

Abu'l A'la Mawdūdī (1903-1979)

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HUMAN RIGHTS IN ISLAM

Voorwoord

Mensenrechten in de Islam - het standpunt van al-Mawdūdī

Zoals in het voorwoord vermeld lag het in de bedoeling om het onderwerp van de mensenrechten in de Islam zowel van orientalistische (niet-Moslimse) als van Moslimse zijde te doen belichten. Immers, zoals bekend hebben Moslims tegen uiteenzettingen van niet-Moslims over hun religie vaak het bezwaar dat niet-gelovigen zich onmogelijk kunnen inleven in de begrippenwereld van een religie waarin zij niet geloven, en dat alleen een gelovig Moslims daaraan recht kan doen. Omgekeerd kan men vaak horen verdedigen dat over de geloofsinhoud van een religie alleen door buitenstaanders objectief en onbevangen kan worden geoordeeld. Het lag dus voor de hand om op het symposium dit dilemma op te lossen door het onderwerp van beide kanten te laten belichten.

Het ligt in deze gedachtegang dus evenzeer voor de hand om in de jaarlijkse bundel van de RIMO dit evenzeer te doen en in plaats van de tekst van de voordracht van Ambassadeur al-Khalīl een tekst op te nemen van een Moslims geleerde die representatief mag worden geacht

voor de moderne Islam. Uiteraard betekent dit niet dat de opvattingen van Ambassadeur al-Khalīl op alle punten overeenstemmen met die van de Pakistaanse geleerde, Abu'l-A'la Mawdūdī (1903-1979). Er was altijd, en er is nog steeds, in de Islam een grote verscheidenheid van opvattingen over de bijzonderheden van de leer. Maar de keuze van Mawdūdī leek in zoverre gerechtvaardigd dat het hier een geleerde betreft die een belangrijke rol heeft gespeeld in het moderne theologische denken in zijn land, en zelfs één van de weinige niet-Arabieren is geweest die ook in de Arabische wereld veel gezag had. Hij is zelfs wel als de meest consequente denker van het moderne Moslimse fundamentalisme beschreven, een richting die juist in de laatste jaren sterk in de belangstelling is komen te staan. Mawdūdī richtte in 1941 - dus nog ruim vóór de stichting van Pakistan in 1949 - de *Jamā'at-i Islāmī* op, een beweging die in Pakistan later een belangrijke rol heeft gespeeld (al is zij wel nauwer betrokken geweest bij het bewind van de onlangs overleden Zia dan wel wordt aangenomen).

De hieronder volgende fragmenten zijn afkomstig uit een brochure van Mawdūdī's hand, getiteld *Human Rights in Islam* gepubliceerd door de *Islamic Foundation*. De oorspronkelijke tekst was waarschijnlijk in het Urdu gesteld maar de vertaling is uiteraard door deze *Islamic Foundation* goedgekeurd, zodat zij geacht kan worden ook in dit opzicht representatief te zijn voor het Moslimse standpunt. Het was uiteraard niet mogelijk de hele tekst over te nemen. Mede om redenen van plaatsruimte is besloten zich te beperken tot de paragrafen "Basic Human Rights" en "Rights of Citizens in an Islamic State" die geacht kunnen worden de belangrijkste informatie over de mensenrechten in de Islam te geven.

Met opzet is afgezien van nadere toelichtingen omdat daardoor aan de opzet hier een Moslim het woord te laten afbreuk zou worden gedaan. De bedoeling is dus dat deze beide fragmenten voor zichzelf spreken. In de inleiding, onder de titel "Human Rights, the West and Islam", wordt de nadruk gelegd op het verschil tussen de Westerse opvatting over mensenrechten, als het resultaat van menselijke denkwerk, en de Islamitische, als een door God gegeven systeem. De brochure bevat verder een beschouwing over het Islamitische oorlogsrecht, getiteld "*Rights of Enemies at War*".

J. Brugman

Basic human rights

The first thing that we find in Islam in this connection is that it lays down some rights for man as a human being. In other words it means that every man whether he belongs to this country or that, whether he is a believer or unbeliever, whether he lives in some forest or is found in some desert, whatever be the case, he has some basic human rights simply because he is a human being, which should be recognised by every Muslim. In fact it will be his duty to fulfil these obligations.

1. The right to life

The first and the foremost basic right is the right to live and respect for human life. The Holy Qur'ān lays down:

“Whosoever kills a human being (without any reason like) manslaughter, or corruption on earth, it is though he had killed all mankind” (5:32).

As far as the question of taking life in retaliation for murder or the question of punishment for spreading corruption on this earth is concerned, it can be decided only by a proper and competent court of law. If there is any war with any nation or country, it can be decided only by a properly established government. In any case, no human being has any right by itself to take human life in retaliation or for causing mischief on this earth. Therefore it is incumbent on every human being that under no circumstances should he be guilty of taking a human life. If anyone has murdered a human being, it is as if he has

slain the entire human race. These instructions have been repeated in the Holy Qur'ān in another place saying:

“Do not kill a soul which Allah has made sacred except through the due process of law” (6:151).

Here also homicide has been distinguished from destruction of life carried out in pursuit of justice. Only a proper and competent court will be able to decide whether or not an individual has forfeited his right to life by disregarding the right to life and peace of other human beings. The Prophet, may God's blessings be on him, has declared homicide as the greatest sin only next to polytheism. The Tradition of the Prophet reads: “The greatest sins are to associate something with God and to kill human beings.” In all these verses of the Qur'ān and the Traditions of the Prophet the word 'soul' (*nafs*) has been used in general terms without any distinction or particularisation which might have lent itself to the elucidation that the persons belonging to one's nation, the citizens of one's country, the people of a particular race or religion should not be killed. The injunction applies to all human beings and the destruction of human life in itself has been prohibited.

'The Right to Life' has been given to man only by Islam. You will observe that the people who talk about human rights if they have ever mentioned them in their Constitutions or Declarations, then it is clearly implied in them that these rights are applicable only to their citizens or they have been framed for the white race alone. This can clearly be gleaned by the fact that human beings were hunted down like animals in Australia and the land was cleared of the aborigines for the white man. Similarly the aboriginal population of America was systematically destroyed and the Red Indians who somehow survived this genocide were confined to specified areas called Reservations. They also penetrated into Africa and hunted down human beings like wild

animals. All these instances go to prove that they have no respect for human life as such and if they have, it is only on the basis of their nationality, colour or race. Contrary to this Islam recognises this right for all human beings. If a man belongs to a primitive or savage tribe, even then Islam regards him as a human being.

