abul-Hanifah recorded the saying of the Caliph Ali as *As long as they do not set out on armed rebellion, the Caliph of the Faithful will not interfere with them*<sup>36</sup>.

Imam Abu Yusuf in his Kitāb ul-Kharāj laid down that nobody can be detained on the ground that someone has made certain allegations against him<sup>37</sup>.

In order to honor the dignity of a person and to safeguard him from insulting and degrading treatment the following rights are considered to be fundamental.

### 1.2.1 Right not to be Arrested or Maltreated

Dignity and security of the person implies that neither the state authorities nor the other individuals can interfere with his person. Neither he can be arrested nor can he be tortured by the police authorities or other individuals except under the protection of law.

Corresponding to the right of an accused to be given a fair trial is the societal interest in punishing one whose guilt is clear after he has obtained such a trial. This punishment should, however, not be cruel, inhuman or degrading. This prohibition is present in both universal and regional treaties and there is a specific convention against torture.

- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment states: *No one shall be subjected to torture or inhuman or degrading treatment or punishment. Every person has a self-respect which should not be injured* (Article 27(1)). Under the Convention each state party is bound to prevent in any territory under its jurisdiction the acts of cruel, inhuman or degrading treatment or punishment (Article 16).
- Universal Declaration of Human Rights declares that *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment* (Article 5).

- The Council of European Convention for the Protection of Human Rights and Fundamental Freedoms says that *No one shall be subjected to torture or to inhuman or degrading treatment or punishment* (Article 3).
- American Convention on Human Rights says that *Every person has the right to personal liberty and security* (Article 7(1)). *No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State concerned or by a law established pursuant thereto* {Article 7(2)}. *No one shall be subject to arbitrary arrest or imprisonment* (Article 7(3)).
- African Charter on Human and Peoples' Rights declares that: *Every individual shall have the right to liberty and to security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law, in particular, no one may be arbitrarily arrested or detained* (Article 6). *Punishment is personal and can be imposed only on the offender* (Article 7(2)). *All forms of exploitation and degradation of man, particularly torture, inhuman, cruel or degrading punishment and treatment shall be prohibited* (Article 5).
- The Rome Statute of the International Criminal Court (1998) provides that *a person shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established in the Statute* (Article 55(d)).

*A suspect/accused should not be subjected to any form of coercion, duress or threat, to torture or to any other form of*

*cruel, inhuman or degrading treatment or punishment* (Article 55 (b)).

- International Covenant on Civil and Political Rights describes that *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment; in particular, no one shall be subjected without his free consent to medical or scientific experimentation* (Article 7).
- ECHR describes that everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure described by law: (a) The lawful detention of a person after conviction by a competent court; (b) The lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law; (c) The lawful arrest or detention of a person affected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; (d) The detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; (e) The lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants; (f) The lawful arrest or detention of a person to prevent his unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition (Article 5(1)).

It appears with the comparison of both the ICCPR and ECHR on this issue that the approach of ECHR is more practicable as compared to ICCPR. In the ECHR not only this point has been discussed in more detail rather it has also covered all the possible exceptions to the general rule relating to the prohibition of arrest and detention of a person.

According to Pakistani Law the exercise of power by the detaining authority is subject to the ascertainment of reasonable grounds. Therefore, no person can be detained illegally or on some unreasonable grounds<sup>38, 39, 40, 41</sup>.

On the question what amounts to detention the Pakistani law considers any act which imposes restrictions on the personal liberty as detention. For Instance, even restricting a person's movement to his dwelling house is detention [<sup>42</sup>]. This law further requires that a person arrested or detained shall be produced before a magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate (Article 10 (2)).

In this regard the Lahore High Court considers it necessary that the accused must be personally brought to the magistrate in court. If the magistrate himself goes to the place where the accused is confined, the constitutional requirement will be considered not to be complied with<sup>43</sup>. Thus if the detune is not produced before the magistrate within the time prescribed, his further detention will be treated illegal<sup>44</sup>.

### **1.2.2 Right to be Presumed Innocent:**

This has been universally recognized as a fundamental right of the accused that he should be presumed innocent until proved guilty. The

law requires that judges while carrying out their duties should not start with the pre-conceived idea that the accused has committed the offence charged; they are bound to presume the accused innocent until proved guilty. It follows from the presumption of innocence that the court must base its conviction exclusively on evidence put forward at trial<sup>45</sup>. All international instruments have upheld the rule that everyone charged with an offence shall be presumed innocent until proved guilty according to law.

It is also the right of the accused that if he is arrested under some legal grounds, then he must be informed promptly of the reason for arrest. This right of the accused has been recognized in all the international and regional instruments along with the constitutions of the world [<sup>46</sup>]. European Convention for the Protection of Human Rights and Fundamental Freedoms is however; more specific in this regard which makes it compulsory that the communication of the grounds of arrest must be made to the accused in the language which he understands (Article 5(3)).

