

Human Rights, Feminism and the Muslim Woman's Identity

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Introduction

The concept of human rights in Islamic teaching is rooted in the dual-notion of human-divinity as the first is combined with dignity, while mankind is a reflection of divinity. Islam teaches that man is created by a transcendental God who favours no person over another except in terms of piety and perfect faculties. In a bid to introduce Islam, several contemporary Muslim scholars have sought to demonstrate that it was Islam that laid the foundations for human rights, by asserting the supremacy of the value of justice and the principle of human value. Some efforts have been aimed at developing a purely Islamic discourse on human rights, to the exclusion of many specifically feminist concerns. Islam reserves an elevated position for women in general, and fosters a sophisticated view for her as an individual; a daughter is an adored member of society, a wife is respected for her chastity through marriage and is awarded a status of dignity when she is blessed with the role of motherhood.

It is logical to assume that the Muslim woman's identity cannot be concluded from certain practical laws, as these details do not reflect the general position of the Muslim woman in the Islamic worldview (*Weltanschauung*). Nevertheless our intention is to introduce thought provoking ideas based on our previous theory¹ and combine it here with an *Ijtihadi* linguistic approach through which one aims to achieve a mere accurate understanding of the truth.

In this paper, we aim to introduce the core rules and rational principles, which need to be implemented in order to fully grasp the

1. This approach is introduced in our article, which was published in 'Islam and Feminism: Theory, Modelling and Applications' by the Institute of Islamic Studies affiliated to the Islamic Centre of England in London 2005.

genuineness and intensity behind the sacred words in their various contexts. Our argument will aim to highlight the refutability of the main points of reference for the proofs used by some Muslim scholars to deprive the Muslim woman of certain of her rights. Adhering to an innovative theory, many patriarchally interpreted texts are rendered into an objective and more balanced understanding in favour of a balanced equality.

1. Feminists and Human Rights:

1.1. Background and Evaluation

It is my firm conviction that the origins and intellectual tradition of European feminism go back to 1790, and that the present feminist movement has inherited the impetus, snowballed two hundred years ago, by people like Mary Wollstonecraft, who, fired by the heady fervour of the French revolution wrote "A vindication of the Rights of Woman" (1790). Almost certainly, this work influenced John Stuart Mill's well-known study on liberal feminism, *The Subjection of Women* (1869) which shares strikingly similar arguments regarding women and human nature, and the contention that physical characteristics, gender related or otherwise, pale to non-existence when compared to the quality that differentiates between mankind and beast – "the simple power ... of discerning truth."¹

Despite being non-Muslims, they have adopted a similar standpoint to that which has been presented in the Islamic teachings. They, both, unwittingly agreed with Muslim scholars by acknowledging what they had been emphasising throughout the centuries: that the faculty of intellect is the most important tool, and the decisive criteria through which one should categorise a creature and distinguish it from others. This is now a representative stance of contemporary liberal feminism. Muslims scholars, however, have also established the superiority of the spiritual dimension of a human being, i.e. the soul, elucidating that in this both genders are equal. I have

1. Wollstonecraft, Mary, A vindication of the rights of men : in a letter to the right honourable Edmund Burke: occasioned by his Reflections on the Revolution in France : and ; A vindication of the rights of woman: with strictures on political and moral subjects / Peterborough, Ont. : Broadview Press ;Hadleigh: B.R.A.D, 1997, p.303.

added to this another Qur'anic point that physical sex-differentiation was not primordially existent, and that, as such, physical difference is a human production, and not a Divine distinction.¹

Wollstonecraft and Mill, on the other hand, are somewhat ambiguous as to whether human nature is gender-differentiated beyond the common rational foundation. Though they both openly admit to men and women displaying different characteristics, and do not shrink from describing women as "almost sunk below the standard of rational creatures",² they argue that these are not, however, natural phenomena so much as the result of social inequality. Although making a few sparse comments suggesting a natural complementarity, most of both Wollstonecraft's *Vindication* and Mill's *Subjection* are single-mindedly devoted to toppling the concept of natural male domination. Astute observers of European societies of that period have explained that the vastly different ways in which girls were brought up as opposed to boys, the way in which certain abilities were nurtured and others neglected, were a natural consequence of a discriminated education. Wollstonecraft seems convinced that the differences between masculine and feminine traits result from nothing other than the greater freedom available to boys.³

1.2. Feminists Approach to Human Rights

Feminist activists and supporters of Human Rights draw attention to the fundamental principle of the international Covenant of human rights law related to non-discrimination, where rights must not be granted or denied by reference to distinctions:

‘Of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’⁴

This organizing principle is found in Article 2 of the Universal Declaration, and it is repeated in the promise of Article 7 that:

1. Al-Hakim, Ali (Edit.), *Islam and Feminism: Theory, Modeling and Applications*, Islamic Centre of England, London 2005, p. 94-97.

2. Wollstonecraft 1975, p. 287.

3. Wollstonecraft 1975, p. 397.

4. Geoffrey Robertson QC, *CRIMES AGAINST HUMANITY, The Struggle For Global Justice*, Penguin Books, London 2002, P.98.

*'all are equal before the law and are entitled without any discrimination to equal protection of the law.'*¹

The principle is endorsed in the Covenant (Article 3 which binds state parties 'to ensure the equal right of *men and women*' to the enjoyment of all their civil and political rights). But, and most important, it is to be found entrenched in the UN Charter, the third Purpose of the organization being defined to include:

'Promoting and encouraging respect of human rights and fundamental freedoms for all *without distinction as to race, sex, language, or religion.*'²

It is reasonable to assume from this that it would therefore follow that international law is contravened every time the rights of universal application are denied through racial, cultural, gender, or religious discrimination.³ One would surmise, therefore, that feminists should be delighted with this outcome.