2. The right to the safety of life

Immediately after the verse of the Holy Qur'ān which has been mentioned in connection with the right to life, God has said: "And whoever saves a life it is as though he had saved the lives of all mankind" (5:32). There can be several forms of saving man from death. A man may be ill or wounded, irrespective of his nationality, race or colour. If you know that he is in need of your help, then it is your duty that you should arrange for his treatment for disease or wound. If he is dying of starvation, then it is your duty to feed him so that he can ward off death. If he is drowning or his life is at stake, then it is your duty to save him. You will be surprised to hear that the Talmud, the religious book of the Jews, contains a verse of similar nature, but records it in altogether different form. It says: "Whoever destroyed the life of the Israelite, in the eyes of the Scripture, it is as if he destroyed the whole world. And whoever protected and saved one life of the Israelite, in the light of the Scripture it is as if he saved the whole world." Talmud also contains the view that if a non-Israelite is drowning and you tried to save him then you are a sinner. Can it be given a name other than racialism? We regard it as our duty to save every human life, because it is thus that we have been enjoined in the Holy Qur'ān. On the other hand, if they regard it necessary to save the life of a human being at all, it should be the life of an Israelite. As far as other people are concerned, according to this view, they do not seem to be human enough to deserve

protection of their persons. In their literature the concept of 'Goyim' for which the English word 'Gentile' and the Arabic word *Ummi* (illiterate) is used, is that they enjoy no human rights: human rights are reserved only for the children of Israel. The Qur'ān has mentioned this belief of the Israelites and quotes the Jews saying: "There is no blame on us (for anything we may do) with regard to the unlettered folk (i.e. the *ummi*)" (3:75).

3. Respect for the chastity of women

The third important thing that we find in the Charter of Human Rights granted by Islam is that a woman's chastity has to be respected and protected under all circumstances, whether she belongs to our own nation or to the nation of an enemy, whether we find her in the wild forest or in a conquered city; whether she is our coreligionist or belongs to some other religion or has no religion at all. A Muslim cannot outrage her under any circumstances. All promiscuous relationship has been forbidden to him, irrespective of the status or position of the woman, whether the woman is a willing or an unwilling partner to the act. The words of the Holy Qur'ān in this respect are: "Do not approach (the bounds) of adultery" (17:32).

Heavy punishment has been prescribed for this crime, and the order has not been qualified by any conditions. Since the violation of chastity of a woman is forbidden in Islam, a Muslim who perpetrates this crime cannot escape punishment whether he receives it in this world or in the Hereafter. This concept of sanctity of chastity and protection of women can be found nowhere else except in Islam. The armies of the Western powers need the daughters of their nation to satisfy their carnal appetites even in their own countries, and if they happen to occupy another country, the fate of its women folk can better be imagined than

described. But the history of the Muslims, apart from a few lapses of the individuals here or there, has been free from this crime against womanhood. It has never happened that after the conquest of a foreign country the Muslim army has gone about raping the women of the conquered people, or in their own country, the government has arranged to provide prostitutes for them. This is also a great blessing which the human race has received through Islam (1).

4. The right to a basic standard of life

Speaking about the economic rights the Holy Qur'ān enjoins upon its followers:

"And in their wealth there is acknowledged right for the needy and destitute" (51:12).

The words of this injunction show that it is a categorical and unqualified order. Furthermore this injunction was given in Makka where there was no Muslim society in existence and where generally the Muslims had to come in contact with the population of the disbelievers. Therefore the clear meaning of this verse is that anyone who asks for help and anyone who is suffering from deprivation has a right in the property and wealth of the Muslims; irrespective of the fact whether he belongs to this nation or to that nation, to this country and to that country, to this race or to that race. If you are in a position to help and a needy person asks you for help or if you come to know that he is in need, then it is your duty to help him. God has established his right over you, which you have to honour as a Muslim.

5. Individual's right to freedom

Islam has clearly and categorically forbidden the primitive practice of capturing a free man, to make him a slave or to sell him into slavery. On this point the clear and unequivocal words of the Prophet are as follows: "There are three categories of people against whom I shall myself be a plaintiff on the Day of Judgement. Of these three, one is he who enslaves a free man, then sells him and eats his money" (Bukhāri and Ibn Māja). The words of this Tradition of the Prophet are also general, they have not been qualified or made applicable to a particular nation, race, country or followers of a particular religion. The Europeans take great pride in claiming that they abolished slavery from the world, though they had the decency to do so only in the middle of the last century. Before this, these Western powers had been raiding Africa on a very large scale, capturing their free men, putting them in bondage and transporting them to their new colonies. The treatment which they have meted out to these unfortunate people has been worse than the treatment given to animals. The books written by the Western people themselves bear testimony to this fact.

The Slave Trade of Western Nations

After the occupation of America and the West Indies, for three hundred and fifty years, traffic in slave trade continued. The African coasts where the black skinned captured Africans were brought from the interior of Africa and put on the ships sailing out from those ports, came to be known as the Slave Coast. During only one century (from 1680 to 1786) the total number of free people who were captured and enslaved only for British Colonies amounts, according to the estimate of British authors, to 20 million human beings. Over the period of only one year (1790) we are told that 75,000 human beings were captured and sent

for slave labour in the Colonies. The ships which were used for transporting the slaves were small and dirty. These unfortunate Africans were thrust into the holds of these ships like cattle right up to the top and many of them were chained to the wooden shelves on which they could hardly move because these were only eighteen inches apart, kept one on top of the other. They were not provided with suitable food, and if they fell ill or were injured, no attempt was made to provide them with medical treatment. The Western writers themselves state that at least 20% of the total number of people who were captured for slavery and forced labour perished during their transportation from the African coast to America. It has also been estimated that the total number of people who were captured for slavery by the various European nations during the heyday of the slave trade comes to at least one hundred million. This is the record of the people who denounce Muslims day and night for recognising the institution of slavery. It is as if a criminal is holding his finger of blame towards an innocent man.