In *Fox, Campbell and Hartley vs. UK*<sup>47</sup> the applicants, who were arrested on suspicion of terrorist offences, were not informed of the reason for the arrest at the time of it, but were told that they were being arrested under a particular statutory provision. The European Court of Human Rights found that paragraph 5(2) was not satisfied at the time of the arrest.

Pakistani and Indian Laws both have given recognition to this right of the person arrested that he must be informed of the grounds for his arrest as soon as it is possible. They require that the grounds must be sufficiently particularized with facts and information to enable the

detenu to understand the alleged reason for his arrest. If no grounds are communicated, the detention would be illegal<sup>48, 49, 50, 51, 52, 53, 54</sup>.

### 1.2.3 Right to Fair and Public Hearing:

The idea of a fair trial is central to human rights doctrine which requires the application of due process of law. The accused should be given a full right to prove oneself innocent and be heard by an impartial judge and, where applicable, by the jury.

In order to establish any charge against the detenu all the International and regional instruments have given recognition to the right that one is entitled to be heard within a reasonable time, by a competent, independent, and impartial tribunal and shall be public, except in so far as may be necessary to protect the interest of justice. In the case of juvenile persons, the procedure is to take account of their age and the desirability of promoting their rehabilitation.<sup>55, 56, 57, 58, 59, 60, 61, 62</sup>.

All the international and regional instruments and the constitutions of the states have guaranteed this right to the accused to defend in person or through legal assistance. The person arrested must be given reasonable opportunity to engage counsel, and the counsel engaged must be given reasonable opportunity to defend. It is the inalienable right of the person arrested to be assisted by counsel provided by the state, if the accused cannot defend personally or through a counsel on payment. Sixth Amendment to the U.S. Constitution which, inter alia, provides that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the Assistance of Counsel for his defense<sup>63, 64</sup>.

It is held by the European Convention in the case of *Golder vs. United Kingdom*<sup>65</sup> that the right to a fair and public hearing before an independent and impartial tribunal under Article 6 of the 1950 Convention involved necessarily a right of a prisoner to have free communication with, and access to legal advisers for the purpose of instituting legal proceedings.

This ruling is also followed by the Convention in several subsequent cases, as in the case of *Tyrer vs. United Kingdom*<sup>66</sup> the infliction of corporal punishment by birching on the Isle of Man amounted to ‘degrading punishment’, thereby violating article 3 of the 1950 Convention [67].

It is right of the accused to be assisted without charge, by a translator or interpreter, if one does not understand or can not speak the language of the tribunal or court [68]. The Rome Statute also recognizes the right of the accused to have a legal assistance of own choice to defend the case; and if the accused does not have legal assistance at his own or is unable to pay for it, then it should be provided by the state [69]. The same right of the accused person is recognized by the ICCPR and the Council of European Convention on Human Rights<sup>67</sup>.

The Pakistani Courts have also recognized similar rights of the accused; that the person arrested must be given reasonable opportunity to engage counsel, and the counsel engaged must be given reasonable opportunity to defend the accused. Similarly, in case of preventive detention, right to make representation must be made available to the detenu. The provisions of the law which deny to such person the right to be defended by a legal practitioner are void,<sup>68 69 70 71 72 73 74 75 76</sup>.

The right of the accused to bail is recognized not only in the Eighth Amendment of the US Bill of Rights, but also in the much earlier 1689 English Bill of Rights, UK. To refuse bail and keep someone in detention before trial is acceptable only on the basis of sufficient required grounds; in other words, only where the state can show relevant and sufficient reasons of public interest (European Court of Human Rights). In general, there are three kinds of reasons which stand up under analysis: firstly, where the accused is likely to abscond; secondly, where accused is likely to commit other crimes; and thirdly, where he is likely to try to intimidate witnesses or otherwise pervert the course of justice<sup>77</sup>. The right of the accused to appeal the judgment to a Higher Court is also recognized by all the International and regional instruments, along with the constitutions of the states<sup>78, 79, 80, 81</sup>.

### **1.3 Islamic Perspective of Right to Life:**

The protection of life, liberty, property and human pursuit is secured by Shariah and can only be abridged by the process of law<sup>82, 83</sup>.

Five essential interests are protected by Shariah; i.e., life, religion, intellect, property, and lineage. Some ullahamah adds a sixth one i.e., dignity. The Qur'an and the Sunnah further provide authority for each of these values. Many of these norms and principles are identified and articulated by Muslim jurists as legal maxims (qawā'id kullīyah) that express the Sharia'h objectives and themes. These rights are to be protected at all cost by the state, as a society cannot afford to expose people to danger and collapse<sup>84</sup>.

