

## **FUNDAMENTAL HUMAN RIGHTS IN ISLAMIC SHARIA LAW**

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### **INTRODUCTION**

1. When western academics, politicians, and non-governmental organisations who specialise in the field of human rights discuss the concept of fundamental human rights in the Arab and Muslim world they often attempt to show that the reason for the absence of human rights in the Muslim and Arab world is the presence of Islam. The assertions are often based on no more than baseless assertions, themselves based on a deep hatred for Islam dating back to the Crusades rather than any informed research or understanding of Sharia Law or Islam. Further the hatred of Islam in the west is not merely Ideological but has racial undertones stemming from the fact that so far as many western academics and politicians are concerned Islam is a Blackman's religion not worthy of being given equal status to the other white religions such as Christianity and Judaism.
2. In this paper I will attempt to prove that the lack of human rights in the Islamic and in Particular the Arab World stems not from the presence of Islam but from the fact that the governments have abandoned the only constitutional guarantees that the citizens enjoyed namely the rights enshrined in Sharia Law for a failed western secular type of government which have proved to be the most oppressive forms of governments seen since the 3<sup>rd</sup> Reich and Stalin's Soviet Union. I will further show that the reason why there is a systematic violation of human rights even amongst those nations who profess to adopt Sharia law stems not from the teachings of Islam but from the fact that the political establishment have twisted and sidestepped fundamental rights given to man by God to suit further their ambitions and in the process destroy those of whom they are supposed to represent. The final explosive ingredient in this cocktail is the fact that for over a century western governments have tried to encourage many Muslim Governments

in particular in the Arab world to become even more oppressive so that their ideological and economic interests can be preserved without them having to commit a large number of troops in each nation that they have come to covet, Iraq during the rule of Saddam Hussain was a prime example of such a policy being put into action.

### **HUMAN RIGHTS AND THE ISLAMIC PERSPECTIVE**

3. A prevalent attitude amongst many Western Human Rights Organizations, Politicians, and Human Rights Academics when looking at the Islamic and Arab world is often unhelpful and patronizing. They approach the subject not from the basis of wanting to truly end the suffering of those who are oppressed but as a means of exerting undue political influence and a means of denigrating a whole people and society. The Rights of those who are oppressed only become important when there is a higher political interest to serve, a prime example is the support for Saddam Hussain by the United States during his gassing of the Kurds of Halabja in 1988, only to use the incident as a whip when it suited its interest.
  
4. What no one ever mentions is the fact that unlike the western world, the Islamic World had a comprehensive system of preservation of man's Fundamental Human Rights 1500 years before the Council of Europe, the United States, or the United Nations ever thought of the concept. Further unlike the European Convention of Human Rights or the United Nations Declaration on Human Rights, the rights guaranteed by Sharia Law were not a reaction to mass murder as happened in Europe during the Second World War, but was proactive attempt to guide humans to the attainment of a higher level of interaction between one another. The Rights guaranteed were simply a gift from God upon Humans in exchange for duties imposed upon mankind. In its own right the rights guaranteed under Sharia Law were entrenched and around which the legal and political system was based rather than rights which had to be molded to fit in uncomfortably with the legal and political systems entrenched as happened with the European Convention of

Human Rights and the United Nations Declaration of Fundamental Rights. Therefore the rights guaranteed are fixed and not subject to erosion depending on the continuously changing political considerations.

5. Where as it is clear that following September 11<sup>th</sup> there is no such things as Fundamental Human Rights so far as many Western States are concerned, in that they were easily cast aside on the pretext of National Security and Prevention of Terrorism. Islam guarantees the rights given by God irrelevant of the ever changing situation on the basis that every thing can change but the relationship between man and his creator remains constant and thereby so do the rights granted and the duties imposed.
  
6. Having regard to the comprehensive nature of the rights guaranteed under the Islamic Shari'a, it is not possible to deal with each and every area of the Shari'a. Having regard to the substantial undermining of Human Rights Globally and in particular by the United States and European Governments following the attacks on the World Trade Centre on 11<sup>th</sup> September 2001, I shall attempt to deal with the Shari'a Law perspective on the rights that dovetail with the Criminal Justice System, in particular the Prohibition of Torture, Freedom of Person and Prohibition of Arbitrary Detention, the Rights to a fair trial and Private Life, or the Equivalent of the Rights allegedly guaranteed under Articles 3, 5, 6, and 8 of the European Convention of Human Rights and Fundamental Freedoms signed in Rome in 1958. Further I shall attempt to compare and contrast the stance taken between the Islamic Sharia and the European Convention of Human Rights.