The Position of Slavery in Islam

Briefly I would like to tell you about the position and nature of slavery in Islam. Islam tried to solve the problem of the slaves that were in Arabia by encouraging the people in different ways to set their slaves free. The Muslims were ordered that in expiation of some of their sins they should set their slaves free. Freeing a slave by one's own free will was declared to be an act of great merit, so much so that it was said that every limb of the man who manumits a slave will be protected from hell-fire in lieu of the limb of the slave freed by him. The result of this policy was that by the time the period of the Rightly-Guided Caliphs was reached, all the old slaves of Arabia were liberated. The Prophet alone liberated as many as 63 slaves. The number of slaves freed by 'Ā'isha was 67, 'Abbās liberated 70, 'Abd Allāh bin 'Umar liberated one

thousand, and 'Abd al-Raḥmān purchased thirty thousand and set them free. Similarly other Companions of the Prophet liberated a large number of slaves, the details of which are given in the Traditions and books of history of that period.

Thus the problem of the slaves of Arabia was solved in a short period of thirty or forty years. After this the only form of slavery which was left in Islamic society was the prisoners of war, who were captured on the battlefield. These prisoners of war were retained by the Muslim Government until their Government agreed to receive them back in exchange for Muslim soldiers captured by them, or arranged the payment of ransom on their behalf. If the soldiers they captured were not exchanged with Muslim prisoners of war, or their people did not pay their ransom money to purchase their liberty, then the Muslim Government used to distribute them among the soldiers of the army which had captured them. This was a more humane and proper way of disposing of them than retaining them like cattle in concentration camps and taking forced labour from them and, if their women folk were also captured, setting them aside for prostitution. In place of such a cruel and outrageous way of disposing of the prisoners of war, Islam preferred to spread them in the population and thus brought them in contact with individual human beings. Over and above, their guardians, were ordered to treat them well. The result of this humane policy was that most of the men who were captured on foreign battlefields and brought to the Muslim countries as slaves embraced Islam and their descendants produced great scholars, *imams*, jurists, commentators, statesmen and generals of the army. So much so that later on they became the rulers of the Muslim world. The solution of this problem which has been proposed in the present age is that after the cessation of hostilities the prisoners of war of the combatant countries should be

exchanged. Whereas Muslims have been practising it from the very beginning and whenever the adversary accepted the exchange of prisoners of war from both sides, it was implemented without the least hesitation or delay. In modern warfare we also find that if one government is completely routed leaving her in no position of bargaining for the prisoners of war and the winning party gets its prisoners easily, then experience has shown that the prisoners of war of the vanquished army are kept in conditions which are much worse than the conditions of slaves. Can anyone tell us what has been the fate of the thousands of prisoners of war captured by Russia from the defeated armies of Germany and Japan in the Second World War?

No one has given their account so far. No one knows how many thousands of them are still alive and how many thousands of them have perished due to the hardship of the Russian concentration and labour camps. The forced labour which has been taken from them is much worse than the service one can exact from slaves. Even perhaps in the times of ancient Pharaohs of Egypt such harsh labour might not have been exacted from the slaves in building the pyramids of Egypt, as has been exacted from the prisoners of war in Russia in developing Siberia and other backward areas of Russia or working in coal and other mines in below zero temperatures, ill clad, ill fed and brutally treated by their supervisors.

6. The right to justice

This is a very important and valuable right which Islam has given to man as a human being. The Holy Qur'ān has laid down: "Do not let your hatred of a people incite you to aggression" (5:3). "And do not let ill-will towards any folk incite you so that you swerve from dealing justly. Be just; that is nearest to heedfulness" (5:8). Stressing this point the Qur'ān

again says: "You who believe stand steadfast before God as witness for (truth and) fairplay (4:135). This makes the point clear that Muslims have to be just not only with ordinary human beings but even with their enemies. In other words, the justice to which Islam invites her followers is not limited only to the citizens of their own country, or the people of their own tribe, nation or race, or the Muslim community as a whole, but is meant for all the human beings of the world. Muslims therefore, cannot be unjust to anyone. Their permanent habit and character should be such that no man should ever fear injustice at their hands, and they should treat every human being everywhere with justice and fairness.

7. Equality of human beings

Islam not only recognises absolute equality between men irrespective of any distinction of colour, race or nationality, but makes it an important and significant principle, a reality. The Almighty God has laid down in the Holy Qur'ān: "O mankind, we have created you from a male and female." In other words all human beings are brothers to one another. They all are the descendants from one father and one mother. "And we set you up as nations and tribes so that you may be able to recognise each other" (49:13). This means that the division of human beings into nations, races, groups and tribes is for the sake of distinction, so that people of one race or tribe may meet and be acquainted with the people belonging to another race or tribe and cooperate with one another. This division of the human race is neither meant for one nation to take pride in its superiority over others nor is it meant for one nation to treat another with contempt or disgrace, or regard them as a mean and degraded race and usurp their rights. "Indeed, the noblest among you before God are the most heedful of you" (49:13). In other words the

superiority of one man over another is only on the basis of God-consciousness, purity of character and high morals, and not on the basis of colour, race, language or nationality and even this superiority based on piety and pure conduct does not justify that such people should play lord or assume airs of superiority over other human beings. Assuming airs of superiority is in itself a reprehensible vice which no God-fearing and pious man can ever dream of perpetrating. Nor does the righteous have more privileged rights over others, because this runs counter to human equality, which has been laid down in the beginning of this verse as a general principle. From the moral point of view, goodness and virtue is in all cases better than vice and evil.

This has been exemplified by the Prophet in one of his sayings thus: "No Arab has any superiority over a non-Arab, nor does a non-Arab have any superiority over an Arab. Nor does a white man have any superiority over a black man, or the black man any superiority over the white man. You are the children of Adam, and Adam was created from clay" (Bayhaqī and Bazzāz). In this manner Islam established equality for the entire human race and struck at the very root of all distinctions based on colour, race, language or nationality. According to Islam, God has given man this right of equality as a birthright. Therefore no man should be discriminated against on the ground of the colour of his skin, his place of birth, the race or the nation in which he was born. Malcolm X, the famous leader of African Negroes in America, who had launched a bitter struggle against the white people of America in order to win civil rights for his black compatriots, when he went to perform the pilgrimage, and saw how the Muslims of Asia, Africa, Europe, America and those of different races, languages and colours of skin, were wearing one dress and were hurrying towards God's House—the *Ka'ba* and offering prayers standing in one row and there was no distinction of any

kind between them, then he realised that this was the solution to the problem of colour and race, and not what he had been trying to seek or achieve in America so far. Today, a number of non-Muslim thinkers, who are free from blind prejudice, openly admit that no other religion or way of life has solved this problem with the same degree of success with which Islam has done so.