To put a life to death without justice means to put all humanity to death; as the Qura'n says:

مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا وَلَقَدْ جَاءَتْهُمْ رُسُلُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِّنْهُمْ بَعَدَ ذَلِكَ فِي الْأَرْضِ لَمُسْرِفُونَ<sup>85</sup>

*Because of that We ordained the children of Israel that if any one killed a person not in retaliation of murder, or (and) to spread mischief in the land; it would be as if he killed all mankind, and if any one saved a life, it would be as if he saved the life of all mankind.*

In addition, a Muslim is not allowed to commit suicide<sup>86</sup>.

Islam introduces the system of compensation for committing murder wrongfully. Thus it saves the society from the curse of blood-shed and revengeful murder. If anyone is slain wrongfully, Islam gives the authority to demand 'qisas' or to forgive<sup>87</sup>.

In the Farewell Pilgrim, the Prophet (SAW) declared that lives and properties and honour of a person are sacred to one another. The Messenger (SAW) on another occasion said:

فإن دماءكم، وأموالكم، وأعراضكم، بينكم حرام، كحرمة يومكم هذا، في شهركم هذا، في بلدكم هذا<sup>88</sup>

*The blood, property and honour of a Muslim is as sacred to every Muslim as this day, this month and this country.*

#### **1.4 Right of Privacy:**

The right to privacy means to seclude oneself selectively in front of others. The boundaries and content of what is considered private differ among cultures and individuals, but share basic common themes. Privacy is sometimes related to anonymity, the wish to remain unnoticed or

unidentified in the public realm. When something is private to a person, it usually means there is something within them that is considered inherently special or personally sensitive. The degree to which private information is exposed therefore, depends on how the public will receive this information, which differs between places and over time. Privacy can be seen as an aspect of security; one in which tradeoffs between the interests of one group and another can become particularly clear.

The right against unsanctioned invasion of privacy by the government, corporations or individuals is part of many countries privacy laws, and in some cases, constitutions. Almost all countries have laws which in some way limit privacy; an example of this would be law concerning taxation, which normally requires the sharing of information about personal income or earnings. In some countries individual privacy may conflict with freedom of speech laws and some laws may require public disclosure of information which would be considered private in other countries and cultures.

Privacy may be voluntarily sacrificed, normally in exchange for perceived benefits and very often with specific dangers and losses, although this is a very strategic view of human relationships. Academics who are economists, evolutionary theorists, and research psychologists describe revealing privacy as a 'voluntary sacrifice', where sweepstakes or competitions are involved. In the business world, a person may give personal details often for advertising purposes in order to enter a gamble of winning a prize. Information voluntarily shared and later stolen or misused may lead to identity theft.

Right of privacy is also ensured by Islam. The word used in the Qura'n is 'tajassus'. It covers all aspects of privacy like peeping into

other's house, reading someone's letter without permission, investigating someone's financial, private and family affairs, etc.<sup>89</sup>.

In the Quran it is said that:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْذِنُوا وَتُسَلِّمُوا عَلَى أَهْلِهَا ذَلِكَ خَيْرٌ لَكُمْ لَعَلَّكُمْ تَذَكَّرُونَ<sup>90</sup>

*O, you who believe! do not enter houses other than your own until you have asked permission and saluted the dwellers therein; that is best for you, Allah admonishes you, so that you may heed*

Instructions to enter the houses of relatives and friends are given in the Quran as:

يَا أَيُّهَا الَّذِينَ آمَنُوا لِيَسْتَأْذِنَكُمْ الَّذِينَ مَلَكَتْ أَيْمَانُكُمْ وَالَّذِينَ لَمْ يَبْلُغُوا الْحُلُمَ مِنْكُمْ ثَلَاثَ مَرَّاتٍ مِنْ قَبْلِ صَلَاةِ الْفَجْرِ وَحِينَ تَضَعُونَ ثِيَابَكُمْ مِنَ الظَّهْرِ وَمِنْ بَعْدِ صَلَاةِ الْعِشَاءِ ثَلَاثُ عَوْرَاتٍ لَكُمْ لَيْسَ عَلَيْكُمْ وَلَا عَلَيْهِمْ جُنَاحٌ بَعْدَهُنَّ طَوَّافُونَ عَلَيْكُمْ بَعْضُكُمْ عَلَى بَعْضٍ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ الْآيَاتِ وَاللَّهُ عَلِيمٌ حَكِيمٌ<sup>91</sup>

*O, you who believe: Let your servants and those of your children who have not yet come of age ask your permission before coming into your rooms on three occasions: before the morning prayer; at noon when you take off your clothes in the noonday heat; and after the night prayer. These are your three times of privacy. There is no sin for you nor for them if they come without permission at other times than these, for, you have to visit one another for various purposes. Thus does Allah make His Commands clear to you, for He is All-Knowing, All Wise.*

وَالْقَوَاعِدُ مِنَ النِّسَاءِ اللَّاتِي لَا يَرْجُونَ نِكَاحًا فَلَيْسَ عَلَيْهِنَّ جُنَاحٌ أَنْ يَضَعْنَ ثِيَابَهُنَّ غَيْرَ مُتَبَرِّجَاتٍ بِرِيئَةٍ وَأَنْ يَسْتَعْفِفْنَ خَيْرٌ هُنَّ<sup>92</sup>

*There is no sin for such elderly women as are past the age of marriage, if they lay aside their outer garments, provided they do not wantonly display their beauty. Nevertheless, it is best for them if they behave modestly*

**(a) Right to Privacy in Ahadith:**

There are many Ahadith of the Messenger of Allah (SAW), wherein emphasis is on caring the privacy of others. Some of the ahadith in this regard are of worth mentioning.