## **THE SHARIA RIGHTS GUARANTEED**

### **Prohibition of Torture and Degrading Treatment**

7. In Sharia Law the equivalent of Article 3 of European Convention of Human Rights, namely the prohibition on Torture, Degrading, or Inhuman Treatment is

preserved in positive rather than negative terms in that there Allah had bestowed upon Human Beings the concept of Dignity which is to be preserved at all times, as it is a divine right given to man which no other man can take away.

8. The dignity of man stems from the fact that in Islam man is vicegerent of Allah on this earth, it is encapsulated by the words of the Qura'an where it is Allah say to his angels, "I am setting in the earth a viceroy" to which they replied do you create therein he who spreads corruption and sheds blood to which their Lord replied I know hat you know not see Qura'an Chpt 1 verse 29. The dignity and status that Allah had given mankind above all other creations is further enhanced by the fact that he ordered all his Angels to bow down to Adam, which they all did except Satan who definitely remarked that he was a better creation than Adam remarking that he was created from fire whilst Adam was created from clay. The lack of respect shown to Adam extracted the wrath of Allah to the extent that he ordered Satan from heaven remarking that he will be damned and whoever follows him till eternity.
9. Further and contrary to the distorted image it must be noted that the status and dignity of Adam is inherited irrelevant of status, race or religion. Islam makes it plain that all mankind are the descendants of Adam and therefore brothers, and just as no one differentiates between brothers nor does Islam. The equality of man is not only enforced by verses such as "we have created you from a single pair a male and a female and made you into nations and tribes so that you get to know each other, the closest amongst you to Allah are those who are most pious"<sup>1</sup>, but also the Prophet Peace be upon him who stressed to his followers that man was "either their brother in religion or partner in being".
10. From the previous as well as the numerous examples of through out the Qura'an as well as the sayings of the Prophet P.B.U.H Islam has made the overriding duty in mans relations with each other the dignified treatment of not only himself but

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<sup>1</sup> Sura Hujurat V.13

also one another. Therefore whilst self harm and suicide is forbidden in Islam the life, health and wellbeing being a gift from Allah to man, Islam completely forbids the inhuman and degrading treatment of one another. Just as it is forbidden for one to lose ones self dignity for example by becoming intoxicated to such and extent that one cannot distinguish right from wrong and thereby reduces oneself to status of animals, it also forbids the torture and humiliation of others in that it also takes away that basic human dignity granted by Allah. Unlike what is now happening in the United States whether by its own forces in Guantanamo Bay or through its servants and agents in Pakistan, Afghanistan, Saudi Arabia Yemen and Egypt torture under Islamic Law in all circumstances is forbidden. It is no excuse to say that it is necessary in order to try and obtain information that may result in the saving of life for the simple reason that not only does it dehumanize the person being badly treated but it also the torturer himself. What distinguishes humans from animals is the compassion that humans as a general rule have to one another as well as other creations.

11. If a person tortures another and closes his emotions off to the suffering and pain of the victim, then what he has in essence done is abandon that basic human quality that humans normally possess and in doing so the system which allows such behaviour to continue with impunity will eventually be consumed as a cancer overwhelms and kills its victim. Further it ill befits a society which in its attempts to impose law and order and protect others from crime and disorder lowers its standards to those of the criminals whom they so vehemently demonise.
12. Finally so far as Islamic Law unlike the European Court of Human Rights and the English Courts does not look at whether or not the behaviour has or has not reached the necessary degree of severity for it to be classified as being a violation of the Article 3 right. In Islam irrelevant of the degree or intensity once it is forbidden it remains so, (just like the consumption of alcohol) and therefore there is no margin for either ambiguity or error. The approach adopted by the latter is much more secure because whereas human culture and more importantly political

circumstances change with time and geography the dignity bestowed upon man by Allah remains constant.