However, this is not entirely the case, and without embarking on an in depth analysis of feminism at this point, it is necessary to be aware that there are two distinct approaches to Human Rights within the feminist milieu:

1.2.1. The Sceptical Group

The first group views Human Rights with suspicion, and argues that its establishment was in order to maintain the patriarchal position of men in society.

Fran Hosken holds such a viewpoint and has highlighted certain feministic issues that are not included in Human Rights discussions. In a statement we read:

'Human rights are, in reality, men's rights. Never do we hear included in discussions of human rights the sexual assault and torture of women and girls – rape, pornography, forced prostitution and beating of girls and women.'⁴

1. Geoffrey Robertson QC, *CRIMES AGAINST HUMANITY, The Struggle For Global Justice*, Penguin Books, London 2002, P.98.

2. Geoffrey Robertson QC, *CRIMES AGAINST HUMANITY, The Struggle For Global Justice*, Penguin Books, London 2002, P.98.

3. Geoffrey Robertson QC, *CRIMES AGAINST HUMANITY, The Struggle For Global Justice*, Penguin Books, London 2002, P.98.

4. Fran Hosken 1981, p.15, cited in the: '*A Feminist Dictionary*' by Cheri Kramarae and Paula A. Treicherler. Pandora Press, London 1985, p. 200.

Another feminist, putting it another way says:

‘(*Human Rights*) - a luxury I, being black, cannot afford.’¹

By reading between the lines, one is able to grasp the underlying message, which is that if being black is itself a reason by which one may be vulnerable, then the contemplation of Human Rights despite being black is considered a luxury that a black individual cannot afford. In addition, if ‘Human Rights’ were a workable system it should then safeguard their rights which are already violated due to being black. Therefore to consider implementing it for the sake of being a female is almost a luxury that they can only dream about.

This group’s cynical standpoint is currently widespread amongst many Human Rights’ experts. It is my understanding that the reason behind their pessimistic outlook is that they do not feel these articles to be binding, and the reason for this can be summed up in the two following points. In both cases, Human Rights have been violated despite being internationally acknowledged:

- Considering them as ‘a means of puncturing state sovereignty.’²
- Considering them as ‘contradicting the cultural and religious values.’

Concerning the first point, some human rights’ lawyers and activists have been quick to emphasise that some countries, including a number known as Islamic, consider International treaties a threat to their sovereignty. Geoffrey Robertson writes:

‘This is always the problem in reposing much faith in the so-called ‘norms’ of international law as a means of puncturing state sovereignty. No matter how persuasively ‘right reason’ calls for... an end to discrimination against women, it comes up against determined state practice: thousands of executions in countries around the world; a refusal by the United States to sign the Ottawa Agreement; the dictates of Shari’ah law in Islamic nations.’³

1. Morena to her mother 1977 cited in the: ‘*A Feminist Dictionary*’ by Cheri Kramarae and Paula A. Treicherler. Pandora Press, London 1985, p. 200.

2. Neil Hicks, *International Aspects of Human Rights in Theory and Practice*, published in the collected Papers of the International Conference on Human Rights and Dialogue of Civilization, Mofid University, Qum 2001, (the English Part) P. 119.

3. Geoffrey Robertson QC, *CRIMES AGAINST HUMANITY, The Struggle For Global Justice*,

Concerning the second point, many Islamic countries have explicitly expressed reservation in relation to some of the International articles. Indonesia and Yemen have concerns about article 29(1) of the Convention, which allows reference of any dispute concerning the interpretation or application of the convention to the International Court of Justice. Both States indicate that they do not consider themselves bound by the article, with Indonesia taking the position that any dispute relating to the interpretation or application of the convention may only be submitted to arbitration or to the International Court of Justice with the agreement of all the parties to the dispute. These reservations are compatible with the get-out clause of article 29(2), which allows a State party to declare that it does not consider itself bound by article 29(1).¹ Thus, one faces a paradox of a global nature irrespective of the religious or strategic reasons, which lay behind them.

1.2.1.1. Making Human Rights Rule: The International Law Paradox

Many jurists have drawn attention to the fact that International law and universal human rights treaties are not binding. Although there are many overlapping human rights treaties signed and endorsed by the majority of countries, the UN is powerless to obligate its signatories to adhere to any of its rulings. The Universal Declaration is truly universal as most countries belong to its declaratory body, the UN. Its offshoots, the twin Covenants, have (as of May 2002) been ratified by over 140 countries. The twin Covenants – amongst others - do not *automatically* become part of municipal law when the state *signs* them. Conversely, the signature will remain an act with no real legal consequence. What follows is the state's *ratification*, the formal act by its executive government by which the state agrees to be bound. Only in some countries (notably France, Spain and the countries associated with their colonialist pasts in Africa and Latin America) does the ratification *automatically* incorporate the treaty as part of national law.² Geoffrey

Penguin Books, London 2002, P.98.

1. Jane Connors, *The Women's Convention in the Muslim World*, P.355 in 'Feminism and Islam: Legal and literary perspectives, Edited by: Mai Yamani, Ithaca Press, London 1996.