يا معشر من أسلم بلسانه ولم يفيض الإيمان إلى قلبه ، لا تؤذوا المسلمين ولا تعيروهم ولا تتبعوا عوراتهم ، فإنه من تتبع عورة أخيه المسلم تتبع الله عورته ، ومن تتبع الله عورته يفضحه ولو في جوف رحله<sup>93</sup>

*You who have accepted Islam with your tongues but whose hearts have not been reached by faith, do not misbehave with Muslims, nor revile them, nor seek out their faults; for he who seeks out the fault of his Muslim brother will have, his fault sought out by Allah, and he whose faults are sought out by Allah will be exposed by Him even though he is in the privacy of his house*

عن عبدالله بن بسر قال كان رسول الله صلى الله عليه وسلم إذا جاءه الباب يستأذن لم

يستقبله ، يمشي مع الحائط حتى يستأذن فيؤذن له أو ينصرف<sup>94</sup>.

*Haḥrat Abdulla'h bin Busr (Allah be pleased with him) said that when Allah's Messenger (SAW) came to any one's door he did not face it squarely, (but faced the right or left corner) and stand with the wall, (that was because there were no curtains on the doors of the houses at that time) asking permission and if he got it enter (the home) otherwise left.*

*Haḥrat Abū Umḥ ma'h (Allah be pleased with him) has related Allah's Messenger (SAW) said:*

*ثلاثة كلهم ضامن على الله عز وجل : رجل خرج غازيا في سبيل الله، فهو ضامن على الله حتى يتوفاه فيدخله الجنة ، أو يرده بما نال من أجر وغنيمة، ورجل راح إلى المسجد، فهو ضامن على الله حتى يتوفاه فيدخله الجنة، أو يرده بما نال من أجر وغنيمة ، ورجل دخل بيته بسلام فهو ضامن على الله عز وجل<sup>95</sup>*

*There are three persons for whom Allah is guarantee. Allah suffices for them during their life and after their death. Their place is in Paradise.*

*(1) One who entered his house after having saluted, then Allah is his guarantee.*

*(2) One who went towards the mosque (for saying prayer), then Allah is his guarantee.*

*(3) One who left for Jihad in the way of Allah, then Allah is his guarantee*

*يستأذن الرجل على ولده ، وأمه - وإن كانت عجوزا - وأخيه ، وأخته ، وأبيه<sup>96</sup>*

*Haḥrat Atḥ bin Yḥ sar (Allah be pleased with him) told that a man asked Allah's Messenger (SAW) whether he should ask permission to go in where his mother was and he replied that he should. The man said*

*that he lived along with her in the house, but Allah's Messenger (SAW) replied, "Ask her permission." The man said he was her servant but Allah's Messenger (SAW) replied, "Ask her permission. Do you want to see her naked?" He did not, he replied, "Well, ask her permission*

### **(b) Right to Privacy and Western Philosophers**

Anthropologists say that privacy is a socially created need. The demand for, and contours of privacy differ significantly depending upon the level of development in a society. As a creation of society, therefore, it should come as no surprise that privacy is largely defined within the context of society itself.

Alan Westin believes that new technologies alter the balance between privacy and disclosure, and that privacy rights may limit government surveillance to protect democratic processes. Westin defines privacy as *the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others.*

Westin describes four states of Privacy; solitude, intimacy, anonymity, reserve. These states must balance participation against norms. Each individual is continually engaged in a personal adjustment process in which he balances the desire for privacy with the desire for disclosure and communication of himself to others, in light of the environmental conditions and social norms set by the society in which he lives<sup>97</sup>.

Under liberal democratic systems, privacy creates a space separate from political life, and allows personal autonomy and also ensures democratic freedoms of association and expression.

David Flaherty believes networked computer databases pose threats to privacy. He develops data protection as an aspect of privacy, which involves the collection, use, and dissemination of personal information. This concept forms the foundation for fair information practices used by governments globally. Flaherty forwards an idea of privacy as information control, individuals want to be left alone and to exercise some control over how information about them is used<sup>98</sup>.