### **Security of Person and Justice**

13. Where as the European Convention of Human Rights has made it liberty and security of a person and the right to a fair trial as two separate rights with qualifications for each Islamic Law sees the Security and liberty of man as part and parcel of the wider concept of Justice. Justice in Islam is not only about court procedure it is about social and moral justice. Therefore it includes the prohibition of gluttony, greed, oppression and the usurping of the rights of others, in addition to the due process of law blind to status, rank, race or religion.
14. In Islam each person has the right if he so wished to pursue whatever worldly and spiritual ambitions he may have, wherever he wishes on God's earth, not constrained by artificial boundaries and concept of citizenship. In fact so far as Islam is concerned there is only lands inhabited by Muslims and lands that are inhabited by non-Muslims and there is no prohibition of movement in between the 2 so long as the person wishing to do so does not expose himself to injustice. Therefore Allah commands the believers to seek refuge in any place on earth where there is justice irrelevant of who rules, a command that was followed by the Muslims who on the Command of the Prophet P.B.U.H sought refuge in the Christian Kingdom of Abyssinia to flee persecution in Mecca, as he was deemed by the Prophet to have been a just ruler and a believer.
15. Just as Allah commands that one should seek the protection of a just ruler irrelevant of his faith, it has also commanded Muslims to offer justice and protection to all those who inhabit the Islamic lands irrelevant of their creed or race. Further if a person is subjected to oppression then irrelevant of his religion and the identity of the perpetrator Allah has commanded and the Prophet and others after him had obeyed the command to attempt to pursue and punish the

perpetrators. An example was where during the rule of Imam Ali P.B.U.H , Syrian forces under the command of Muawya had attacked a border town and had amongst other things torn off the earrings of a Jewish woman causing her in the process injury. In great distress and anger Imam Ali sought Justice not only due to the fact that such act of oppression happened but the protection the victim was entitled to was not forthcoming he was so aggrieved that he stated openly that “Ali should be buried alive if it is possible in his realm men could tear off the earrings from the ear of a Jewish woman”<sup>2</sup>. In his sermon to the people of Kufa urging them to rise up and fight Muawya he states the following “when I order you to march against them in winter you say let the summer come for it is too cold, and when I order you to march in the Summer you say spare us the heat of Summer when in truth you wish not to fight them at all...., never have I seen s many people united for the cause of oppression and injustice and so many people disunited in its face o People of Kufa you have the intelligence of children and wit of women you have filled my heart with grief yet he who is obey has no opinion...”<sup>3</sup>

16. That speech clearly shows that the most important element in Islam is Justice and its pursuit and application irrelevant of rank, status, race or religion. Further emphasis can be seen when one of the companions of Imam Ali during the Battle of the Camel went to the Caliph and questioned how Aisha the mother of the faithful, Talha and Zubair (may Allah have mercy on their souls) could all be acting unjustly, and Imam Ali replied “that one should judge the person by what is right and not what is right by the person”

### **Due Process Principle**

17. Where as the European Convention of Human Rights guarantees the right to a fair trial it is a qualified right and as the case law in England has shown since the

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<sup>2</sup> See A Muslim Commentary on the Universal Declaration of Human Rights, by Sultan Hussain Tabandeh P. 13 Para 2.

<sup>3</sup> A Commentry on Nahj-Ul-Balagha by Imam Mohammed Abdu

coming into force of the Human Rights 1998, its interpretation has been subject to political agenda set by the legal establishment and was at times intellectually dishonest. Further where the Judiciary have been seen by the government to have failed to protect their political interests then Parliament has been used to force them into doing so. Prime examples of the behaviour of the political establishment to undermine the basic right to a fair trial are the laws relating to internment of terrorist suspects without trial and also the “Abu Hamza Law”.

18. The reason why there has been an unchallenged ability by the UK and US governments to ride over the most basic principles of any civilised nation in relation to due process is the simple fact that in reality the presumption of innocence although much vaunted has never really existed in the Western Judicial Process. Further the principle of justice must be seen to be done has meant that so long as the impression to the outside world is that justice was done whether it is in fact done or not matters not.
  