2. Geoffrey Robertson QC, *CRIMES AGAINST HUMANITY, The Struggle For Global Justice*,

Robertson has also referred to the above-mentioned central points. He said in his book on '*Crimes against Humanity*':

'The convention on the Elimination of All Forms of Discrimination against women entered into force in 1981 and has been ratified by most states, but with reservations which preserve for Muslim countries the indelibly sexist legal regime of Shari'ah law, and for the United States the power to deny any women either an abortion or paid maternity leave. This must be compared to the equivalent Convention on the Elimination of All forms of Racial Discrimination, which has been almost universally and unreservedly ratified, thereby establishing an international law against systemic racism. So it is idle to pretend that at this point in time equal treatment for women is a rule of international law. It should be, of course, and the UN made the issue a central theme of the conferences in Vienna in 1993 and Beijing in 1995, but so long as discrimination remains a basic tenet of many national legal systems, the *opinio juris* necessary to make international law is lacking, other than where violations of womanhood are so systematic and gross that the State fails in its internationally recognised duty to protect victims, if it does not possess or does not enforce law against their violators.'

He continues by depicting the full extent of the deprivation of women's rights within the more sophisticated countries, including those in the European continent. He says:

'Even at this elemental level, international law has been slow to recognise rape for the war crime it invariable constitutes when inflicted with impunity by victorious armies. Although prohibited in terms by Geneva Convention IV and as a form of torture by all human rights conventions, 'spoils of war' rapes were not taken seriously until they featured in war crime indictments handed down by the Hague International Criminal Tribunal for the former Yugoslavia. States are in consequence under the clearest international law duty to ensure that military commanders take all reasonable steps to prevent and punish sexual abuse of civilians, and the commanders themselves as well as their soldiers will be

criminally liable for any failure. Recent studies have shown that many governments turn a blind eye to rape in women's prisons: in Pakistan, for example, 70 percent of inmates are sexually abused, and the problem is endemic in prisons throughout the United States, amounting to a breach by that country of its positive duty to take appropriate steps to prevent torture and inhumane treatment.'¹

These words reveal the fact that violation of women's rights is still taking place with no serious consequences for the perpetrator and, therefore, with no fear of punishment. This depressing reality applies equally to Muslim countries as it does to the most developed countries in the world, especially when impostors, claiming to be adherents of Women's Rights, are the very people guilty of committing the crimes and violations. It also reveals that armies and parties who enjoy the upper hand in contemporary wars are responsible for many atrocities and criminal violations. The most pernicious element in this regard is that the relevant governments are turning a blind eye to rapes taken place outside war zones and in civil places, such as in the cases of Pakistan and the former Yugoslavia.

1.2.2. The Realistic Group

The second group views Human Rights as a positive feature and considers it a historical development. The realistic group takes a positive standpoint and wishes to use Human Rights as a tool to improve the conditions of women. Amongst them is Simone de Beauvoire who claims that:

'(*Human Rights*) is something more than a mere species; it is a historical development.'²

In contrast to the initially pessimistic stance taken by some black feminists to Human Rights, a number of them are now arguing that these laws, on the contrary, are there for the benefit of women. Many women's legal representatives are of the firm belief that existing human rights laws could be used to develop a women's rights agenda. In a workbook designed for the use of women of varying levels of literacy, the

1. Geoffrey Robertson QC, *CRIMES AGAINST HUMANITY, The Struggle For Global Justice*, Penguin Books, London 2002, P.98.

2. Cited in Ellain Partnow 1977, p. 122, see the: '*A Feminist Dictionary*' by Cheri Kramarae and Paula A. Treicherler. Pandora Press, London 1985, p. 200.

international women's tribune centre categorises six areas of human rights laws that could be drawn on to protect the rights of women: education; employment; marriage; female refugees; sexual exploitation, and women and torture. They then identify women's human rights to include six areas of concern: violence against women; housing, land and property; reproductive rights; environmental rights; women with disabilities; and sexual orientation rights. All these issues are equally important for all women, irrespective of background, colour or creed.¹

One of the experts in this field has expressed her understanding of the importance of the International conventions, and to what extent she considers violation of these agreements tantamount to a violation of women's rights. She says:

'The convention on the elimination of all Forms of discrimination against women (The women's Convention), which entered into force on 3 September 1981, was drafted by the Commission on the status of women in the early years of the United Nations Decade for Women. Its origins lay in the perception that despite the efforts of the United Nations to promote equality of rights between women and men through both the legal norm of non-discrimination and specific treaties concerning women, extensive discrimination against women continued to exist. Such discrimination it was believed, as the convention's Preamble States, "violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family, and makes more difficult the full development of the potentialities of women in the services of their countries and humanity".'²

Activists and members of the legal profession have recently achieved a degree of success on the world stage by asserting that infringement of women's rights amounts to nothing less than violations of human rights themselves, being one and the same thing. *The Human Rights Watch Global Report on Women's Human*

1. See Patricia Hill Collins, *Black Feminist Thought*, Second edition, Routledge/London, 2000, P.239.

2. Jane Connors, *The Women's Convention in the Muslim World*, P.351 in 'Feminism and Islam: Legal and literary perspectives, Edited by: Mai Yamani, Ithaca Press, London 1996.

Rights (1995) record certain forms of exploitation perpetrated exclusively against women resulting from their specific biological characteristics, ranging from enforced pregnancy and inspection of virginity to forms of abuse which include rape and varieties of sexual enslavement, all of which predominantly affect women. Anti-female brutality in many guises, previously swept under the carpet as allegedly belonging to private (domestic violence) or cultural domains (female genital mutilation), are now being argued as violations of the human right not to be tortured. Other less gender-specific abuses, like denial of the right to work, have also served to maintain the oppression of women.¹

2.1. The Islamic Position regarding Women and Human Rights

In the Qur'an and the Sunnah, the value of justice is considered the highest of all values, and the one upon which the whole universe is built,² as it is derived from one of Almighty God's main attributes, (*Al-'adel*) i.e. the Just.³ On the one hand, these sources have established the principles of justice when dealing with any practical law (*Shari'ah Law*) related to the lives of human beings. In Islamic terminology, the 'human being' (*al-insan*) refers to a person irrespective of gender, colour or race.

