

HUMAN RIGHTS IN ISLAM: JUDICIAL RIGHTS, SANCTIONS AND PENALTIES¹

Omar Jah and Omar Kasule²

Preamble

I am required to address myself to judicial rights, sanctions and penalties within the context of human rights. This therefore requires me to look at the concepts before me within a context that need be clearly highlighted. So I choose to first address myself to the concept of "human rights in Islam", which I find difficult to define within the framework of the Western understanding of the term.

For almost half a century, Muslims along with the "international community" have been debating human rights as conceived in the West at all kinds of fora, be they international, regional, national, or even in the most local ways as is done by local non-governmental organizations in any given country. This practice has been going on with unprecedented zeal, and our presence here today, bears testimony to this fact. It has become a formality and indeed fashionable for people all over the world to associate themselves with human rights. This could be by claiming to protect these rights or demanding them or promoting them or even creating and praising them by way of discourse³

Substantial amount of efforts has been directed toward

¹ This paper was presented at the OIC Conference on Humanism Right in Geneva in March 2002 and was first published in *Al-Shajarah*, Vol. 7 No. 1 (2002).

² Prof. Dr. Omar Jah is a professor of Islamic Thought at the International Institute of Islamic Thought and Civilization (ISTAC) based in Malaysia. Dr. Omar Kasule is a senior lecturer of Islamic University of Uganda.

³ Vincent R. J., *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986), 7, hereinafter cited as HRIR.

promoting human rights internationally between nations and, regionally, among nations. For example, school programs have been designed, distributed and supported by UNESCO to teach the values of human rights. The efforts are so tremendous and the commitment is so strong that vast resources have been and are still being expended on this project. My intention, however, is not to review these efforts, but to caution ourselves as representatives of the Muslim Ummah on the international scene. We need to pause and take a close look at the concept of human rights even before we append to it the application "Islamic" or "Islam".

The caution I am referring to is about calls upon all of us individually as well as collectively to redefine our position on the notion of human rights by questioning ourselves about the actual origins of these rights as conceived in the West. We should ask ourselves what are the philosophical and conceptual assumptions underlying this concept? When and how did it come about well before it reached us? What were the circumstances that led, for instance, to the famous declaration such as the Universal Declaration of Human Rights? Against whom are these rights demanded? What is the source of these rights? Who defined them and why are they called human rights and not, for example, legal rights? The list of questions can go on and on.

These questions require us to look carefully at the Western philosophical and intellectual discourse going back to about three hundred years from the present day. We need to specifically focus our attention on what ideas the European and American philosophers and intellectuals advanced in the field of moral philosophy. In order to do this, we need to know the circumstance in which these people's mind operated, that is, their worldview, for it shaped the way they thought and what ideas they put forward. The most important period that comes to our mind is the Enlightenment. The European Enlightenment as an intellectual movement began in the more liberal political climate of France, fast spreading to the rest of Europe and then later spilling over to America. It was during the Enlightenment that a very powerful paradigm shift had taken place in the European political thought and moral philosophy.