

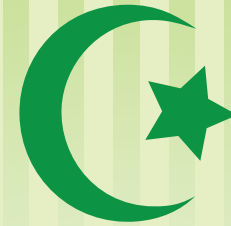
*“EXTRACT FROM THE BOOK”*

*“No greater tribute could have been paid to the cause of human rights and fundamental freedoms in Islam than by words of one of the members of the European delegation to the conferences when he said:*

*“As a Christian I declare that here in this Muslim country, God is revered in all truth”.*

*He, in conjunction with the other members of the European delegation, professed, his agreement with Muslim canonists in asserting that, after what he had heard and actually seen, he held Qur’aanic prescriptions on human rights as undoubtedly more meaningful than the Charter of Human Rights.”*

**In the name of Allaah, Most Gracious, Most Merciful**



***HUMAN RIGHTS***  
***And***  
***FUNDAMENTAL***  
***FREEDOMS***  
***In***  
***ISLAM***

**by the late Justice G. A. Edoe,  
former High Court Judge and Ombudsman,  
Republic of Trinidad and Tobago**

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On the question of polygamy it must be noted that it was practised without condition or limitation long before the advent of Islam. It was practised in Judaism from which Christianity originated. It is reported that the prophets of the Old Testament belonged to a polygamous society beginning with Abraham who is recognized as the father of the prophets by Arabs as well as by Jews and Muslims. There is no doubt that even among those who forbid it, polygamy is still practised in concealment causing much material, social and moral damage to husbands, wives and children.

It was as a result of this state of affairs that Islam limited polygamy to four wives thus closing the door to rampant abuse. The second reform was to ensure justice in the equal rights of all the wives. A “new” wife becomes a legitimate spouse, not a concubine of low consideration in the social life. If a husband contracts a second marriage against the will of the first wife, she has a right to sue for divorce. It is interesting to note that because of the stringent conditions laid down, monogamy rather than polygamy has been the rule rather than the exception in countries where Islamic law prevails.

What is the duty of Muslims in this Country whose laws and Constitution are of a secular origin? Human rights and fundamental freedoms are protected in the Constitution and in the civil and criminal law without discrimination by reason of race, origin, colour, religion or sex. Such protection does not go as far as the Islamic law requires in an Islamic state. Nevertheless rules and principles which safeguard human rights and fundamental freedoms in Islam but exist only as moral prohibitions in the political, cultural, economic and religious spheres in this Country are nevertheless binding upon Muslims. Their rewards and punishments in the observance or breach of these laws lie not in this life but in the Hereafter.

End

## *About the Author*



Justice Edo was born in San Fernando on the 17th January 1926. His father was an indentured immigrant who opened a dry goods shop after serving his term of indenture and his mother was the daughter of an indentured immigrant. Young Edo received his primary school education at the San Fernando R.C. Primary School. He then entered Naparima College on an open scholarship in 1937, graduating in 1941.

Edo at first worked with an oil exploration and refining company but left and entered the Civil Service as a Second Class Clerk in 1945. He was posted to the Sub-Registry of the Supreme Court in San Fernando and his exposure to law in the courts aroused in him a desire to study for that profession. Thus he embarked upon studies for the Bar and for the Bachelor of Laws (LL.B.) at London University by correspondence courses. By 1961 he had completed both the first part of the Bar and the London LL.B. He then enrolled as a member of Lincoln’s Inn and proceeded to London for the final examination at the Bar and for his Degree course. He completed his final examination for the Bar at Michaelmas (Christmas) 1962 having placed third in the Commonwealth with Upper Second Class Honours. He was called to the Bar in July 1963. He also completed his final examination for the London LL.B. He was admitted to the Bar in Trinidad in August 1963.

Edoo then resumed duties as Principal Officer and 2nd Deputy Registrar in the Registry of the Supreme Court, a position in which he had acted prior to his departure for London in 1961. In 1964 he was promoted to the post of Assistant Registrar and Deputy Marshal of the Supreme Court in charge of the Sub-Registry in San Fernando. He opted for early retirement and was in private practice for two years before he was appointed to the position of High Court Judge in February 1980. He was promoted to Justice of Appeal in 1987 and retired in 1991. In February 1991 Justice Edoo was appointed as Ombudsman of Trinidad and Tobago by the President for a three-year term and by successive terms his tenure was extended until February 2006 when he retired.