Richard Posner and Lawrence Lessing focus on the economic aspects of personal information control. Posner criticizes privacy for concealing information, which reduces market efficiency. For Posner, employment is selling oneself in the labor market, which he believes is like selling a product. Any defect in the product that is not reported is fraud. For Lessig, privacy breaches online can be regulated through code and law [<sup>99</sup>].

Lessing claims that the protection of privacy would be stronger, if people conceive of the right as a property right, and that individuals should be able to control information about them. Economic approaches to privacy make communal conceptions of privacy difficult to maintain<sup>100</sup>.

There have been attempts to reframe privacy as a fundamental human right, whose social value is an essential component in the functioning of democratic societies. Additional ways of thinking about privacy have been explored by researchers largely outside of the field of law using various approaches that work towards a concept of privacy beyond individual liberalism.

Amitai Etzioni suggests a communitarian approach to privacy. This requires a shared moral culture for establishing social order. Etzioni believes that privacy is merely one good among many others and that

technological effects depend on community accountability and oversight. He claims that privacy laws only increase government surveillance<sup>101</sup>.

Priscilla Regan believes that individual concepts of privacy have failed philosophically and in policy. She supports a social value of privacy with three dimensions; shared perceptions, public values, and collective components. Shared ideas about privacy allow freedom of conscience and diversity in thought. Public values guarantee democratic participation, including freedoms of speech and association, and limits government power. Collective elements describe privacy as collective good that cannot be divided. Regan's goal is to strengthen privacy claims in policy making; 'if we did recognize the collective or public good value of privacy, as well as the common and public value of privacy, those advocating privacy protections would have a stronger basis upon which to argue for its protection'.

Leslie Regan Shade argues that the human right to privacy is necessary for meaningful democratic participation, and ensures human dignity and autonomy. Privacy depends on norms for how information is distributed, and if this is appropriate. Violations of privacy depend on context. Shade believes that privacy must be approached from a people-centered perspective, and not through the marketplace<sup>102</sup>.

The human right to privacy has precedent in the United Nations Declaration of Human Rights: *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

(c) Privacy Law

Privacy law is the area of law concerning the protecting and preserving of privacy rights of individuals. While there is no universally accepted privacy law among all countries, some organizations promote certain concepts be enforced by individual countries. For example, the Universal Declaration of Human Rights, Article 12, states:

*No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.*

For Europe, Article 8 of the European Convention on Human Rights guarantees the right to respect for private and family life, one's home and correspondence. The European Court of Human Rights in Strasbourg has developed a large body of jurisprudence defining this fundamental right to privacy. The European Union requires all member states to legislate to ensure that citizens have a right to privacy, through directives such as the 1995 Directive 95/46/EC on the protection of personal data. It is regulated in the United Kingdom by the Data Protection Act 1998 and in France; data protection is also monitored by the CNIL, a governmental body which must authorize legislation concerning privacy before them being enacted.

In the United Kingdom, it is not possible to bring an action for invasion of privacy. An action may be brought under another tort and privacy must then be considered under EC law. In the UK, it is sometimes a defense that disclosure of private information was in the public interest.

Concerning privacy laws of the United States, privacy is not guaranteed per se by the Constitution of the United States. The Supreme Court of the United States has found that other guarantees have "penumbras" that implicitly grant a right to privacy against government intrusion, for example in *Griswold vs. Connecticut* (1965). In the United States, the right of freedom of speech granted in the First Amendment has limited the effects of lawsuits for breach of privacy. Privacy is regulated in the U.S. by the Privacy Act of 1974, and various state laws. Canadian privacy law is governed federally by multiple acts, including the Canadian Charter of Rights and Freedom, and the Privacy Act Canada. Mostly this legislation concerns privacy infringement by government organizations. Data privacy was first addressed with the Personal Information Protection and Electronic Documents Act, and provincial-level legislation also exists to account for more specific cases personal privacy protection against commercial organizations.<sup>103, 104, 105, 106, 107, 108</sup>

### **1.5 Right to Healthy and Clean Environment:**

The individuals by virtue of their very existence as human beings have the right to live, eat, drink fresh water, breath fresh air, and have shelter. Just as human beings have human rights, they also have moral, legal responsibilities and related obligations and accountabilities. Every person needs oxygen to live, so clean air is certainly a primordial human right by our very nature. A large part of our body is made of water and we could not live without water; therefore, water is also primordial human rights by our very nature. Fresh water resources and clean air are therefore, proposed to be categorized as human and earth rights. Ecological and primordial human rights are the only rights that have

existed unchanged throughout the evolutionary origin of our species. Any major change would have threatened our very existence. On the official level, the link between human and environmental rights was first made in 1972 at the Stockholm Conference on the Human Environment<sup>109</sup>.

Life, livelihoods, culture and society are fundamental aspects of human existence and environment. Destruction of environment and thereby of the natural resources is a violation or leads to the violation of human rights directly; by undermining the aspects of human existence, or indirectly by leading to other violations through social disruption, conflicts and even war<sup>110</sup>.