19. In Sharia Law it is not that justice must be seen to be done, but that it must be done period. Allah commanded his Prophet P.B.U.H “if you judge between them then do so justly”<sup>4</sup>. Therefore the presumption of innocence principle is cast in stone and there no room for reverse burden offence, and certainly unlike in Modern Western Criminal Justice Systems where unfortunately the burden of proof has been slowly lowered so that it is now possible for the most serious offences carrying the death penalty such as the ones faced by the Guantanamo Bay prisoners it is possible to achieve a conviction on the balance of probability or mere suspicion. In Islamic Law rather than the laws of Muslim Countries as the two are often confused the person is innocent and remains so unless and until direct cogent evidence is produced to show otherwise. In fact the more serious the offence the much more cogent the evidence needs to be to reverse that burden as Islam preserves and protects the reputations and dignity of men above all other things.

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20. There is in Shari'a Law no room for circumstantial evidence no matter how strong,<sup>5</sup> therefore schedules of 3 seconds calls between co-accused and cell site evidence which has become a fashion in English Courts to achieve convictions for conspiracies where there is no evidence to convict of any substantive offence has no place in Islamic Criminal Justice System. Circumstantial evidence is flawed in one very major way namely that it is only as good as the person attempting to draw the inference from the evidence and the more the suspicious the person the more that evidence becomes cogent. Islam recognised the possibility of attaching sinister interpretations to perfectly innocent acts and therefore to eliminate the possibility of misinterpretation has eliminated the dependence upon circumstantial evidence. The western thinker may then claim that the system is flawed in that it allows the guilty to escape justice, but that view is only valid for those who do not believe in divine justice and judgment after death, because the prime deterrence and punishment in an Islamic Society is the knowledge that irrelevant what happens in this life one will have to account to his creator.
21. Further, it is not enough to target a person in Sharia law and lock him up without a trial for months on the whims of politicians only on the suspicion that he may be involved or planning to undertake a criminal offence, as is now happening in the United Kingdom. The Law says either one has committed an offence in which case he must be brought before the courts where the evidence against him is presented against him or else left alone. Further there is also no place to deport or withdraw the citizenship of those whose ideas are not approved of such is the attempt of the British Government with Abu Hamza who has not and will never be convicted of a criminal offence, as he has not committed any.
22. There is no better illustration of that stance than the approach taken by Imam Ali in relation to those who sought to plot and undermine his rule such as the

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<sup>5</sup> See A Muslim Commentary on the Universal Declaration of Human Rights, by Sultan Hussain Tabandeh P.29 Para 2.

Kharajites. When the Commander of the Faithful was petitioned to put them under surveillance or expel them he replied “ They are free citizens of Kufa, and so long as their hostility is solely personal and directed merely against myself, they have full freedom of action, unless they proceed to do something which is contrary to the public interest and security.”<sup>6</sup>

23. Further illustration of the principle is when there came an occasion when the Commander of the Faithful was reading his sermon in the Mosque in Kufa when some opponents interrupted with disparaging remarks, where upon some of the leaders of Kufa wanted Imam Ali to take action to punish or expel them from the mosque, but it was ordered that “they be left alone until their presumptions and pertness overflow slay them not”<sup>7</sup> namely until their actions cross the threshold into criminality. It was not until that Imam Ali learnt that the Kharajites started to rally their forces outside Kufa and preparing to massacre Ali’s supporters that he resorted to military force to defend the state and its citizens.
24. The importance of fair trial and the concept of due process before punishment can not be better illustrated than by the stance taken by Imam Ali following his slaying by Ibn Muljim whilst leading congregational prayers. Whilst badly injured he cried out to his followers who had by that stage caught the Defendant red handed, to ensure that no harm comes to their prisoner, but to try him first, and then only hand down the punishment that ultimately reflects whatever happened to Imam Ali. He went on to order that “If I survive, I myself will be his judge and decide whether to forgive him or to extract retribution. If this one blow kills me, do not torture my murderer but execute him, and that with but a single blow in exact retribution only for the one blow he has struck me.”<sup>8</sup>

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<sup>6</sup> A Muslim Commentary on the Universal Declaration of Human Rights, by Sultan Hussain Tabandeh P.35 Para.3

