Equality but not Uniformity

We said that Islam has a special philosophy concerning the relations and rights of men and women within the family which differs from that which was current fourteen centuries ago and does not conform either with what is accepted in the world of today.

We have already explained that according to the Islamic view it is never a matter of dispute as to whether a man and woman are equal as human beings or not and as to whether their family rights should or should not be equal in value with each other. According to Islam a woman and a man are both human beings and both are apportioned equal rights.

That which has been kept in view in Islam is that woman and man on the basis of the very fact that one is woman and the other is a man are not identical with each other in many respects. The world is not exactly alike for both of them and their natures and dispositions were not intended to be the same. Eventually this requires that in very many rights duties and punishments they should not have an identical placing. In the western world they are now attempting to create uniformity and identicalness in laws regulations rights and functions between women and men while ignoring the innate and natural differences.

It is here that the difference between the outlook of Islam and that of western systems is to be found. Thus the dispute between on the one hand those sections of the people who support Islamic rights and on the other hand those who support western systems is about the identicalness and exact similarity of rights of women and men and not about equality of rights. ‘Equality of rights’ is a counterfeit label which the followers of the west have stuck on as a souvenir of the west.

In my writings conferences and lectures I always avoid the use of this counterfeit label and the use of this phrase which comes to mean nothing but uniformity and identicalness of rights for women and men in place of genuine equality of rights.

I am not saying that nowhere in the world did or does the claim for equality of rights for women and men have any meaning nor am I saying that every past and present law in the world concerning the rights of men and women was passed on the basis of equality of worth and estimation and that it is just identicalness which was eliminated.

No I have no such claim. Europe before the twentieth century is the best evidence. In Europe before the twentieth century woman legally as well as practically lacked all human rights. Neither did she have rights equal to those of man nor the same as his. In the sudden development of the movement which sprang up in less than one century in the name of woman

and for woman she acquired rights almost the same as those of man. However considering her natural build and her physical and spiritual needs she never acquired rights equal to those of man.

For if woman wishes to acquire rights equal to the rights of man and happiness equal to the happiness of man the only way to get that end is for her to forget about an identicalness of rights with man and have faith in rights suitable for herself. Only in this way can unity and real sincerity between man and woman be achieved and only then will woman obtain happiness equal to or better than man's.

Man then out of sincerity and without any derogatory thoughts will be ready to concede to her equal and at times better rights than their own.

Similarly I am not at all claiming that the rights that have in practice been the lot of women in our seemingly Islamic society are equal in value to the rights that men have had. I have many times said that it is essential to hold a thorough inquiry into the plight of women and that many rights that have been given to women by Islam and have in practice been ignored should be restored to them; but not that we should blindly follow and imitate the ways of the west which have brought thousands of misfortunes for them and give a pretty name to an erroneous principle and thus encumber women who already have misfortunes of the eastern type with misfortunes of the western type as well.

Our point of view is that dissimilarity in the rights of man and woman should be observed to whatever extent nature has differently moulded and created them. This is in better accord with justice and with natural rights; and will both secure good will in the family and also result in the better development of society.

It must be completely understood that we claim that justice and the natural and human rights of man and woman call for dissimilarity in certain rights. Thus our discussion has a completely philosophical orientation: it is linked to the philosophy of rights and linked with a principle which is called the principle of justice which is one of the vital pillars of Islamic theology and jurisprudence. The principle of justice is the same fundamental principle which brought into existence the rule of the harmony of reason and religious law in Islam.

It means that according to Islamic jurisprudence — or at least Shi'ite jurisprudence — if it can be established that justice demands that a particular precept should be such-and-such and not something else then if it is something else it will be an iniquity and against justice; thus we are obliged to say that the ruling of religious law is what reason and justice tell us it should be. For Islamic religious law according to the fundamental principle which it has itself taught can never leave the axis of justice and intrinsic natural rights.