On the other hand, one is interested to address various examples of women's rights from an Islamic perspective within the general worldview. It is widely understood that the Islamic rulings of Shari'ah Law are based on justice.⁴ Hence the dynamic and function should be monitored by that general principle, as it is well-defined and primordially agreed upon, while at the same time, the Muslim legislator finds it perfectly acceptable to introduce new ideas that are in coherence with the general principle. I can confirm this approach

1. Nancy Holmstrom, Human Nature. See '*A companion to feminism Philosophy*', Edited by: Alison M. Jaggar and Iris Marion Young, Blackwell, London, 1998, P.287.

2. Abdullah Jawadi Amuli, *Falsafeh Huquq Bashari* (The Philosophy of Human Rights), 1st Edition, Isra'a Publication, Qum 1997, p. 207.

3. For further reading in this topic see: Hussain, Ali, *The Awaited Savior: Questions & Answers*, Al-Mansuri Publ. Qum/Iran, 2003, p. 134-140.

4. Nasser Qurban Nia, *Nisbat mian 'Idalat wa Huquq Bashari* (The relationship between Justice and Human Rights) published in the collected Papers of the International Conference on Human Rights and Dialogue of Civilization, Mofid University, Qum 2001, P. 211.

from my own experience in any project based on Shari'ah Law within the inclusive notion of human rights.

It is worth emphasizing here that this should not be one of the many ways in which human rights activists embroil themselves, or allow themselves to be exploited in a campaign to undermine the principles and intentions (*Maqassid*) of Shari'ah and/or to change the pure identity of the Muslim woman. Such an embroilment would be detrimental to the credibility of the human rights movement within Muslim quarters and from the view of Muslim scholars and their objective academic researches.

Although Islam established the ground for just legislation, certain Muslim scholars have deprived women of various rights. They have maintained an androcentric standpoint by imposing various baseless limitations. Nevertheless, they claim that this by no means implies a superior position of the male over the female, but rather reflects a literal adherence to the sacred texts, and the practice of the pious *Salaf*.

These restrictions, I argue, are on many occasions based mainly on imprecise and incorrect implementation of the vital process of *Ijtihad*. We will take a couple of examples where many Muslim scholars have arguably misinterpreted the narrations to shape a meaning contrary to that which was originally intended.

We all know that the four sources for *Ijtihad* amongst the Shi'ah are: The Qur'an, the Sunnah, the consensus and the intellect. While the first is a sacred text and its authenticity is beyond question, the third is hardly useful because it is rarely apparent, the fourth is restricted to certain principles of pure reason, which leaves the second, i.e. the Sunnah as the main source for Shari'ah Law *Mujtahids*. All of the compilations of the narrations have been written in order to document and register the verbal statements of the Infallible Prophet or Imams (saws). Thus, the central problem lies in the reversion of the written sacred text into a lively phonetically shaped form, or in other words, to understand them exactly in the same intonational forms in which they were originally spoken.

While persevering with the technical experience of the '*Ijtihadi*' background, I have assiduously been seeking to establish an innovative approach and theory entitled: '*Al-Anmat As-Soutiah*

Al-Kalamiah' (The Differing Phonological Approach of Intonational Forms).

From the following paragraphs, it will be clear that this theory will not be exclusively related to this topic, or even to the subject of Jurisprudence, as it was founded when the author felt the need for a commonsensical reading and a correct reversion of the sacred and religious texts.

2.2.1. 'Al-'Anmat As-Soutiah Al-Kalamiah' (The Differing Phonological Approach of Intonational Forms)

The narrations are verbal statements of the infallibles, and their utterances are sentences comprised of words.¹ These words are expressed following the principles of discourse common amongst the dialogue parties, who in this case were all Arabs. Despite the fact that Arabic is not considered to be a tone language² – such as Chinese or Norwegian, where tone in the pronunciation of a word plays a crucial role in conveying its meaning – the *intonation* of phonological features related to supra-segments still occupies a remarkable place in the dialogue technique of the Arabic language, therefore Arabic is considered to be an intonational language.³

Intonation is literally a manner of producing or uttering tones, especially with regard to the accuracy of pitch. Linguistically, it is the use of changing pitch to convey semantic information. Thus, intonation is the music of the language.⁴ In many languages – such as English – a person uses tone to signal emotion, questioning, and to emphasise parts of the sentence among many other things. It is important to recognise the meaning behind the tones used in everyday speech, and to be able to use them so that misunderstandings do not occur between the speaker and the listener. It is generally true that mistakes in pronunciation of sounds can be overlooked, but mistakes

1. Ahmed Mukhtar 'Umar, *Dirasat As-Sawt Al-Lughawi* (A Study of the Arabic Phonology), 1st Edition, 'Alam Al-Kutub, Cairo 1991, p. 161.

2. See Ramzi Munir Baalbaki, *Dictionary of Linguistic Terms*, Dar El-ilm Lilmalayin, Beirut 1990, p. 505.

3. Ibraheem Anees, *Dilalat Al-'Alfadh* (The Meaning of Words), 4th Edition, Anglo-Egyptian Library, Cairo 1980, p. 46-47.

4. Ahmed Mukhtar 'Umar, *Dirasat As-Sawt Al-Lughawi* (A Study of the Arabic Phonology), 1st Edition, 'Alam Al-Kutub, Cairo 1991, p. 366.

in intonation make a lasting impression, sometimes conveying the wrong message or even the opposite to what was intended.

Within the study of modern linguistics, intonation is considered a subfield of a topic known as supra-segmental phonology.¹ It is still wide open to pioneering work, and experts and phonologists are working to detect and establish core principles and features, which apply to the various languages. It is in fact one of the 'most puzzling and idiosyncratic' aspects of human speech within the behavioural sphere of language. Knowing the rules of intonation is equal to grasping the 'dynamism of discourse' in any language.