8. The right to co-operate and not to co-operate

Islam has prescribed a general principle of paramount importance and universal application saying: "Co-operate with one another for virtue and heedfulness and do not co-operate with one another for the purpose of vice and aggression" (5:2). This means that the man who undertakes a noble and righteous work, irrespective of the fact whether he is living at the North Pole or the South Pole, has the right to expect support and active co-operation from the Muslims. On the contrary he who perpetrates deeds of vice and aggression, even if he is our closest relation or neighbour, does not have the right to win our support and help in the name of race, country, language or nationality, nor should he have the expectation that Muslims will co-operate with him or support him. Nor is it permissible for Muslims to co-operate with him. The wicked and vicious person may be our own brother, but he is not of us, and he can have no help or support from us as long as he does not repent and reform his ways. On the other hand the man who is doing deeds of virtue and righteousness may have no kinship with Muslims, but Muslims will be his companions and supporters or at least his well-wishers.

Rights of citizens in an Islamic State

We have discussed the human rights in general. Now we would like to take up the question of rights of the citizens in an Islamic State. As these rights are more extensive than the general human rights which have been described earlier, they need separate treatment.

1. The security of life and property

In the address which the Prophet delivered on the occasion of the Farewell *Hajj*, he said: "Your lives and properties are forbidden to one another till you meet your Lord on the Day of Resurrection." God Almighty has laid down in the Holy Qur'ān: "Anyone who kills a believer deliberately will receive as his reward (a sentence) to live in Hell for ever. God will be angry with him and curse him, and prepare dreadful torment for him" (4:93). The Prophet has also said about the *dhimmi*s (the non-Muslim citizens of the Muslim state): "One who kills a man under covenant (i.e. a *dhimmi*) will not even smell the fragrance of Paradise" (Bukhārī and Abū Dāwūd). Islam prohibits homicide but allows only one exception, that the killing is done in the due process of law which the Qur'ān refers to as *bi'l-haqq* (with the truth). Therefore a man can be killed only when the law demands it, and it is obvious that only a court of law can decide whether the execution is being carried out with justice or without justification. In case of war or insurrection a just and righteous government alone, which follows the *shari'a* or the Islamic law, can decide whether a war is just or unjust, whether taking of a life is justified or not; and whether a person is a rebel or not and who can be sentenced to death as a punishment. These weighty decisions cannot be left in the hands of a court which has become heedless to God and is under the influence of the administration. A judiciary like this may

miscarry justice. Nor can the crimes of state be justified on the authority of the Holy Qur'ān or Traditions (*Hadith*) when the state murders its citizens openly and secretly without any hesitation or on the slightest pretext, because they are opposed to its unjust policies and actions or criticize it for its misdeed, and also provides protection to its hired assassins who have been guilty of the heinous crime of murder of an innocent person resulting in the fact, that neither the police take any action against such criminals nor can any proof of witnesses against these criminals be produced in the courts of law. The very existence of such a government is a crime and none of the killings carried out by them can be called "execution for the sake of justice" in the phraseology of the Holy Qur'ān.

Along with security of life, Islam has with equal clarity and definiteness conferred the right of security of ownership of property, as mentioned earlier with reference to the address of the Farewell *Hajj*. On the other hand, the Holy Qur'ān goes so far as to declare that the taking of people's possessions or property is completely prohibited unless they are acquired by lawful means as permitted in the laws of God. The law of God categorically declares "Do not devour one another's wealth by false and illegal means" (2:188).

2. The protection of honour

The second important right is the right of the citizens to the protection of their honour. In the address delivered on the occasion of the Farewell *Hajj*, to which I have referred earlier, the Prophet did not only prohibit the life and property of the Muslims to one another, but also any encroachment upon their honour, respect and chastity were forbidden to one another. The Holy Qur'ān clearly lays down:

(a) "You who believe, do not let one (set of) people make fun of another set.

(b) Do not defame one another.

(c) Do not insult by using nicknames.

(d) And do not backbite or speak ill of one another" (49:11-12).

This is the law of Islam for the protection of honour which is indeed much superior to and better than the Western Law of Defamation. According to the Islamic law if it is proved that someone has attacked the honour of another person, then irrespective of the fact whether or not the victim is able to prove himself a respectable and honourable person the culprit will in any case get his due punishment. But the interesting fact about the Western Law of Defamation is that the person who files suit for defamation has first to prove that he is a man of honour and public esteem and during the interrogation he is subjected to the scurrilous attacks, accusations and innuendoes of the defence council to such an extent that he earns more disgrace than the attack on his reputation against which he had knocked the door of the court of law. On top of it he has also to produce such witnesses as would testify in the court that due to the defamatory accusations of the culprit, the accused stands disgraced in their eyes. Good Gracious! what a subtle point of law, and what an adherence to the spirit of law! How can this unfair and unjust law be compared to the Divine law? Islam declared blasphemy as a crime irrespective of the fact whether the accused is a man of honour or not, and whether the words used for blasphemy have actually disgraced the victim and harmed his reputation in the eyes of the public or not. According to the Islamic law the mere proof of the fact that the accused said things which according to common sense could have damaged the reputation and honour of the plaintiff, is enough for the accused to be declared guilty of defamation.

