

*HUMAN
RIGHTS
IN
ISLAMIC
LAW*



Contents

	Introduction	i
	List of Arabic Transliteration	ix
	List of Abbreviations	x
	Introduction	1-6
	Chapter 1: Sources of Islamic legislation	7-82
	Introduction	7-12
Section	1. The Holy Qurān	10
	2. The <i>Sunna</i>	30
	3. <i>al-Ijmā'</i> (the consensus opinion)	38
	4. <i>al-Ijtihād</i> (endeavour)	44
	5. <i>al-Qiyās</i> (analogy)	47
	6. <i>al-Istiḥsān</i> (approval)	53
	7. <i>al-Maṣāliḥ al-Mursala</i> (public interest)	59
	8. <i>Sadd al-Dharā'i'</i> (precautionary measures)	61
	9. <i>al-'Urf</i> (custom)	63
	10. <i>al-Istishāb</i> (legal presumption)	65

11. <i>Sharʿu man Qablanā</i> (pre-Islamic religion)	67
12. <i>Qawl al-Ṣaḥābi</i> (companion's legal opinion)	70
13. The establishment of the four major schools	
of <i>Sunni</i> jurisprudence.	72
Conclusion. General characteristics of Islamic law	76
Chapter 1: Sources of Islamic legislation	83 - 188
Introduction	
Section 1. The concept of Islam	84
2. <i>al-Jihād</i> and freedom of religion and thought	92
3. Legal concepts (the four cornerstones of Islamic human rights)	
I. Freedom, <i>al-Hurriyya</i>	113
II. Right; <i>al-Haqq</i>	136
III. Justice; <i>al-'Adāla</i>	154
IV. Ethics; <i>al-Akhlāq</i>	172
Conclusion	187

Chapter 3: Islamic Family Law	189 - 284
Introduction	
Section 1. Marriage under Islamic law	192
Betrothal	196
The marriage proper	198
The mutual consent and guardianship	198
Dowry	205
Witnesses	210
Section 2. The Rights of Women	212
Wife's right to maintenance, independent accommodation and to domestic assistance	214
Wife's economic right and her right to personal dignity	217
Women's right to education, work, and their political and judicial rights	220
Section 3. Polygamy	236
(Circumstances under which polygamy was legislated, restrictions on polygamy, some justifications of polygamy and its function as precautionary measure to protect Muslim community from any illegal sexual relationship between sexes, abuse of polygamy and some governmental attempts for more restrictions or prohibition of polygamy.)	237
Section 4. Children's rights	249
(Measures for protecting embryos' right to life and its financial rights, Children's rights to maintenance, child benefit and education)	255

5. Dissolution of Marriage	265
Conclusion	280
Chapter 4 : Economic Rights	285 - 336
Section 1. Economy and Islamic Theory of Wealth	285
2. Means of earning wealth	293
I. Work	294
II. Commerce	300
III. Usury (an illegal means of gaining property)	303
3. Distribution of wealth	309
I. Right of kin to maintenance	310
II. Compulsory tax; <i>al-Zakāt</i> (capital tax)	313
4. Economic Function of Islamic State	316
I. The state revenues	319
<i>al-Zakāt</i>	319
<i>al-Jizya</i> (head tax)	320
<i>al-Kharāj</i> (arable land tax)	323
<i>al-'Usūr</i> (carry commerce tax)	323
<i>al-'Ushr</i> (one tenth)	324
<i>al-Fay'</i>	324
<i>al-Khums</i> (one fifth)	325
General taxes and incomes	325
II. State expenditure and financial duties	326

	Social security and public housing	327
	Health care and medication	329
	Education	330
	General public services	332
	Monarch's civil list (allowances)	333
	Conclusion	334
Chapter 5: Political Rights		
	Introduction	337 - 398
	Section 1. The legislative power	341
	I. al-Shūrā (consultation)	341
	II. Ahl al-Hall wal- 'Aqd (the representatives of Muslim community)	352
	Section 2. The executive power	361
	(Historical development of the government of the Prophet and of al-Rāshidūn(p.b.u.t.)	361
	(The qualifications of a presidential candidate. The public right to political exercise in establishing their own government, in supporting or criticising it and in its removal.)	370
	Section 3. Judiciary Power	380
	The purpose of distinction of powers	380
	The qualification of judges	385

	Rules of judicial procedures	386
	The authority of qāḍī al-Quḍat (the chief judge)	389
	Specialised courts and al-Mazālim	
	(administrative judiciary)	390
	Measures for protection of accused and prisoners	392
	Freedom of judiciary	395
Conclusion	396
Section 1.	Economy and Islamic Theory of Wealth	285
	2. Means of earning wealth	290
Chapter 6: The Universal Dimension of Human Rights	399 - 463
	Introduction	399
Section 1.	The Universal Concept and Dimensions of Human Rights and Fundamental Freedoms	400
	i. The right to life	404
	ii. The right to liberty and security	411
	iii. The right to a decent standard of living, health care and social security	413
Section 2.	Islamic Law and EHR (A Comparative View Relating to Human Rights)	417
	1. The right to life	418
	2. The right to protection from torture	424
	3. Freedom from slavery and servitude	429
	4. The right to freedom	436
	5. The right to justice and fair trial	438

6. The right to privacy, honour and reputation	440
7. Freedom of thought and religion	441
8. The right to marriage and to establish family	444
9. The right to education and training	447
10. The right to freedom of movement and residence	449
11. The right to asylum	453
12. The right and obligation to participate in the conduct of management of public affairs	454
13. The right to freedom of assembly and association	455
14. The right to own property	457
15. The right to social security, assistance and welfare	458
Conclusion General characteristics of Islamic law	461
Chapter 7 : Conclusion	465 - 480
Contemporary Muslim countries	470
Collective efforts of Muslim countries	472
Particular attempts in favor of human rights	475
Modern international concerns	478
Suggestions for further research	480

Bibliography	481-520
Appendices	
1. The Constitution of al-Madīna	521
2. A model of an Islamic Constitution	531
3. Universal Islamic Declaration of Human Rights	551
4. Comments on Islamic Declaration of Human Rights	560
5. The U.N. Universal Declaration of Human Rights	564
6. European Convention for the Protection of Human Rights	570
7. European Social Charter	583
Conclusion	600
1. The right to social, economic and cultural rights	600
2. Islamic Law and Human Rights	617
3. Collective efforts of Muslim countries	618
4. Particular attempts in favor of human rights	628
5. Freedom from slavery and servitude	634
6. The right to freedom	634
7. Suggestions for further research	634