Justice Edoo had over the years made a substantial contribution to Islam in the country. He was a member of the Executive Committee of the ASJA and Chairman of its Education Board and Divorce Council. Following the repeal of the Muslim Marriage and Registration Ordinance in 1961 and its replacement by the Muslim Marriage and Divorce Act which came into force on the 1 December 1964, it became necessary for the Registrar General to make rules prescribing the procedure and practice to be observed by a Divorce Council in dealing with applications for divorce. Because of the failure by the appropriate authority to make the relevant rules the Divorce Councils could not function for a number of years. As a result, representatives of the three Muslim bodies (ASJA, TIA, and TML), under the chairmanship and guidance of Edoo, formulated the rules, which were then submitted to the Registrar General, and eventually passed into law.

His advice had often been sought by other bodies and individuals in the country *pro bono*.

Justice Edoo died on April 10, 2013 at his home in Palmiste, San Fernando. He was buried at the Paradise Cemetery the following day after Islamic funeral rites were conducted at the Jama Masjid, San Fernando.

(From: *“Milestones in the History of Muslims in Trinidad and Tobago”* by Zainol A. Khan)

civilizations flourishing at the time. In Roman Law and in many ancient civilizations women were denied any juridical capacity whatever. She was the subject, by reason of her sex, to a perpetual guardianship, that of her father during her childhood and that of her husband, the rest of her life. She had no freedom of action. She was a mere object dependent on man; she had no personality of her own and could not act as she pleased. There is no doubt that western countries were influenced by Roman Law and this can be seen in the legislation concerning the disabilities and status of women. Medieval theologians questioned the humanity of women. One wondered whether her soul was identified with that of a man or more akin to animals, like foxes or dogs. Another decided that she had no soul at all and so was not destined to resurrection.

In Arabia, before the advent of Islam, Arab tribes held women in a state of utter subjection and degradation. She was commonly regarded as a disgrace and those responsible for her hastened to get rid of her by burying her alive at the moment of birth. The Holy Prophet (upon whom be peace) censured these cruel practices. In Ch.16 Verses 58 and 59 of the Qur’aan is revealed: *“When news is brought to one of them of the birth of a female child, his face darkens and he is filled with inward grief. He hideth himself from his people because of the bad news he hath had. Verily evil is their judgment”*.

More than fourteen hundred years ago before the existence of charters on human rights and fundamental freedoms, Islam placed the question of women among the first human problems and with firmness and faith resolved and proclaimed the perfect humanity of women equal to that of men. The Holy Prophet (upon whom be peace) said: *“Women are the sisters of men”* at a time when she was held in such utter subjection and degradation.

Islam ensures all rights both social and economic e.g. the right to property, the right to enter into contracts and marriage without any guardianship or restriction. Ch. 9 Verse 71 of the Qur’aan states: *“And the believers, men and women, are Protectors of one another, they enjoin the right and forbid the evil”*.

recommendations not guaranteed by any legal safeguards either on the international or domestic level.

Despite this comprehensive code of conduct in the field of human rights and fundamental freedoms, western society has always expressed doubts on two fundamental aspects—that of punishments and legal penalties and the status of women in Islam.

In the Holy Qur’aan, certain penalties are prescribed for murder, theft, adultery, calumnious accusation of adultery and offences against public security. Throughout history in secular countries graver punishments have been imposed for these crimes than are prescribed by the Qur’aan.

To western eyes at the present day the penalties prescribed may seem harsh and as constituting cruel and unusual punishment and an infringement of human rights and fundamental freedoms. It must be emphasised that in Islam laws and injunctions with regard to punishment for crimes are prescribed by Divine law which lays down rules and precepts for all human activity. But as I have already indicated the general principles which are explicitly stated in the Qur’aan with respect to many matters including crime and punishment can be altered according to the progress of morality.

In an Islamic State the punishment for premeditated murder is death which is simply and expeditiously carried out. The great majority of secular states still prescribe the death penalty for premeditated murder. In the western world there is a division of opinion and feeling as to whether the death penalty can be considered cruel and unusual punishment. Many States which have abolished the death penalty are having second thoughts and are seeking to re-introduce it due to rising crime rates and the pressure of public opinion.

I now turn to consider the status of women in Islam, a subject for which the western world has reserved its most biting comments.

The condition of women in Islam can be understood only by reference to her condition prior to Islam, not only in Arabia but also in other

# HUMAN RIGHTS and FUNDAMENTAL FREEDOMS IN ISLAM

by Late Justice

G. A. Edo, former High Court Judge and Ombudsman,  
Republic of Trinidad and Tobago

Most authorities agree that the term “human rights and fundamental freedoms” has sprung from the doctrine of natural rights which itself has sprung from the natural law. The natural law has been identified as the law of God or nature and as denoting the status of man when he was put upon this earth. The whole concept is grounded upon the primary instincts of man and his perception of rights and obligations to one another in a society. Since these rights and obligations are of universal application, it can be said that natural rights are inherent in every human being in every country and in every age.