Climate change is set to undermine human rights on a massive scale. International human rights law states that: 'In no case may a person be deprived of its own means of subsistence. But excessive greenhouse gas emissions are depriving millions of people of the very water, food, soil, and land on which they subsist. Human rights law and the environmental law are linked to each other. They both are a challenge to, or limitation on the traditional understanding of state sovereignty as independence and autonomy. The right to a healthy environment is a fundamental part of the right to life and personal integrity.

Linking climate change and human rights is nothing new. The Stockholm Declaration of 1972 was the starting point of linking human rights to environmental law. Back then man saw the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment. The protection and improvement of the human

environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all Governments [see end note:110].

Every woman, man, youth and child has the human right to a safe and healthy environment. Human rights related to environment are:

- a safe and healthy environment.
- highest attainable standard of health.
- ecologically sustainable development
- adequate standard of living, including access to safe food and water.
- of the child to live in an environment appropriate for physical and mental Development
- full and equal participation for all persons in environmental decision making and Development planning, and in shaping decisions and policies affecting one's community at the local, national and international levels.
- Safe working conditions.
- Education and information relating to links between health and the environment.

#### **(a) Islamic Perspective of Environment**

Islam is considered a comprehensive way of life whose teachings, directly or indirectly, cover every possible human relationship including what is described as environment. Islam has an integrated and holistic approach to health that all human beings aspire to achieve.

In light of today's environmental crises, many secular and religious scholars have looked into underlying philosophical causes for

man's rapacious attitude towards environment. Part of this search involves a look at root philosophies affecting the human outlook and interaction with the world and the responsibility religion shares in creating the attitudes and philosophies that have led to the desecration of nature that has occurred in the past few centuries and which seems to be accelerating in present times.

Ziauddin Sardar writes that the roots of our ecological crises are axiomatic: they lie in our belief and value structures which shape our relationship with nature, with each other and the lifestyles we lead [see end note:111.

For this reason, religions like Christianity, Judaism and Islam are held accountable as they supposedly espouse an anthropocentric (human-centered) reality. Writers like Lynn White Jr. see this as being the root cause for the ecological or environmental problems of today. He decries not only the dualistic nature of man's relationship with nature but also the idea that it is God's will that man exploit nature for his proper end; as man shares, in great measure, God's transcendence over nature<sup>111</sup>.

The Islamic tradition takes into consideration the nature of man, his place in relation to Allah; his rights and responsibilities before Allah, and his relationship to the rest of the world with regard to his rights over it. In other words the world-view of Islam is the starting point for the examination of man's relation to the world of external nature.

The primary basis of an Islamic world view is the idea of 'Tawhīd', or the oneness of Allah. A world view based on Tawhīd sees this world created and sustained by Allah with a purpose, and a design. Tawhīd is the point of origin of a theological doctrine of ecology.

Zain al Abideen elaborates the Islamic point of view on the subject as; ‘The right of your subjects through knowledge is that you should know that God has made you a caretaker. If you do well, not treating them roughly or annoying them, then God will increase His bounty toward you. But if you treat them roughly, then it will be God’s right to deprive you’<sup>112</sup>.

The Quran is replete with references to the precious resources of water, air, and land, and proscribes wastefulness. The Áhadith likewise report Muhammad’s (SAW) concern for the protection of natural resources and their equitable availability to all. Islam, from its very origin offers a basis for ecological understanding and stewardship. Man is only a manager of the earth and not a proprietor; a beneficiary and not a disposer or ordainer.

<sup>113</sup> وَهُوَ الَّذِي جَعَلَكُمْ خَلَائِفَ الْأَرْضِ

*It is He who has appointed you viceroys in the earth*

The Islamic faith lays great stress on improving the condition of the Earth at the hands of humans as humans are described as the vicegerents of God on Earth. As befits a faith born in the desert, water is honored as the secret of life. Islam forbids the wastage of water and the usage thereof without benefit. The preservation of water for the drinking of mankind, animal life, bird life and vegetation is a form of worship which gains the pleasure of Allah.

Muslims should be active in growing more trees for the benefit of all people. Even during battle, Muslims are required to avoid cutting trees that are useful to people.

Allah has created all the sources of life for man and all resources of nature that he requires, so that he may realize objectives such as contemplation and worship, inhabitation and construction, sustainable utilization, and enjoyment and appreciation of beauty. It follows that man has no right to cause the degradation of the environment and distort its intrinsic suitability for human life and settlement. Nor has he the right to exploit or use natural resources unwisely in such a way as to spoil the food bases and other sources of subsistence for living beings, or expose them to destruction and defilement.

**(b) Important Compartments of Environment:**

Owing to the importance of water as the basis of life, Allah has made its use the common right of all living beings and human beings. All are entitled to use it without monopoly, usurpation, despoilment, wastage, or abuse. Allah commanded the people of Thamud and their camel.