Unlike other works dealing with phonological verbal statements, our target in this paper is to grasp written statements. Since the majority of the mentioned narrations are not combined with punctuations marks, nor associated with other obvious methods conducive to understanding, our task is fraught with extreme complication.² For these reasons, rendering such statements into their phonological forms requires establishing the innovative theory of '*The Differing Phonological Approach of Intonational Forms*'. The approach is dedicated to detecting broad-spectrum models of intonation in Arabic, and to institute the general approaches which will enable one to summarise the possible intonational patterns of the language as it is spoken and heard. Clearly, since the human eye is open to imprecision in what and how it reads from a text, the most reliable method is to incorporate rhetoric, syntactical, morpho-syntactical, individual and technical evidence³ as aids to reading a statement, understanding how it might sound and deciding what auditory impressions we record from our initial data.

2.2.2. An Elucidation of the Necessity for the Prosodic Studies

Prosody is one of the modern studies within the Arabic language. Western linguists have achieved a lot of success in their study of

1. Muhammed Ahmed Mahmud, *Ilm Al-'Aswat* (Phonology), Eshbella publication, Riyadh 2003, p. 201.

2. Fathi Al-Khuli, *Daleel Al-Imla' wa Quai'd Al-Kitaba Al-Arabiah* (The Guide to Arabic Orthography), Wahbah Publication, Cairo 1988, p. 169.

3. Muhammed Ahmed Mahmud, *Ilm Al-'Aswat* (Phonology), Eshbella publication, Riyadh 2003, p. 212-214.

languages; however, their efforts have chiefly concentrated on the tree of Indo-European languages. The Arabic language is considered one of the Semitic languages, and its linguistic rules and prosodic features are therefore not easy to grasp.

Checking the Arabic phonologic library, I have been unable to discover many relatively modern clear and concise presentations of the phonological system of Arabic by any distinguished Arabic phonologist.¹ Bearing in mind that the Arabic language has undergone considerable alteration since the first century after the Prophetic Emigration, and has still been subtly changing during the last 200 years, we cannot afford to leave the matter unaddressed. However it is beyond the scope of topics of our Conference, but it has therefore been deemed necessary - without delving too deeply into a study of the Arabic prosodic features - to explore the most relevant phenomena.

The functions of prosody in phrases are characterised by complex interactions between word order and phrase stress, commonly termed 'sentence stress'. Arabic is a highly inflecting language, with relatively flexible word order, both in a sentence build-up, and for the purpose of conveying a message. Therefore, it may be said that this has consequences for the use of intonation, as it would have little effect on the understanding of Arabic. Unlike languages, such as English, with no fixed word order, Arabic has few inflections and a relatively fixed word order, and we encounter the phenomenon that word order is a major focalisation device regularly used in reference to the syntactical status of words, for topicalisation and, conversely, for marking new information by utterances. This means that the 'functional load' on prosody in this connection may well be lower than in English, which is based largely on the intonational tone in order to convey important information.

Furthermore, word order in Arabic – like the order in Welsh - is predominantly *Verb-Subject-Object*; with the VSO order present in verbal sentences, and *Subject-Predicate* in nominal sentences, which contrasts with the SVO order of English or French.

In addition, Standard Arabic has many quasi-parenthetical expressive and discourse particles - being joint with a word or

1. Ahmed Mukhtar 'Umar, *Dirasat As-Sawt Al-Lughawi* (A Study of the Arabic Phonology), 1st Edition, 'Alam Al-Kutub, Cairo 1991, p. 15.

separated - such as the modal particles like (*Harf Tahqieq*) `Quad` for (*Tahqeeq*) 'certainty', `L` for emphasis and `Lam` for firm negation, transforming the verb in its present tense into the past, and others whose functions are to convey the kinds of information possibly characteristic of intonation in other languages, such as 'certainty', 'emphasis', or 'negation'. These particles and devices may be fairly combined and easily expressed without contradicting the rules of Arabic rhetoric, while in English one uses the prosody and the intonational tone to convey them.

However, despite Arabic having a relatively fixed word order, there is still sufficient flexibility to place great reliance on the intonational tone for the purpose of conveying the correct message, in order to essentially avoid a wrong meaning. The reliance on tones and various intonational forms by the Arabs in their general use of the language is crucial evidence for our claim.

The existence of the many quasi-parenthetic expressive and discourse particles – joint or not joint – occurs in certain European languages such as German, however German phonologists have continuously studied and analysed this phenomenon. Thus, it naturally follows that these devices will exclusively replace vital roles of intonation at irregular intervals. It certainly does not rule out the fact that certain messages and specific points can, and therefore should, be most effectively communicated solely by the use of intonational focalisation and tone.

If the relatively fixed word order is adequate reason for negating intonation its vital role and/or to wipe out its existence, then all similar languages should have a similar status; all linguists have come to the same logical conclusions and their phonological efforts have arrived at the same closing stages.

In fact, focalisation is one of the most challenging areas in the study of Arabic intonation, whereas the number of studies on Arabic intonation are few and very limited. Therefore, these or related aspects such as topic and comment, focus and background, given and new information and signalling the scope of semantic operators should all be covered; a general overview is usually given in rhetoric. In Arabic syntax and rhetoric, the field is often referred to as `emphatical

sentence perspective', '*Aj-Jumlah At-tawkidiah*' '*At-Ta'keed wal Quasr*', terms used by the rhetoric books as well as, infrequently, by some linguists.