<sup>7</sup> Ibid P.32 Para.4

<sup>8</sup> Ibid P.31 Para 1

25. That behaviour of Imam Ali in his strenuous attempt to protect the principle of due process and no punishment without trial even when the evidence was overwhelming that any trial was likely to be a formality, is to be contrasted with the behaviour of so called civilised and democratic nations especially that of the United States and Israel. Those 2 nations have caused the concept of Human Rights and due process to be denigrated and set back centuries in their uncivilised and illegal behaviour. Both nations have made extra-judicial murder of those they suspect rather than having convicted them of involvement in offences against their interests as their trade mark. The resort to such barbaric modes of behaviour is often condoned by governments such as the British and the European Union who if the victims had been white, would draw the wrath of their coloured judgement. It is the British prime minister who refused to condemn the Israeli policy of targeted murder simply stating that it was on the verge of being illegal. What he refuses to accept is that such disfigured sense of morality is often used by those who oppose our system of governance to justify acting in the same manner.
26. The system of Justice in Islam is blind to colour, creed, rank or status, and in fact went further than any system that the west had ever even to this day conceived. During the days of the Prophet P.B.U.H when he was asked to judge between non-muslims of the same faith he would Judge in accordance with their religious laws, as is stated in the Qura'an, "if they (Jews) have recourse unto you judge between them or disclaim jurisdiction. If you disclaim jurisdiction, then they cannot harm you at all. If you judge, judge between them with equity. Lo god loves the equitable."<sup>9</sup> Often when Jews and Christians came to the Prophet with their disputes he would ask for advice from Jewish and Christian Jurists as to what Jewish or Christian laws would say about the matter before him. One such

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<sup>9</sup> Suar Al-Maidah Chpt.5 V.42

example was when the Prophet was asked to judge on the fate of a Jewish couple who had committed adultery<sup>10</sup>.

27. It has now become a fashion amongst the so called the leaders of the free and democratic world that they simply need to accuse someone with whom they disagree in any part of the world of being a terrorist and demand his surrender from the nation that hosts him. How sad it is to see that the most belligerent culprits of such behaviour are those who profess to adhere the most to the principles of Christianity such as Tony Blair and George Bush. They apply either bribery or economic, and political blackmail to override the due process of the extradition laws and simply demand the hand over of various persons whether found in friendly nations such as Pakistan whose leaders are then rewarded financially for their abandonment of the principles of justice, or alternatively if it is not a friendly nation such as Iran they then resort to threat of violence or economic terrorism. If those 2 methods then fail they resort to the murder of those persons who are legally innocent as they have neither been indicted nor convicted of any offence, but off course because it is the leaders of the free world the murderous policy is presented as targeted killings or pre-emptive strike.
28. In contrast the Islamic stance on extradition of suspects is illustrated by the response of the King of Abyssinia when the Leaders of Mecca sent a friend of the King to seek the return of Muslims who sought refuge in his kingdom. Initially he was offered financial inducements which he turned down and then when it was claimed that they had committed a crime against his Kingdom by denying the existence of Christ, the King demanded to know what they thought of Christ and when one of the companions of the Prophet recited what the Qura'an says about Jesus Christ the King turned to the Meccan representative and stated that he would not hand them over even if he was offered a mountain of Gold.

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<sup>10</sup> See The Islamic Quest for Democracy, Pluralism and Human Rights by Ahmad Moussalli P.132 Para. 1.

### **Right to Private Life**

29. Islamic Sharia Law protects the right to a private life without qualification. Even if the person relying on the right to a private life commits a personal offence that right must be respected and unlike the European Convention of Human Rights it is not permissible to undermine the right on the simple suspicion that the person may be indulging in criminal activity. The command in the Qura'an is very clear "Spy Not" that was further explained by the Prophet (P.B.U.H) who said "do not be on the lookout for slips made by believers. For he who is eager to show up the shortcomings of a fellow believer will find that God shows up his faults and humiliates him before others, even though his ill deeds were performed in the secrecy of his own home."<sup>11</sup>
30. It is therefore not permitted to spy at all even though there is strong probability that wrong relationships are ruling within one's home. There is no better illustration of the Point than the incident involving the second Caliph Omar May Allah be pleased with him when on one night whilst he was crossing the street in Madina he heard the sound of debauchery coming from inside a man's home. In anger he knocked on the door but there was no reply. He therefore decided to climb onto the man's roof and shouted down to the man in the garden "why are you breaking the law and allowing such a debauch in your home?"
31. The home owner replied in the following terms "No Muslim has the right to speak to another like that. Maybe I have committed one sin, but think how many you have committed he then went through the list stating that he Committed the sin "Spying despite God's command thou shall not spy, breaking and entering, as you had come over the roof despite the command that you should enter the houses by the door, entering without the owner's consent in defiance of God's command which orders you to enter no house without the owners consent, and omitting the

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<sup>11</sup> A Muslim Commentary on the Universal Declaration of Human Rights, by Sultan Hussain Tabandeh P.31 Para.3

Salaam, when God had ordered you to enter no house without indicating that you are a friend and calling down peace on those within.