By expounding and elucidating the underlying meaning of justice Islamic scholars have laid upon it the foundation of the Philosophy of rights. As a result of the occurrence of regrettable historical events they could not continue the work they had started At any rate preoccupation with the idea of human rights and the principle of justice as being something essential in accordance with the order of things and beyond conventional law was first of all propounded and put forward by the Muslims. They laid the foundation of the rights that are both natural and also required by intellectual considerations.

However it turned out that Islamic scholars could not carry on that work and after a gap of about eight centuries European thinkers and philosopher's continued it and took upon themselves the credit for that task. On the one hand they worked out social political and economic philosophies and on the other hand they informed individuals societies and nations and explained to them the value of life and their rights as human beings. They started movements instigated revolutions and changed the face of the world.

In my opinion besides historical reasons psychological and geographical reasons also played their part in creating this situation whereby the Islamic east did not follow up these rights which are intellectually indispensable and whose foundations they had laid This is one of the differences in mentality between the east and the west that the east has a tendency towards ethical thinking while the west is inclined towards the idea of rights.

The east is under the spell of morality and the west is in love with rights. The easterner by virtue of his eastern nature conceives of his humanity as consisting of behaving with kindness and toleration in being friendly towards his fellow men and in conducting himself the generosity towards them. On the other hand a westerner takes pride in the realization of his rights and in safeguarding them and will not allow anybody to intrude upon the sacred territory of his rights.

Humanity needs ethics as well as rights. It is linked to rights as well as to morals and neither of the two rights or morals is in itself the criterion of humanity.

The sacred religion of Islam has the great privilege of having approved both rights and ethics. In Islam as was mentioned before sincerity and right action in the moral sense is considered a virtue; and knowledge of rights and defending them is also considered a virtue and to be human. This matter has details which cannot be gone into here.

However the particular mentality of the east set to work. In spite of the fact that in the beginning the concept of rights and the insistence on morality had both been acquired from Islam the east gradually let go of rights and focused its attention on morals.

Our point is that the problem with which are at present confronted is a problem of rights a

philosophical and intellectual problem a problem based upon arguments and reasoning. It is closely connected with reality of justice and the nature of the rights. Justice and rights were in existence before any laws were passed in the world so the enacting of a law cannot change the reality of justice and the human rights of mankind.

Montesquieu said: “Before man created laws there seem to have been relations founded on law and upon justice between creatures. The existence of these relations itself was the cause of the creation of laws. If we say that apart from the actual first laws consisting of orders and prohibitions nothing else just or unjust exist it is as if we say that before man drew a circle the radii of that circle were not all equal”.

Herbert Spencer said: Justice is associated not with the sentiments but with something else which is the natural rights of individuals. For justice to have external reality it is necessary to have regard for rights and innate differences”.[1]

The European philosophers who upheld and still do hold this view are in large number. The manifestos and proclama- tions that were drawn up and the material that was incorporated under the heading of Human Rights has as its source this very theory of natural rights. In other words it was the theory of natural and innate rights which reappeared in the form of the Proclamation of Human Rights.

Once again what Montesquieu Spencer and others have said concerning justice is as we know the very same thing that theologians have said concerning the inborn intellectual capacity to determine ‘right’ and ‘wrong’ and the real meanings of justice. Amongst Islamic scholars there were some individuals who refused to accept the idea of instinctive rights and considered justice as something conventional. Amongst Europeans also such a belief existed. The .Englishman Hobbes refused to accept justice as having real existence

The Declaration of Human Rights is philosophy and not law:

The absurd thing is that they say that text of the declaration of Human Rights has been approved by the two Houses (of the Iranian Parliament) and as the equality of rights for men and women is included the text of the Declaration so under the law approved by the two Houses men and women should have equal rights. As if the text of the Declaration of Human Rights is something which is within the competence of the two Houses to approve of or reject. The contents of the Declaration of Human Rights is not the kind of thing which can be put up for the legislative assemblies of countries to approve of or reject.

The Declaration of Human Rights deals with the innate undeniable and unrelinquishable rights of mankind. It refers to rights which as the Declaration claimed are prerequisites of man’s humanity and which the hand of the All- mighty Creator established for them. In other words

the Source and Power which provided upon men with intellect volition and human dignity also bestowed upon man as the Declaration Claims human rights.