The situation is further complicated by the possibility that it may not be just a straightforward case of listening to expressions or statements in similar contexts; it may also occur that texts will be encountered without a single written mark to indicate how to read them or how to express the appropriate intonation. When all the dots, vowel points accents, punctuation and orthographic marks are missing, and all this in association with different manuscript versions of the same account, a multiple challenge will be faced in understanding a multi-readable statement, with unspecified correlated intonations.

In conclusion, the Arabic language has three main ways of signalling focalisation and related aspects of functional sentence perspective: using *focus particles*, word order, and accentuation. The three signalling devices do not have to coincide, and can therefore be assumed to relate to slightly different aspects of focalisation. It is thus evident that there is a need for extensive work to be done in order to establish certain, rules, regulations and evidences by which to detect the correct or the most probable intonation.

2.2.3. Intonation and the *Ijtihad* for Reading of the Sacred Texts:

The intonation of Arabic has not received much attention from linguists and phonologists; however, there is currently an upsurge of interest stemming from speech technology following the constant socialising with Arabs from different dialect and colloquial backgrounds.

For our part, the need to study those prosodic features and to detect principles and rules is of vital importance. Without knowing them, one is unable to grasp the exact intended meaning or the genuine messages that were meant to be conveyed. The goals of providing the most probable estimation of natural speech synthesis, spoken and later recorded in written form, is an attempt to disambiguate alternative analyses and to identify, with precision, the speaker's intentions in his words. These efforts should be acknowledged, recognized and will receive – I assume – prominence

in the context of the large research institutions and *Ijtihadi* projects. It would naturally follow that this would develop to cover increasingly sophisticated problems such as the multiple meaning of words on the side of lexicography, as well as vague phrases that are due to the different ways a sentence can be read, which in many cases is associated with different variants of written manuscripts.

On the side of semantics and pragmatics, dependent on these *Ijtihadi* developments, two main centres of linguistic interest can currently be identified: the application of interpretative methods from text analysis to the description of the most probable uttered intonation, and the investigation of the role of focus in formal semantics. In these areas, increasingly detailed analyses of the functions of prosody will emerge, casting no doubt on the necessity and validity of detecting the approximate meaning of simple and compound functional sentences and the like in view of insights into the complexity of such notions as (*Hukm Taklifi & Wadhi'i*) or which (*hukm taklifi*) is meant.

2.2.4. Two Practical Applications of the Theory:

Let us take two examples and study them in the light of the above mentioned approach and present the following applications:

- In the case of whether a woman has the right to be a judge. Usually, most of the Shi'ah scholars are not of favour of this. Grand Ayatollah Kho'i has written the following in his (*Fiqh Istidlali*) book (*Mabani Takmilat Al-Minhaj*), as argument and proof for his adoption of refuting the right for women to be judges:

In the original text, then, he says, based on the consensus of scholars, and due to the *Prophetic Hadeeth*:

روى الشيخ الصدوق (ره) فى كتابه (من لا يحضره الفقيه) عن حماد بن عمرو وأنس بن محمد عن أبيه عن الإمام جعفر الصادق (ع): "ليس على النساء أذان ولا إقامة، ولا جمعة ولا جماعة، ولا عيادة المريض، ولا اتباع الجنائز، ولا اجهار بالتلبية، ولا الهرولة بين الصفا والمروة، ولا استلام الحجر الأسود، ولا الحلق، ولا تؤولى القضاء...الخ"¹

'There is no obligation on a woman to recite *Athan* or *Iqhamah*, no obligation to perform the Jum'ah or the congregational prayers (*Jama'ah*), ... and she is deprived of the right to be a judge...etc.'

1. As-Saduq, *Man La Yahduruhu Al-Faqieh*, Vol. 4, p. 263, Narration 821.

Minds may gravitate towards this version of the text, as they are often already full of the preconception of women and their deprivation of rights regarding ruling, along with widespread stereotyping that they should be deprived of such vital positions; however, the other possibility is that it could be read in this way:

”ليس على النساء أذان ولا إقامة، ولا جمعة ولا جماعة، ... ولا تَوَلَّى القضاء... الخ”

In this way it has been narrated in *Nahj ul-Balaghah*, where the passive voice is not there, as it is not a verb, but rather a noun.¹

This narration obviously means that it is not incumbent upon a woman to be a judge, as the formulation would then be in the passive voice. We here face an entirely different intonational shape. It is well known that Shari’ah Law wanted to ease things for Muslim women, and did not make those things obligatory on her, but rather optional.² The fact is that there are certain evidences which enforce the second reading, as it fits the whole context of the Hadeeth. The Hadeeth is focused on negation. While concentrating on negation the question could be formed in a jeopardy style, while reading the first few phrases one is able to form the following question based on jeopardy rules:

‘What are the things which are not incumbent upon nor extensively recommended for women in the Shari’ah law?’

It has then been made clear that she is not obliged to have a profession of any of the abovementioned categories, and it thus naturally follows that one must insist that the whole Hadeeth is versed and formulated in order to create a mercy (*Tafadhul*) for women in general, not a curse on their social, judiciary and political involvement - as the style of mercy (*Tafadhul*) contradicts these conclusions.

If one assumes otherwise, then the natural intonation and the prosodic natural rules require an extra focus and emphatic accent on this specific phrase as it is semantically a jump between two ordinary indications, and phonologically would be: Low-high-falling tone, or a hill between two valleys. There are two reasons why it is considered a jump; as for the first reason we know that the initial phrases are negating the practical law, e.g. *Nafi Al-Hukm At-Taklifi*, and this would

1. The selected sayings from Imam Ali (as), *Nahj ul-Balaghah*, vol. 1, p. 415.

2. S. Muhammad Mahdi Shams Ad-deen, *Ahliat Al-Mar’ah litawali As-Sultah*, vol. 2, 3d Edition, Al-Mu’assasah Ad-Duwliyyah, Beirut 2001, p. 87.

then be *Nafi Al-hukm Al-Wadhi'e*. As for the second reason, it is a jump from negating the obligation (*Nafi Wujub*) to the level (*Nafi Hilli'yyah*) of depriving groups what is rightfully theirs. However, there is no such evidence which forces us to adopt this version of higher intonation while speaking of this specific phrase, as the natural habit is that the sound would flow smoothly and systematically towards the end without necessitating an extra emphatic accent on this phrase.