3. The sanctity and security of private life

Islam recognises the right of every citizen of its state that there should be no undue interference or encroachment on the privacy of his life. The Holy Qur'ān has laid down the injunction: "Do not spy on one another" (49:12). "Do not enter any houses except your own homes unless you are sure of their occupants' consent" (24:27). The Prophet has gone to the extent of instructing his followers that a man should not enter even his own house suddenly or surreptitiously. He should somehow or other inform or indicate to the dwellers of the house that he is entering the house, so that he may not see his mother, sister or daughter in a condition in which they would not like to be seen, nor he would himself like to see them in that condition. Peering into the houses of other people has also been strictly prohibited, so much so that there is the saying of the Prophet that if a man finds another person secretly peering into his house, and he blinds his eye or eyes as a punishment then he cannot be called to question nor will he be liable to prosecution. The Prophet has even prohibited people from reading the letters of others, so much so that if a man is reading his letter and another man casts sidelong glances at it and tries to read it, his conduct becomes reprehensible. This is the sanctity of privacy that Islam grants to individuals. On the other hand in the modern civilized world we find that not only the letters of other people are read and their correspondence censored, but even its photostat copies are retained for future use or blackmail. Even bugging devices are secretly fixed in the houses of the people so that one can hear and tape from a distance the conversation taking place behind closed doors. In other words it means that there is no such thing as privacy and to all practical purposes the private life of the individual does not exist.

This espionage on the life of the individual cannot be justified on moral grounds by the government saying that it is necessary to know the secrets of the dangerous persons. Though, to all intents and purposes, the basis of this policy is the fear and suspicion with which modern governments look at their citizens who are intelligent and dissatisfied with the official policies of the government. This is exactly what Islam has called as the root cause of mischief in politics. The injunction of the Prophet is: "When the ruler begins to search for the causes of dissatisfaction amongst his people, he spoils them" (Abū Dāwūd). The Amir Mu'āwiya has said that he himself heard the Prophet saying: "If you try to find out the secrets of the people, then you will definitely spoil them or at least you will bring them to the verge of ruin." The meaning of the phrase 'spoil them' is that when spies (C.I.D. or F.B.I. agents) are spread all around the country to find out the affairs of men, then the people begin to look at one another with suspicion, so much so that people are afraid of talking freely in their houses lest some word should escape from the lips of their wives and children which may put them in embarrassing situations. In this manner it becomes difficult for a common citizen to speak freely, even in his own house and society begins to suffer from a state of general distrust and suspicion.

4. The security of personal freedom

Islam has also laid down the principle that no citizen can be imprisoned unless his guilt has been proved in an open court. To arrest a man only on the basis of suspicion and to throw him into a prison without proper court proceedings and without providing him a reasonable opportunity to produce his defence is not permissible in Islam. It is related in the *Hadith* that once the Prophet was delivering a lecture in the Mosque, when a man rose during the lecture and said: "O Prophet of God, for

what crime have my neighbours been arrested?' The Prophet heard the question and continued his speech. The man rose once again and repeated the same question. The Prophet again did not answer and continued his speech. The man rose for a third time and repeated the same question. Then the Prophet ordered that the man's neighbours be released. The reason why the Prophet 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 neighbours of this man, he would have got up to explain his position. Since the police officer gave no reasons for these arrests the Prophet ordered that the arrested persons should be released. The police officer was aware of the Islamic law and therefore he did not get up to say: "the administration is aware of the charges against the arrested men, but they cannot be disclosed in public. If the Prophet would inquire about their guilt *in camera* I would enlighten him." If the police officer had made such a statement, he would have been dismissed then and there. The fact that the police officer did not give any reasons for the arrests in the open court was sufficient reason for the Prophet to give immediate orders for the release of the arrested men. The injunction of the Holy Qur'ān is very clear on this point. "Whenever you judge between people, you should judge with (a sense of) justice" (4:58). And the Prophet has also been asked by God: "I have been ordered to dispense justice between you." This was the reason why the Caliph 'Umar said: "In Islam no one can be imprisoned except in pursuance of justice." The words used here clearly indicate that justice means due process of law. 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 of their suspicion before a court of law and the culprit or the suspect should be allowed to produce his defence in an open court, so that the court may decide whether the suspicion against him is based on sound grounds or not and if there is good reason for suspicion, then he should be informed of how long he will be in preventive detention.

This decision should be taken under all circumstances in an open court, so that the public may hear the charges brought by the government, as well as the defence made by the accused and see that the due process of law is being applied to him and he is not being victimised.

The correct method of dealing with such cases in Islam is exemplified in the famous decision of the Prophet which took place before the conquest of Makka. The Prophet was making preparations for the attack on Makka, when one of his Companions, Ḥaṭīb bin Abī Balṭa'a sent a letter through a woman to the authorities in Makka informing them about the impending attack. The Prophet came to know of this through a Divine inspiration. He ordered 'Alī and Zubair: "Go quickly on the route to Makka, at such and such a place, you will find a woman carrying a letter. Recover the letter from her and bring it to me." So they went and found the woman exactly where the Prophet had said. They recovered the letter from her and brought it to the Prophet. This was indeed a clear case of treachery. To inform the enemy about a secret of an army and that too at the time of a war is a very serious offence tantamount to treachery. In fact one cannot think of a more serious crime during war than giving out a military secret to one's enemy. What could have been a more suitable case for a secret hearing; a military secret had been betrayed and common sense demanded that he should be tried *in camera*. But the Prophet summoned Ḥaṭīb to the open court of the Mosque of the Prophet and in the presence of hundreds of people asked

him to explain his position with regard to his letter addressed to the leaders of Quraysh which had been intercepted on its way. The accused said: "O God's Messenger (may God's blessings be on you) I have not revolted against Islam, nor have I done this with the intention of betraying a military secret. The truth of the matter is that my wife and children are living in Makka and I do not have my tribe to protect them there. I had written this letter so that the leaders of Quraysh may be indebted to me and may protect my wife and children out of gratitude." Umar rose and respectfully submitted: "O Prophet, please permit me to put this traitor to the sword." The Prophet replied: "He is one of those people who had participated in the battle of Badr (2), and the explanation he has advanced in his defence would seem to be correct."

Let us look at this decision of the Prophet in perspective. It was a clear case of treachery and betrayal of military secrets. But the Prophet acquitted Ḥaṭīb on two counts. Firstly, that his past records were very clean and showed that he could not have betrayed the cause of Islam, since on the occasion of the battle of Badr when there were heavy odds against the Muslims, he had risked his life for them. Secondly, his family was in fact in danger at Makka. Therefore, if he had shown some human weakness for his children and written this letter, then this punishment was quite sufficient for him that his secret offence was divulged in public and he had been disgraced and humiliated in the eyes of the Believers. God has referred to this offence of Ḥaṭīb in the Holy Qur'ān but did not propose any punishment for him except rebuke and admonition.