Human beings cannot make the contents of the Declaration of Human Rights law for themselves and neither can they cancel or depart from those rights on their own. Then what is the sense in saying that it had been approved by the two Houses and the legislative power?

The Declaration of Human Rights is philosophy and not law. It should be presented to the philosophers for their approbation and not for the approval of members of parliaments. The Two legislative Houses cannot determine philosophy and logic for people by taking a vote. If legislative work is to proceed like this then they should take the Einstein's Theory of Relativity to Parliament and present it to the members to have it approved by them. The hypothesis that there is life on other planets should also be sent for their approval. The laws of nature cannot be approved or rejected just like conventional laws. It is as if we were to say that both the Houses of Parliament have passed an act saving that if we graft a pear onto an apple the graft will be successful; but if it is grafted onto a mulberry it will not.

If such a declaration is issued on behalf of a group of persons who are themselves thinkers and philosophers the nations should entrust it to the hands of their philosophers and campaigners for rights. If in the opinion to the philosophers and thinkers of that particular community the matter can be confirmed then it is the duty of all the members of that community to consider what they say as a truth above law. It is binding upon the legislative power also not to enact any law against what they say.

As for the other nations they are not obliged to accept any declaration until it has been established and discovered in their eyes that such rights exist in the same state in nature. Besides this these questions are not experimental matters which require equipments laboratories and so forth which Europeans have but others do not it is not a question of breaking the atom the secret of which and the necessary equipment for which are with a limited number of persons: it is philosophy and logic and for this the tools are the brain the intellect and the power of reasoning.

Even if other nations are obliged to follow others in questions of philosophy and logic because they do not consider themselves competent in philosophical thinking we Iranians should not think like that. In the past we reached a high standard of ability and showed our worth in philosophic and logical investigations. Why should we follow others in their solutions to philosophic problems?

It is strange that Islamic thinkers gave so much importance to the question of justice and the essential rights of man when it arose that without any hesitation in accordance with the law of

the harmony between reason and Islamic law they used to say that the law of Islam was indeed this. That is to say they did not see the necessity of ancillary corroboration by an Islamic law. Today we have been reduced to the level where we seek confirmation for these matters in approval by members of Parliament.

Philosophy cannot be proved by questionnaires:

More ludicrous than this is that when we want to make a study regarding the human rights of women we refer the matter to young boys and girls print questionnaires and try to find out by the way which they are filled in what human rights and whether the human rights of women and men are the same or different.

Anyhow we are seeking to make a study in a scientific and philosophic manner about the human rights of women on the basis of intrinsic human rights and we want to see whether those same principles which require that human beings as a general rule have a series of natural and God-given rights also affirm that women and men should have the same kind of rights or not. So I request the scholars thinkers and jurists of this country who are the only persons who really matter and should put forth their opinions in such matters as this to look into our arguments critically. I would be highly obliged if they gave their opinions together with their reasons for or against what I have written.

In order to study this point it is necessary that we should firstly look at the basis and the roots of human rights and then consider specifically the rights of men and women.

It would not be out of lace to briefly refer in the first place to the movements in the present age to do with rights which culminated in the call for equality of rights for men and women.

A glance at the history of women's rights in Europe:

In Europe from the seventeenth century onwards voices began to be raised in the name of human rights. Writers and thinkers of the 17th and 18th century propagated their thoughts in respect of the natural inherent and undeniable rights of man with wonderful perseverance. Jean-Jacques Rousseau Voltaire and Montesquieu belong to this group of thinkers and writers. The fist practical result of the propagation of the ideas of the supporters of natural human rights occurred when in England a protracted struggle took place between the rulers and the ruled. In 1688 AD the people succeeded in moving for some of their social and political rights according to a manifesto of rights [2] and had them restored.

Another practical result of the propagation of these ideas was manifested in the War of Independence of America against England. Thirteen British Colonies in North America due to the strains and difficulties imposed upon them rose in disobedience and rebellion and at last

gained their independence.