- The other Hadeeth is narrated from Imam As-Sadiq (as) who says in the famous narration from Abi Khadijah:

"أياكم أن يحاكم بعضكم بعضاً إلى أهل الجور، ولكن أنظروا إلى رجلٍ منكم."

The translation is: Don't seek a judge from amongst the unjust people. Look for a man from amongst yourselves. This provides evidence that one should only ask a man to be the judge. Many claim that if the Imam's intention was to leave the position of judge open for both genders, he should then have implemented another word instead of *Rajul* which obviously refers only to a man. They thus employ this narration to prove that women have no right to be judges. It is also an extension to what is known in the Principles of Jurisprudence (*Usul al-Fiqh*); that is the majority of the words are to be wanted alone and meant seriously, i.e. (*Qa'idat Ihtiraziat Al-Qiyyud*), which forces everyone to conclude that no woman is allowed to hold such a blessed position.

It is clear that this is another example where prosody plays a vital role. There are many variations of the former statement: in the word order's swing, the positioning of accent and focus particles. These were necessary if the abovementioned meaning were his initial intention. The possible meaning - as indicated by the opponents - for this example sentence can only be illustrated here in the following way: effectively the (*rajul*) syllables can be fronted with an emphatic accent, or a combination of those syllables and a focus particle that can occur combined with the focussed constituent. Only if it was accented for contrastive or emphatic purposes, would this message be conveyed, while, because of its absence, such an indication cannot be understood from the already given formulation.

Referring to the principle (*Qa'idat Ihtiraziat Al-Qiyyoud*) which has forced many scholars to insist that the gender factor is addressed here is another misleading argumentation. Many have therefore

claimed that it is said as a matter of habit and usual way of expression, not to provide evidence that females are deprived of this position.¹ As a matter of fact, there are many statements which are unconditionally (*I'tlaqat Al-Adillah*) uttered. In the famous narration *Maqbulat 'Umar bin Handhalah* one is able to read the following:

”ينظران الى من كان منكم من روى أحاديثنا ونظر في حلالنا وحرامنا“.

In this narration, there are no indications of gender issues, as he says: Look for someone who has access to the Shari'ah Law, has narrated our traditions and knows our *Halal & Haram*, and let that person be a judge between you.'

The general meaning of the pronoun applies to both genders.² In conclusion the general rules necessitate a general principle that females are equal to males, therefore they should not be deprived of what is rightfully theirs, in which case such a weak indication – as one assumes, is given by this former statement - is not enough to destroy the unconditionality (*I'tlaqat Al-Adillah*) and the general principles. It is due to this narration and other opinions that Ayatullah Hakim has explicitly stated in *Al-Mustamsak* that in the case of *Taqleed* there are no clear arguments which prove this restriction. He writes:

“Many scholars have issued a Fatwa that a female, or even hermaphrodite can be followed in *Taqleed*.”³

2.3. An Approach for Fair and Just Achievements

Based on what we have read and presented of this approach, we will not share much empathy for this reading of the sacred texts. Therefore, one may associate many of the contradictions and reservations of Muslim countries towards the International treaties with the Western supported so-called Islamic regimes, which follow the Afghan-Talibani model, or liberal regimes, which were supported by West when replacing the former communists. It might be the reason why Geoffrey Robertson concludes the following at the end of his book, '*Crimes against Humanity*':

1. *Douruss fi Fiqh As-Shiah*, vol. 1, p. 124.

2. S. Hussain Bahr ul-'Ulum, *Al-Furu' min Fiqh Ahlul-Bayt, Ijtihad wal Taqleed*, Taqreerat of Ayatollah Shaikh Mustafah Al-Harandi, 1st Edition, Al-Alfain, Beirut 2001.

3. Al-Hakim, *Al-Mustamsak*, vol. 1, An-Najaf/Iraq, p. 44.

'In the twenty-first century the human rights movement will struggle on, against ... armies, churches and states – looking increasingly to international law to provide a lever against these institutional powers. Most of the crimes ... were committed by professional soldiers, blessed by bishop or approved by governments. The new role of peacekeeping has muted the military brass but not changed its tune: the Pentagon organized a global campaign to undermine the International Criminal Court, ensuring that commanders in most of its client countries lobbied governments against the idea. (What was hopeful and heartening was that it failed in every country except the US.) Transnational religion has proved a forceful opposition to women's rights, especially since the collapse of communism. Shari'ah law exerts its primitive attraction: in 2002, after the overthrow of the Taliban, the Chief Justice of Afghanistan announced that thieves would be mutilated, adulterers stoned, and that homosexuals, apostates and Christian proselytizers would face the death sentence. The Problem is not confined to Islam: a resurgence of Roman Catholicism in Eastern Europe has been particularly damaging to women's rights – Lech Walesa lost his civil liberties halo when as President of Poland he vetoed abortion reform.'¹

It is worth emphasising two vital points here:

- Muslims still assiduously adhere to their sacred Shari'ah Law, and cannot ignore its Divine treasure despite any pressure to employ man-made laws, which have proved to be a huge failures, especially if one takes into consideration the above-mentioned viewpoints.