32. Ashamed and acknowledging his error the Caliph (may Allah be pleased with him) retired saying I must forgive you for your debauchery, whereupon the home owner replied “that is your fifth sin, for you claim to be the executor of Islam’s commandments, if so how could you forgive what Allah has condemned as a sin?”<sup>12</sup> The incident and exchanges shows how jealously Islam guards not only the right to privacy but also the right to express oneself freely without fear of any repercussions. The stance of the Sharia law should be contrasted but the stance taken by many Muslim States even those who profess to uphold Sharia Law, and also those of the so called democratic and freedom loving nations. Islam forbids that on pretext of simple suspicion of an over zealous police constable to place listening devices and covert cameras in people’s homes. Yet that has become a custom in all of the so called civilised world.
33. The only permissible interference with the right to a private life is if the person who claims that right abandons it by indulging in behaviour of a very open and public nature. As has been stated earlier the prime responsibility of a state is to protect its citizens from harm and therefore where one is acting in a manner which undermines the security of the state and its citizens then he has abandoned his right to privacy as he has come to behave in a manner which is harmful to the public at large, and therefore has committed a public rather than a private crime. The sole exception to the prohibition on interference with one’s private life is when in a time of war there is a strong reason to believe that the person being spied upon is serving the enemy see A Muslim Commentary on the Universal Declaration of Human Rights by Sultan Hussain Tabandeh p31.

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<sup>12</sup> A Muslim Commentary on the Universal Declaration of Human Rights, by Sultan Hussain Tabandeh PP31-32

34. What one must be careful however not to confuse the above proposition as being a charter which exonerating those who commit offences against children in the privacy of their own home or even offences against their spouses. Just as in any western state where a victim makes a complaint of abuse albeit within the confines of someone's home, the act of going to the authorities takes the crime into the public domain. In any event when the offence is one which is perpetrated against another therefore the offender again forfeits the right of privacy, as the consequences affect others.

### **CONCLUSION**

35. As can be seen from the above rather than hindering the progress of Human Rights, Islam and the Sharia Law have had a revolutionary impact upon the concept of Human Rights and Due Process over 1500 years ago when no such concept existed anywhere on the face of the earth. As much as many in the West would hate to admit the fact, many of the concepts of Human Rights are in fact imported from Islam just as the west imported many a mathematical, scientific and artistic doctrines from the Islamic world. The patronising attitude with which the west looks upon the Islamic World and the attempt to attribute the repressive nature of Muslim societies upon Islam is simply borne out of deep historical hatred of Islam which the west has for many centuries seen as a Blackman's religion.
36. Certainly the theory that Human Rights started in Europe in 17<sup>th</sup> century is complete nonsense which pays no regard to the fact that whilst people in Europe were being tied to rocks and thrown into rivers in order to decide their guilt or innocence only some 400 years ago, Islam had set up a system of law with Judges deciding the guilt of the accused based on evidence, 1100 years before that.
37. It is clear that the reason for the disregard for Human Rights in the Muslim world is due to the complete disregard to the Islamic Sharia, in almost every Muslim

country universally. Many a system of government however has used the cover of Islam to justify its repressive behaviour, as it then gives its action which are motivated by nothing more than political interest, the necessary legitimacy before its citizens who are equally as unfamiliar with their rights Sharia rights as their leaders.

38. If Human Rights organisations are serious about the promotion of Human Rights, in the Muslim world then rather than calling for the further erosion of Islamic values they should encourage the adoption of Sharia Law in relation to the basic rights of Muslim citizens. Erosion of Sharia Law has been catastrophic in the Muslim and in particular the Arab world as those states that have been most secular such as Iraq and Turkey have been most repressive and undemocratic.

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