All of the great philosophers of the past have recognised the unique status of man and the rights which are inherent in that status. Justinian, the great Roman Emperor and Jurist from whom most of the western systems of law and jurisprudence are derived. said: “*By natural law all men are born free.*” Again, “*So far as pertains to natural rights, all men are equal.*”

In times of oppression and adversity, men have sought to define and to establish these rights and put them in a permanent form or basis. In the olden days rulers thought that they had a divine right to trample upon these God-given rights and so came about the expression “the divine right of kings.”

It was from *Magna Carta* or the Great Charter which culminated in the Bill of Rights in England in 1689 that the king had to acknowledge that there were certain rights of the subjects which could not be violated even by a sovereign in whom all legal power was vested. This was the

bill which established the basis of the laws and legal rights upon which our system and that of the Anglo-American system of law and jurisprudence are founded.

It was not until the American Declaration of Independence and the French Declaration of the Rights of Man that such rights were defined in the Constitution of a country. The Declaration of American Independence drafted by Jefferson in 1776 stated: *“We hold these truths to be self-evident; that all men are created equal; that they are endowed by their creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.”* It is to be noted that these safeguards were put into a Constitution to protect citizens from the heavy hand of the State and its agencies in order to preserve and guarantee their God-given rights.

Since the emergence of new states from colonial domination after the Second World War, the great majority of them have seen it fit to ensure that these natural rights over which men have fought wars over the ages, should be preserved and guaranteed in their Constitutions.

The Constitution of the Republic of Trinidad and Tobago enshrines human rights a fundamental freedom in the following respects: (i) by preserving the rights of the individual to life, liberty; (ii) security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law; (iii) equality before the law and the protection of the law; (iv) respect for his private and family life; (v) equality of treatment from any public authority in the exercise of any functions; (vi) the right to join political parties and to express political views; (vii) the right of a parent or guardian to provide a school of his own choice and for the education of his child or ward; (viii) freedom of movement; (ix) freedom of conscience and religious belief and observance; (x) freedom of thought and expression; (xi) freedom of association and assembly; and (xii) freedom of the press. If any individual believes that any such right is infringed or threatened by the State or any public authority or any agent or officer of the State, he is entitled to apply to the High Court of Justice for redress.

7. House immunity for the protection of man’s freedom. Ch. 24 Verse 27 of the Qur’aan states: *“O ye who believe! Enter not houses other than your own until ye have asked permission and saluted those in them; that is best for you, in order that ye may heed (what is seemly)”*.

8. Reciprocal responsibility among members of society as to the right of every person to lead an honourable life and to get rid of poverty and need, by levying a certain tax on the wealth of those who are financially able, so as to be paid to those in need, whatever their needs may be. Ch. 51 Verse 19 of the Qur’aan states: *“And in their wealth, the beggar and the deprived had due share”*.

9. Imposing education on every Muslim in order to get rid of ignorance. The Holy Prophet (upon whom be peace) said: *“Seeking knowledge is the duty of every Muslim, male and female”*.

10. The duty to deal fairly and render justice. Ch 5, Verse 8 of the Qur’aan states: *“O ye who believe! Stand out firmly for God, as witness to fair dealing and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to piety; and fear God, for God is well-acquainted with all ye do”*.

There are numerous other Islamic religious laws for the protection of human rights and fundamental freedoms. They deal in a comprehensive manner with man’s political, economic, social and cultural rights from the humanitarian and idealistic aspects and they do not make any distinction or allow for any kind of distinction between one human being and another regardless of race or colour or language or religion or national or social origin or wealth or country. In an ideal Islamic State they are part of the legal order, not as moral sermons which the State will not enforce. They go beyond what has been provided by secular states and in a comprehensive manner encompass all a human being’s rights of a political, civil, economic, social, cultural or religious nature. Neither the provisions of the Universal Declaration of Human Rights nor the International Covenant on Economic, Social and Cultural Rights has gone so far. Their provisions remain as moral

1. The dignity of man in conformity with Ch.17, Verse 70 of the Qur'aan which states: *"We have honoured the sons of Adam"*.

2. No distinctions in dignity and fundamental rights between one man and another as respect race, sex, blood relations or wealth. The Holy Prophet (upon whom be peace) said: *"There is no advantage for an Arab over a non-Arab, or for a white man over a black man excepting by piety"*. On another occasion he said: *"Women are the partners of men"*.