- There is a need today for the establishment of an Islamic human rights movement to defend women and men's rights as part of human rights without conceding the pure Islamic identity.² One of the objectives of such a movement would be to reinforce the Qur'anic theory through the backing and promotion of universal Qur'anic human rights. At the same time, the pressure group should seek

1. Geoffrey Robertson QC, *CRIMES AGAINST HUMANITY, The Struggle For Global Justice*, Penguin Books, London 2002, P. 532-533.

2. S. Sadiq Haqiqat, *Huquq Bashari Islami: Shari'at, Imkan wa Imtina'* (Islamic Human Rights: Conditions, possibility and impossibility, published in the collected Papers of the International Conference on Human Rights and Dialogue of Civilization, Mofid University, Qum 2001, P. 91.

common ground on which all defendants of secular human rights, irrespective of ideological convictions, may at least find no incentive to oppose.

Feminists and supporters of the secular human rights movements need to understand that it will do the human rights cause no good to neglect the Qur'anic identity in the name of defending Feminism and the secular elements of human rights. The Qur'anic value of humanity and the notion of Islamic Human Rights is indeed a universal value; therefore, the movement and the cause should be too. For both the value and the cause to remain universal, and in order to prevent their monopoly by one particular culture, cultural specificity has to be recognized and respected. In fact, cultural specificity is an indispensable feature of universality. This aspect of universality can principally be introduced based on the Divine teachings, which are manifested in the line of prophethood. This line is both Divine and universally accommodated within the mind and the cultures of the globe.

3. A Prophetic Model for the Feminist

Feminists in the West appear to have been brought up with Christian dogma in their backgrounds. They have praised Jesus (as) as a man who really appreciated females and who never looked down on them as inferior beings. Nor did he express superiority over them solely on account of his being a man. 'He is a feminist' Marilyn Warenski said.¹ Another of them (Dorothy Sayers) writes:

'A prophet and teacher who never nagged at women, never flattered or coaxed or patronized, who never made arch-jokes about them.'²

For Muslims his image is magnificent, and they are proud and honoured to proclaim him the great sign of Allah's (swt) Divinity, and His sincerely devoted servant. They, unreservedly and with absolute pride, honour, and complete delight, declare that he is the son of Mary (as). However, for the feminists it seems there is still a problem

1. Marilyn Warenski 1978, p. 261, see the: '*A Feminist Dictionary*' by Cheris Kramarae and Paula A. Treicherler. Pandora Press, London 1985, p. 215.

2. Dorothy Sayers 1974; in Betty Roszak and Theodore Roszak eds 1969, p. 121, see the: '*A Feminist Dictionary*' by Cheris Kramarae and Paula A. Treicherler. Pandora Press, London 1985, p. 215.

regarding the way in which the Church has presented him as a Divine man. Anne G. Dallenbaugh writes:

‘[Jesus is] Man-made. Male conceived of Mary as a hollow shell through which ‘god the father’ reproduced himself in the world. Jesus is not the son of Mary of woman, nor is he ever named that way. He is the son of god, the son of man. In other words, he is a totally man-made product, a clone.’¹

In fact, she is right, as Jesus (as), who is certainly a son solely of a woman, is transformed to a man-made son of God, who, once again, is in turn of a patriarchal nature. Reading what we have elaborated upon so far and relying on this approach, one is able to reveal the truth behind the Islamic teaching, which is presented in a moderate and truthful colouring. Above all, one holds complete satisfaction regarding the illuminated nature of the Prophet Muhammad (saws), as he disregarded the established conventions and taboos by treating the female members of society with equality and respect. He posed such a threat to the *Jahiliyyah* institutions in that he was the triumphant destroyer of their idols. He was not a feminist in the contemporary meaning of the word, but rather a messenger for all humanity. He succeeded in removing the false gods of fanaticism and ignorance from the temple of human hearts. In sum, he was the blessed son of Abdullah and Aminah and so, in addition to being a true and all-encapsulating reflection of the Divine, was a female - male procreated human being.

Conclusions:

- The feminists' position regarding human rights is divided into two groups, one being sceptical, while the second is considered more realistic. Their scepticism can be absolved, as the International law legislators have no enforcement power to secure their rights, nor have they taken into consideration certain important aspects, while the essence of many of their claims is to be treated as a full human being equal to men with respect and dignity. While Qur'anic human rights is a just and universal notion, this system should be supported and

1. Anne G. Dallenbaugh 1982, p. 60, see the: '*A Feminist Dictionary*' by Cheris Kramarae and Paula A. Treicherler. Pandora Press, London 1985, p. 216.

promoted in the International institutions, at the same time as maintaining the pure Islamic principles of a balanced equality between the two genders, which is a universal message and in absolute conform with the Shari'ah Law.

- Muslim jurists, on some occasions, have introduced an androcentric position related to depriving women of some of what is justly their right. However, these *Fatwas* were technically natural failures due to the human incapability of grasping a textual writing of a verbal statement. When certain general rules and individual evidences can be established through the innovative theory: '*Al-Anmat As-Soutiah Al-Kalamiah*' (The Differing Phonological Approach of Intonational Forms), one would be firmly able to assert that certain restrictions were based on a misleading reading of the relevant sacred texts. The suggested reading based on this innovative theory will, in many cases, lead to systematic refutation of those conclusions.

- The Prophet (saws), who was the reflection of the above-mentioned principles, was the reformer, and deserves to be the true model for all human beings, as he established, after demolishing the *Jahiliyyah* idols, the most sophisticated worldview system (*Weltanschauung*) based on balanced equality. He is himself not a clone of a patriarchal contemptuous Lord - as some feminists have wrongly claimed about Jesus (as) - but a male-female procreated Divine human being.