The attitude and activities of the Khārjites in the days of the Caliph 'Alī 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. 'Alī 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 Imām Abū Ḥanīfa has recorded the following saying of the Caliph 'Alī: "As long as they do not set out on armed rebellion, the Caliph of the Faithful will not interfere with them." On another occasion 'Alī was delivering a lecture in the mosque when the Khārjites raised their special slogan there. 'Alī said: "We will not deny you the right to come to the mosques to worship God, nor will we stop to give your share from the wealth of the state, as long as you are with us (and support us in our wars with the unbelievers) and we shall never take military action against you as long as you do not fight with us." One can visualise the opposition which 'Alī was facing; more violent and vituperative opposition cannot even be imagined in a present day democratic state; but the freedom that he had allowed to the opposition was such that no government has ever been able to give to its opposition. He did not arrest even those who threatened him with murder nor did he imprison them.

5. The right to protest against tyranny

Amongst the rights that Islam has conferred on human beings is the right to protest against government's tyranny. Referring to it the Qur'ān says: "God does not love evil talk in public unless it is by someone who has been injured thereby" (4:148). This means that God strongly disapproves of abusive language or strong words of condemnation, but the person who has been the victim of injustice or tyranny, God gives him the right to openly protest against the injury that has been done to him. This right is not limited only to individuals. The words of the verse are general. Therefore if an individual or a group of people or a party

usurps power and after assuming the reins of authority begins to tyrannise individuals or groups of men or the entire population of the country then to raise the voice of protest against it openly is the God-given right of man and no one has the authority to usurp or deny this right. If anyone tries to usurp this right of citizens then he rebels against God. The talisman of Section 144 (3) may protect such a tyrant in this world, but it cannot save him from the hell-fire in the Hereafter.

6. Freedom of expression

Islam gives the right of freedom of thought and expression to all citizens of the Islamic State on the condition that it should be used for the propagation of virtue and truth and not for spreading evil and wickedness. This Islamic concept of freedom of expression is much superior to the concept prevalent in the West. Under no circumstances would Islam allow evil and wickedness to be propagated. It also does not give anybody the right to use abusive or offensive language in the name of criticism. The right to freedom of expression for the sake of propagating virtue and righteousness is not only a right in Islam but an obligation. One who tries to deny this right to his people is openly at war with God, the All-Powerful. And the same thing applies to the attempt to stop people from evil. Whether this evil is perpetrated by an individual or by a group of people or the government of one's own country, or the government of some other country, it is the right of a Muslim and it is also his obligation that he should warn and reprimand the evil-doer and try to stop him from doing it. Over and above, he should openly and publicly condemn it and show the course of righteousness which that individual, nation or government should adopt.

The Holy Qur'ān has described this quality of the Faithful in the following words: "They enjoin what is proper and forbid what is improper" (9:71). In contrast, describing the qualities of hypocrite, the Qur'ān mentions: "They bid what is improper and forbid what is proper" (9:67). The main purpose of an Islamic Government has been defined by God in the Qur'ān as follows: "If we give authority to these men on earth they will keep up prayers, and offer welfare due, bid what is proper and forbid what is improper" (22:41). The Prophet has said: "If any one of you comes across an evil, he should try to stop it with his hand (using force). If he is not in a position to stop it with his hand then he should try to stop it by means of his tongue (meaning he should speak against it). If he is not even able to use his tongue then he should at least condemn it in his heart. This is the weakest degree of faith" (Muslim). This obligation of inviting people to righteousness and forbidding them to adopt the paths of evil is incumbent on all true Muslims. If any government deprives its citizens of this right, and prevents them from performing this duty then it is in direct conflict with the injunction of God. The government is not in conflict with his people, but is in conflict with God. In this way it is at war with God and is trying to usurp that right of its people which God has conferred not only as a right but as an obligation. As far as the government which itself propagates evil, wickedness and obscenity and interferes with those who are inviting people to virtue and righteousness is concerned, according to the Holy Qur'ān it is the government of the hypocrites.

7. Freedom of association

Islam has also given people the right to freedom of association and formation of parties or organisations. This right is also subject to certain general rules. It should be exercised for propagating virtue and

righteousness and should never be used for spreading evil and mischief. We have not only be given this right for spreading righteousness and virtue, but have been ordered to exercise this right. Addressing the Muslims, the Holy Qur'ān declares:

"You are the best community which has been brought forth for mankind. You command what is proper and forbid what is improper and you believe in God" (3:110).

This means that it is the obligation and duty of the entire Muslim community that it should invite and enjoin people to righteousness and virtue and forbid them from doing evil. If the entire Muslim community is not able to perform this duty then "let there be a community among you who will invite (people) to (do) good, command what is proper and forbid what is improper, those will be prosperous" (3:104). This clearly indicates that if the entire Muslim people collectively begins to neglect its obligation to invite people to goodness and forbid them from doing evil then it is absolutely essential that it should contain at least a group of people which may perform this obligation. As has been said before this is not only a right but an obligation and on the fulfilment of which depends success and prosperity here as well as in the Hereafter. It is an irony with the religion of God that in a Muslim country the assembly and association that is formed for the purposes of spreading evil and mischief should have the right to rule over the country and the association and party which has been formed for propagating righteousness and virtue should live in perpetual fear of harassment and of being declared illegal. Conditions here are just the reverse of what has been prescribed by God. The claim is that we are Muslims and this is an Islamic State (4) but the work that is being done is directed to spreading evil, to corrupt and morally degrade and debase the people while there is an active and effective check on the work being carried out for reforming society and inviting people to righteousness. Moreover

the life of those who are engaged in spreading righteousness and checking the spread of evil and wickedness is made intolerable and hard to bear.

8. Freedom of conscience and conviction

Islam also gives the right to freedom of conscience and conviction to its citizens in an Islamic State. The Holy Qur'ān has laid down the injunction: "There should be no coercion in the matter of faith" (2:256). Though there is no truth and virtue greater than the Religion of Truth-Islam, and Muslims are enjoined to invite people to embrace Islam and advance arguments in favour of it, they are not asked to enforce this faith on them. No force will be applied in order to compel them to accept Islam. Whoever accepts it he does so by his own choice. Muslims will welcome such a convert to Islam with open arms and admit him to their community with equal rights and privileges. But if somebody does not accept Islam, Muslims will have to recognise and respect his decision, and no moral, social or political pressure will be put on him to change his mind.