In the year 1776 AD a Congress was formed in Philadelphia which declared its complete independence and published a document [3] to that effect. In the introduction that document they wrote that all men are created equal that they are endowed by their Creator with certain unalienable Rights that among these are Life Liberty and the pursuit of Happiness. That to secure these rights Governments are instituted among Men deriving their just powers from the consent of the governed."

However that is well-known in the world under the name of the 'Declaration of Human Rights' is that document which was issued after the Great French Revolution. This declaration [4] consists of a series of general principles which are prefixed to the French Constitution and it is considered an inseparable part of it. This proclamation consists of an introduction and seventeen clauses. The first section states that "Men are born and always continue free and equal in respect of their rights."

In the 19th century new changes and new thoughts occurred in the field of economics sociology and politics which culminated in the advent of socialism and the resultant requirement of the allocation of a share of profits to the working class and the transfer of government from the hands of the capitalists to the workers.

Till the early part of the 20th century all the controversies concerning human rights were connected entirely with the rights of the people before their governments or with rights of the proletariat and the working class before the employers.

It was in the 20th century for the first time that the question of the rights of woman before man came to the fore. Britain which is considered to be the oldest democratic country only acknowledged equal rights for men and women in the beginning of the 20th century. The United States of America in spite of their generally admitting the rights of all human beings in the 18th century in their Declaration of Independence passed the act giving equal political rights to men and women in the year 1920 and France also approved this matter in the 20th century.

Anyhow in the 20th century many groups all over the world favoured a profound change in the relations of men and women concerning their rights and duties. According to these people the change and transformation in the relations of peoples with their governments and in the relations of the labour class and the proletariat with the employers and the capitalists did not suffice for social justice so long as the relations of rights of men and women are not reformed. Accordingly a Universal Declaration of Human Rights was issued for the first time after the Second World War in 1948 [5] on behalf of the United Nations Organization. In its introduction

it was stipulated:

Whereas the people of the United Nations have once again proclaimed their belief in human rights and the status and worth of an individual human being and equality of the rights of men and women…

The crisis of change due to mechanization in the 19th and the 20th century and the eventual unfortunate condition of craftsmen especially women exaggerated the situation all the more demanding that the matter of the rights of women should be especially attended to. In his Nouvelle Histoire Universelle (vol.4 p.387) Albert Malet writes: "Since the State no longer interfered in any way between the employers and the workers except to forbid the latter to group together and strike the employers were able to enforce a real economic despotism'….in France in 1840 in the Ronen region cotton mill workers laboured up to 16—17 hours a day… The exploitation for work of women and children was particular obnoxious.....mortality in the working districts was horrifying."

This is a short and cursory history of the human rights movement in Europe. As we know all the matters contained in the Declarations of Human Rights which have novelty for the Europeans were anticipated fourteen century ago in Islam. Some Arab and Iranian scholars have compared (the position of) Islam with these declarations in their books. Of course there are differences in some parts between what the declarations say and what has said and this is itself an absorbing and interesting matter. One of these differences is the problem of the rights of men and women in which Islam approves of equality but does not agree with identicalness .uniformity and exact similarity

Notes:

[1] Both translated from the Persian. Originals untraced. (Tr.)

[2] The author refers to the Persian translation of Albert Malet's Nouvelle Histoire Universelle where mention is made of the "Declaration of Rights" presented to William and Mary of Orange in the presence of the entire British Parliament on 13th February 1689. (Tr.)

[3] Actually called "The unanimous Declaration of the thirteen United States of America" made on 4th July 1776. (Tr.)

[4] The "Declaration of the Rights of Man and of Citizens." This was promulgated by the French National Assembly as a preamble to the constitution in 1789 and subsequently popularized by Thomas Paine's "The Rights of Man". (Tr.)

[5] The Universal Declaration of Human Rights was adopted and proclaimed by the General (.Assembly of the United Nations on 10th December 1948. (Tr