قَالَ هَذِهِ نَاقَةٌ لَهَا شِرْبٌ وَلَكُمْ شِرْبٌ يَوْمَ مَعْلُومٍ<sup>114</sup>

He said: *Here is a she-camel: it has a right to drink, and you have a right to drink (each) on a day, known*

The Messenger (SAW) said:

المسلمون شركاء في ثلاث: في الماء ، والكلا ، والنار<sup>115</sup>

*Muslims are to share in these three things: water, pasture, and fire*

Extravagance in using water is forbidden; this applies to private use as well as public, and whether the water is scarce or abundant; It is related that the Messenger (SAW) passed by his companion Sa'ad, who was washing for prayer, and said:

*What is this wastage, O Sa'ad?' Is there wastage even in washing for prayer?* asked Sa'ad; and he said:

فِي الْوَضُوءِ إِسْرَافٌ وَلَوْ كُنْتَ عَلَى شَاطِئِ نَهْرٍ<sup>116</sup>

*There is wastage in ablution, even if you are at the bank of a flowing river.*

The long experience of Muslim jurists in the allocation of water rights in arid lands has given rise to an outstanding example of the sustainable use of a scarce resource; an example which is of increasing relevance in a world where resources which were once abundant are becoming progressively more scarce.

The Air also has other functions which may be less apparent to man but which Allah has created for definite purposes, as we have been made aware of by the Glorious Qur'an -such as the vitally important role of the winds in pollination. God said:

وَأَرْسَلْنَا الرِّيَّاحَ لَوَاقِحَ فَأَنْزَلْنَا مِنَ السَّمَاءِ مَاءً فَأَسْقَيْنَاكُمُوهُ وَمَا أَنْتُمْ لَهُ بِخَازِنِينَ<sup>117</sup>

*And We send the winds fertilizing (to fill heavily the clouds with water), then cause the water (rain) to descend from the sky, and We give it to you to drink. And it is not you who are the owners of its stores.*

Since the atmosphere performs all the biological and social functions, its conservation as pure and unpolluted air is an essential aspect of the conservation of life itself which is one of the fundamental objectives of Islamic law.

The land and soil are also essential for the perpetuation of our lives and the lives of other creatures. From the minerals of the earth are made the solid constituents of our bodies, as well as those of all the living animals and plants. God said in the Qur'an:

وَمِنْ آيَاتِهِ أَنْ خَلَقَكُمْ مِنْ تُرَابٍ ثُمَّ إِذَا أَنْتُمْ بَشَرٌ تَنْشُرُونَ<sup>118</sup>

*And among His signs is that He has created you from dust; then behold, you are humans scattered widely*

God has made the land a source of sustenance and livelihood for us and other living creatures. He has made the soil fertile to grow the vegetation upon which we and all animal life depend. Plants constitute the basic source of sustenance for animal and human life on earth. Allah said:

فَلْيَنْظُرِ الْإِنْسَانُ إِلَى طَعَامِهِ أَنَا صَبَبْنَا الْمَاءَ صَبًّا ثُمَّ شَقَقْنَا الْأَرْضَ شَقًّا فَأَنْبَتْنَا فِيهَا حَبًّا وَعِنَبًا

وَقَضْبًا وَّرَيْتُونًا وَنَخْلًا وَحَدَائِقَ غُلْبًا وَفَاكِهَةً وَأَبًّا مَتَاعًا لَكُمْ وَلِأَنْعَامِكُمْ<sup>119</sup>

*Then let man consider his nourishment that We pour down the rain in showers, and We split the earth in fragments, and therein make the grain to grow, and vines and herbs, and olives and palms, and gardens of dense foliage, and fruits and fodder are provision for you and your cattle*

In addition to the plants importance as nourishment, plants also enrich the soil and protect it from erosion by wind and water.

Waste products and exhaust fumes, resulting from ordinary human or industrial activities and the uses of modern and advanced technology, should be carefully disposed of or eliminated in order to protect the environment against corruption and distortion. It is also vital to protect man from the effects of the harmful impact of these on the environment, and its beauty and vitality, and to ensure the protection of other environmental parameters. The accumulation of waste is largely a result of our wastefulness. Islam's prohibition of wastefulness, however,

requires the reuse of goods and recycling of materials and waste products in so far as is possible, instead of their disposal as trash.

The Messenger (SAW) forbade that a person relieve himself in a water source or on a path, or in a place of shade, or in the burrow of a living creature (Bukh $\eta$  ri, Hakim).

لا يبولن أحدكم في الماء الدائم الذي لا يجري<sup>120</sup>

The values underlying these prohibitions should be understood as applicable to the pollution of critical resources and habitats in general.

The use of pesticides should not lead to any harm or damage to human beings or the environment in the present or the future. Consequently, control and prohibition of whatever leads to harm or damage, to people or to ecosystems, is required, even though this control or prohibition may affect the personal interests of some individuals. This is in accordance with the principle that ‘A private injury is accepted to avert a general injury to the public.