9. Protection of religious sentiments

Along with the freedom of conviction and freedom of conscience Islam has given the right to the individual that his religious sentiments will be given due respect and nothing will be said or done which may encroach upon this right. It has been ordained by God in the Holy Qur'ān: "Do not abuse those they appeal to instead of God" (6:108). These instructions are not only limited to idols and deities, but they also apply to the leaders or national heroes of the people. If a group of people holds a conviction which according to you is wrong, and holds certain

persons in high esteem which according to you is not deserved by them, then it will not be justified in Islam that you use abusive language for them and thus injure their feelings. Islam does not prohibit people from holding debate and discussion, on religious matters, but it wants that these discussions should be conducted in decency. "Do not argue with the people of the Book unless it is in the politest manner" (29:46)-says the Qur'ān. This order is not merely limited to the People of the Scriptures, but applies with equal force to those following other faiths.

10. Protection from arbitrary imprisonment

Islam also recognises the right of the individual that he will not be arrested or imprisoned for the offences of others. The Holy Qur'ān has laid down this principle clearly: "No bearer of burdens shall be made to bear the burden of another" (6:164). Islam believes in personal responsibility. We ourselves are responsible for our acts, and the consequence of our actions cannot be transferred to someone else. In other words this means that every man is responsible for his actions. If another man has not shared this action then he cannot be held responsible for it, nor can he be arrested. It is a matter of great regret and shame that we are seeing this just and equitable principle which has not been framed by any human being, but by the Creator and Nourisher of the entire universe, being flouted and violated before our eyes. So much so that a man is guilty of a crime or he is a suspect, but his wife is being arrested for his crime. Things have gone so far that innocent people are being punished for the crimes of others. To give a recent example, in Karachi (Pakistan), a man was suspected of being involved in a bomb throwing incident. In the course of police investigation he was subjected to horrible torture in order to extract a confession from him. When he insisted on his innocence, then the police

arrested his mother, his wife, daughter and sister and brought them to the police station. They were all stripped naked in his presence, and he was stripped naked of all his clothes before their eyes so that a confession of the crime could be extracted from him. It appears as if for the sake of investigation of crime it has become proper and legal in our country to strip the innocent women folk of the household in order to bring pressure on the suspect. This is indeed very outrageous and shameful. This is the height of meanness and depravity. This is not a mere hearsay which I am repeating here, but I have full information about this case and can prove my allegations in any court of law. I would here like to ask what rights such tyrants who perpetrate these crimes against mankind have to tell us that they are Muslims or that they are conducting the affairs of the state according to the teachings of Islam and their state is an Islamic State. They are breaching and flouting a clear law of the Holy Qur'ān. They are stripping men and women naked which is strictly forbidden in Islam. They disgrace and humiliate humanity and then they claim that they are Muslims.

11. The right to basic necessities of life

Islam has recognised the right of the needy people that help and assistance will be provided to them. "And in their wealth there is acknowledged right for the needy and the destitute" (51:19). In this verse, the Qur'ān has not only conferred a right to every man who asks for assistance in the wealth of the Muslims, but has also laid down that if a Muslim comes to know that a certain man is without the basic necessities of life, then irrespective of the fact whether he asks for assistance or not, it is his duty to reach him and give all the help he can extend. For this purpose Islam has not depended only on the help and charity that is given voluntarily, but has made compulsory charity,

zakat as the third pillar of Islam, next only to profession of faith and worship of God through holding regular prayers. The Prophet has clearly instructed in this respect that: "It will be taken from their rich and given to those in the community in need" (Bukhārī and Muslim). In addition to this, it has also been declared that the Islamic State should support those who have nobody to support them. The Prophet has said: "The Head of state is the guardian of him who has nobody to support him" (Abū Dāwūd, Tirmidhī). The word *wali* which has been used by the Prophet is a very comprehensive word and has a wide range of meanings. If there is an orphan or an aged man, if there is a crippled or unemployed person, if one is invalid or poor and has no one else to support him or help him, then it is the duty and the responsibility of the state to support him and assist. If a dead man has no guardian or heir, then it is the duty of the state to arrange for his proper burial. In short the state has been entrusted with the duty and responsibility of looking after all those who need help and assistance. A truly Islamic State is therefore a truly welfare state which will be the guardian and protector of all those in need.

12. Equality before law

Islam gives its citizens the right to absolute and complete equality in the eyes of the law. As far as the Muslims are concerned, there are clear instructions in the Holy Qur'ān and *Hadith* that in their rights and obligations they are all equal: "The believers are brothers (to each other)" (49:10). "If they (disbelievers) repent and keep up prayer and pay the welfare due they are your brothers in faith" (9:11). The Prophet has said that: "The life and blood of Muslims are equally precious" (Abū Dāwūd; Ibn Māja). In another *Hadith* he has said: "The protection given by all Muslims are equal. Even an ordinary man of them can grant

protection to any man" (Bukhārī; Muslim; Abū Dāwūd). In another more detailed Tradition of the Prophet, it has been said that those who accept the Oneness of God, believe in the Prophethood of His Messenger, give up primitive prejudices and join the Muslim community and brotherhood, "then they have the same rights and obligations as other Muslims have" (Bukhārī; Nisāī). Thus there is absolute equality between the new converts to Islam and the old followers of the Faith.

This religious brotherhood and the uniformity of their rights and obligations is the foundation of equality in Islamic society, in which the rights and obligations of any person are neither greater nor lesser in any way than the rights and obligations of other people. As far as the non-Muslim citizen of the Islamic State are concerned, the rule of Islamic *shari'a* (law) about them has been very well expressed by the Caliph 'Alī in these words: "They have accepted our protection only because their lives may be like our lives and their properties like our properties" (Abū Dāwūd). In other words, their (of the *dhimmis*) lives and properties are as sacred as the lives and properties of the Muslims. Discrimination of people into different classes was one of the greatest crimes that, according to the Qur'ān, Pharaoh used to indulge in: "He had divided his people into different classes," ... "And he suppressed one group of them (at the cost of others)" (28:4).