المصلحة العامة تقدم على المصلحة الخاصة.<sup>121</sup>

*The interest of the society will prevail over the interest of the individual.*

The most selective and least destructive means of pest control are required by these values and principles of Islam. Preventive measures, biological controls, non-poisonous repellents, biodegradable substances, and narrow-spectrum pesticides should be favored whenever possible over their more destructive alternatives. Furthermore, their application should be carefully calculated to protect human life, crops, and livestock with utmost efficiency and effectiveness, and with an eye to make the minimum overall impact on God’s creation.

It is also clear that intoxicants and narcotics have a harmful effect on the physical and mental health of human beings and, as a consequence, on his life and reason; his offspring, work, properties, honor, and righteousness. It has been proven, without doubt, that intoxicants and other drugs cause considerable physical, social, and psychological disorders. Therefore, all kinds of intoxicants and mind-affecting drugs are prohibited in Islam. Their production and marketing as well as of anything that is associated with them or assists in their production is forbidden. As it has been stated in the Qur'an:

يأبها الذين آمنوا إنما الخمر والميسر والأنصاب والأزلام رجس من عمل الشيطان فاجتنبوه [122]  
لعلكم تفلحون

*O you who believe! Intoxicants and gambling, and arrows for seeking luck or decisions are an abomination of Satan's handiwork. So avoid in order that you may be successful.*

The tradition of the Messenger (SAW) of Allah states in this regard as:

كل مسكر خمر ، وكل مسكر حرام.<sup>123</sup>

*Every intoxicant is 'khamr' and every khamr is haram*

This shows the concern of Islamic legislation over fourteen centuries for the protection of human life and the conservation of the social and physical environment against all forms of corruption, harm, damage and pollution.

### **(c) Commitments for a Safe Environment:**

Human beings are at the Centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature. In order to achieve sustainable development,

environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it. Human Beings are confronted with a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems. However, integration of environment and development concerns and greater attention to them will lead to the fulfillment of basic needs, improved living standards for all, better protected and managed ecosystems and a safer, more prosperous future.

The major commitments and objectives of Rio Declaration are:

- by the year 2000, to incorporate environmental safeguards as part of development
- establish programs for providing environmental injury, hazard surveillance and the basis for abatement in all countries;
- establish programs for tackling pollution at the source and at the disposal site.
- control use of pesticides,
- establish industrial hygiene programmes in major industries for surveillance of workers exposure to health hazards<sup>124</sup>.

Beijing Declaration states that: *We are deeply convinced that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, which is the framework for our efforts to achieve a higher quality of life for all people. Equitable social development that recognizes empowering the poor, particularly women living in poverty, to utilize environmental resources sustainably is a necessary foundation for sustainable development*<sup>125</sup>.

The major actions and commitments made in Beijing Declaration are to:

- Ensure opportunities for women to participate in environmental decision-making at all levels.
- Facilitate and increase women's access to information and education, including in the areas of science, technology and economics, thus enhancing their knowledge, skills and opportunities for participation in environmental decisions.
- Take appropriate measures to reduce risks to women from identified environmental hazards at home, at work and in other environments.
- Integrate women, their perspectives and knowledge in decision-making regarding sustainable resource management and the development of policies for sustainable development.
- Evaluate policies in terms of environmental impact and women's equal access to and use of natural resources<sup>126</sup>.

Sustainable development is essential for human settlements development, and gives full consideration to the needs and necessities of achieving economic growth, social development and environmental protection. The main commitments are:

- sustainable human settlements in an urbanizing world by developing societies that will make efficient use of resources within the carrying capacity of ecosystems
- by providing all people with equal opportunities for a healthy, safe and productive life in harmony with nature

- promoting changes in unsustainable production and consumption patterns, population policies that are sustainable, reduce environmental stress
- promote efficient use of natural resources and meet basic needs, providing a healthy environment and reducing the ecological footprint of human settlements<sup>127</sup>.

World Resources' Annual Report 2000-2001, focuses on people and ecosystems and points out that people of all nations, rich or poor, are experiencing the effects of ecosystem decline in one form or another; water shortages, soil erosion, fish kills, landslides on deforested slopes, and fires in disturbed forests are but a few manifestations of environmental degradation that have a direct impact on human beings<sup>128</sup>.

The link between environmental degradation and human living conditions is of even greater relevance when one considers that the victims of environmental degradation tend to belong to the more vulnerable sectors of society, racial and ethnic minorities or the poor, who regularly share a disproportionate burden of environmental contamination. Examples include municipal waste sites and industrial toxic dumps that are placed systematically in sectors where certain populations, who are less able to defend them against such exposures. This phenomenon is labeled as 'environmental discrimination' or 'environmental racism'<sup>129</sup>.

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