13. Rulers not above the law

Islam clearly insists and demands that all officials of the Islamic State, whether he be the head or an ordinary employee, are equal in the eyes of the law. None of them are above the law or can claim immunity. Even an ordinary citizen in Islam has the right to put forward a claim or file a legal complaint against the highest executive of the country. The Caliph

'Umar said, "I have myself seen the Prophet, may God's blessings be on him, taking revenge against himself (penalising himself for some shortcoming or failing)." On the occasion of the battle of Badr, when the Prophet was straightening the rows of the Muslim army he hit the belly of a soldier in an attempt to push him back in line. The soldier complained "O, Prophet you have hurt me with your stick." The Prophet immediately bared his belly and said "I am very sorry, you can revenge by doing the same to me." The soldier came forward and kissed the abdomen of the Prophet and said that this was all that he wanted.

A woman belonging to a high and noble family was arrested in connection with a theft. The case was brought to the Prophet, and it was recommended that she may be spared the punishment of theft. The Prophet replied: "The nations that lived before you were destroyed by God because they punished the common man for their offences and let their dignitaries go unpunished for their crimes; I swear by Him (God) who holds my life in His hand that even if Fāṭima, the daughter of Muḥammad, has committed this crime then I would have amputated her hand." During the caliphate of 'Umar, Muḥammad the son of 'Amr bin al-'Āṣ the Governor of Egypt, whipped an Egyptian. The Egyptian went to Madina and lodged his complaint with the Righteous Caliph, who immediately summoned the Governor and his son to Madina. When they appeared before him in Madina, the Caliph handed a whip to the Egyptian complainant and asked him to whip the son of the Governor in his presence. After taking his revenge when the Egyptian was about to hand over the whip to 'Umar, he said to the Egyptian: "Give one stroke of the whip to the Honourable Governor as well. His son would certainly have not beaten you were it not for the false pride that he had in his father's high office." The plaintiff submitted: "The person who had beaten me, I have already avenged myself on him." 'Umar said: "By God,

if you had beaten him (the Governor) I would not have checked you from doing so. You have spared him of your own free will." Then he (Umar) angrily turned to 'Amr bin al-Āṣ and said: "O 'Amr, when did you start to enslave the people, though they were born free of their mothers?" When the Islamic State was flourishing in its pristine glory and splendour, the common people could equally lodge complaints against the caliph of the time in the court and the caliph had to appear before the *qadi* to answer the charges. And if the caliph had any complaint against any citizen, he could not use his administrative powers and authority to set the matter right, but had to refer the case to the court of law for proper judgement.

14. The right to avoid sin

Islam also confers this right on every citizen that he will not be ordered to commit a sin, a crime or an offence; and if any government, or the administrator, or the head of department orders an individual to do a wrong, then he has the right to refuse to comply with the order. His refusal to carry out such crime or unjust instructions would not be regarded as an offence in the eyes of the Islamic law. On the contrary giving orders to one's subordinates to commit a sin or do a wrong is itself an offence and such a serious offence that the officer who gives this sinful order whatever his rank and position may be, is liable to be summarily dismissed. These clear instructions of the Prophet are summarized in the following *Hadith*: "It is not permissible to disobey God in obedience to the orders of any human being" (*Musnad* of Ibn Ḥanbal). In other words no one has the right to order his subordinates to do anything against the laws of God. If such an order is given, the subordinate has the right to ignore it or openly refuse to carry out such instructions. According to this rule no offender will be able to prove his

innocence or escape punishment by saying that this offence was committed on the orders of the government or superior officers. If such a situation arises then the person who commits the offence and the person who orders that such an offence be committed, will both be liable to face criminal proceedings against them. And if an officer takes any improper and unjust measures against a subordinate who refuses to carry out illegal orders, then the subordinate has the right to go to the court of law for the protection of his rights, and he can demand that the officer be punished for his wrong or unjust orders.

15. The right to participate in the affairs of state

According to Islam, governments in this world are actually representatives (*khalifa*) of the Creator of the universe, and this responsibility is not entrusted to any individual or family or a particular class or group of people but to the entire Muslim nation. The Holy Qur'ān says: God has promised to appoint those of you who believe and do good deeds as (His) representatives on earth" (24:55). This clearly indicates that *khalifa* is a collective gift of God in which the right of any individual Muslim is neither more nor less than the right of any other person. The correct method recommended by the Holy Qur'ān for running the affairs of the state is as follows: "And their business is (conducted) through consultation among themselves" (42:38). According to this principle it is the right of every Muslim that either he should have a direct say in the affairs of the state or a representative chosen by him and other Muslims should participate in the consultation of the state. Islam, under no circumstance, permits or tolerates that an individual or a group or party of individuals may deprive the common Muslims of their rights, and usurp powers of the state. Similarly, Islam does not regard it right and proper that an individual may put up a false show of setting up a

legislative assembly and by means of underhand tactics such as fraud, persecution, bribery, etc., gets himself and men of his choice elected in the assembly. This is not only a treachery against the people whose rights are usurped by illegal and unfair means, but against the Creator who was entrusted the Muslims to rule on this earth on His behalf, and has prescribed the procedure of an assembly for exercising these powers. The *shura* or the legislative assembly has no other meaning except that:

(1) The executive head of the government and the members of the assembly should be elected by free and independent choice of the people.

(2) The people and their representatives should have the right to criticize and freely express their opinions.

(3) The real conditions of the country should be brought before the people without suppressing any fact so that they may be able to form their opinion about whether the government is working properly or not.

(4) There should be adequate guarantee that only those people who have the support of the masses should rule over the country and those who fail to win this support should be removed from their position of authority.

NOTES

1. From the point of view of Islam it is not only the woman who possesses chastity, the man also has it. A man who perpetrates rape or adultery does not only spoil the chastity of the woman, he also spoils his own chastity.

2. Badr: the battleground of the first decisive victory won by the Muslims against the Makkan unbelievers in 2A.H./624C.E. in which 313 faithful routed more than 1,000 infidels, killed 70, and captured 70 Quraysh leaders.

3. Section 144 is the Section of Indian Penal Code of 1935 adopted by the Government of Pakistan which prohibits the assembly of five or more than five persons, forming processions, or holding protest rallies. The administrators are using this Section too frequently to silence opposition and terrify the people into obedience.

4. This refers to Pakistan.