3. The call for the unity of the human race. The persons most favoured by God are those who are most useful to their fellowmen: The Holy Prophet (upon whom be peace) said: *"Human creatures are the families of God and the ones who are most loved by Him are those who are most useful to their families"*. On another occasion he said: *"All men are God's people and the one loved most by Him is the one who serves His people best"*.

4. The call for acquaintance and co-operation for the common good as well as for the performance of all kinds of righteous deeds towards all human beings regardless of their citizenship or religion. Ch. 49, Verse 13 of the Qur'aan states: *"O mankind! We created you from a single (pair) of male and a female and made you into nations and tribes that ye may know each other (not that ye may despise each other). Verily the most honoured of you in sight of God is he who is the most righteous of you"*. Again in Ch. 60 Verse 8 it is stated: *"God forbids you not for (your) faith nor drives you out of your homes, from dealing kindly and justly with them. For God loveth those who are just"*.

5. Religious freedom to everyone and prohibition of any exercise of force in this respect. In Ch. 2, Verse 256 of the Qur'aan is stated: *"Let there be no compulsion in religion."* and in Ch. 10 Verse 99: *"Wilt thou then compel mankind against their will to believe"*.

6. Prohibition of any attack on the property or the life of man as expressed by the Holy Prophet (upon whom be peace): *"You are forbidden to attack the property or the lives of others"*.

The Constitutions of other countries have similar provisions in varying respects. In order to maintain their international prestige, it has become incumbent on the nations of the world to adhere to the principles proclaimed by the United Nations in 1958 in its Universal Declaration of Human Rights. Almost all states have adopted the 1966 International Covenant on Civil and Political Rights which states that *"the recognition of the inherent dignity, of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world"*. Various national, international and private organizations have sought to promote and ensure that these rights are observed. Among them are the European Court of Human Rights, the International Commission of Jurists, Amnesty International and the American Civil Liberties Union.

The International community has also come to realise that fundamental human rights are not only limited to political and civil rights which are enshrined in Constitutions. There are rights which a Court of law would find difficult to enforce against a State because of their nature of such rights or rights by which for political reasons a State may not wish to bind itself. These are rights of an economic, social and cultural nature which are nevertheless recognised as natural rights to which man is entitled. The United Nations by its International Covenant on Economic, Social and Cultural Rights have included within such rights, the right to work; the right to fair wages; the right to rest, leisure and reasonable working hours and the right to freedom from hunger.

It is against this background that we must embark upon a study of human and fundamental rights in Islam.

There is one important difference between a truly Islamic State and any other State i.e. the general principles of law in an Islamic State are of divine origin and derived from the Holy Qur'aan and the *Sunnah*. Those of a secular state are derived from man-made laws. The divine law has made provision for every aspect of human activity and conduct including that which is regarded outside of Islam as the fundamental freedoms and human rights to which the individual is entitled.

How does Islam in the modern world regard this most important fundamental question? Between the years 1972 and 1974, a delegation from Saudi Arabia comprising eminent Muslim jurists and scholars met with an eminent body of European jurists and intellectuals to discuss and to seek a thorough understanding of the concepts of such rights and freedoms in Islam. The Saudi delegation was led by the Minister of Justice, Sheikh Muhammad Al-Harkan, the then Minister of Justice, subsequently President of the Muslim World League. The European delegation was headed by Mr. Sean Mc Bride, a former Foreign Minister of the Irish Republic and General Secretary of the International Commission of Jurists. These conferences were held in Riyadh in Saudi Arabia; Vatican City in Italy; Geneva in Switzerland and Strasbourg in France where the European Commission and the Court of Human Rights are established.

A report of the conferences has been published by the Saudi Ministry of Justice and it reveals the stand of Islam with respect to various aspects of what is considered in the western world to be basic human rights and fundamental freedoms. It is to be noted that the conferences sought to enlighten the western world and to remove misconceptions which prevailed for centuries with respect to such rights and freedoms in Islam. What I have to say here is gathered from the answers given to questions posed by the European delegation.

According to Muslim doctrine, the general principles of law in a truly Islamic State are stated in the Qur'aan which is regarded as its Constitution. The Kingdom of Saudi Arabia, adhering to this precept, has no written Constitution, unlike other Islamic countries which use the Qur'aan and the Sunnah as the basis for their laws and Constitution.

These general principles cannot be modified or changed in any way but there are particular provisions which deal with particular matters which can be altered according to their relative degrees of importance or according to the progress of morality but these principles and provisions must remain in constant accord with the data of science and the precepts of reason and reflection.

To obtain a better idea of Islamic Law which rules authorities and individuals alike, it is necessary to understand its sources. I will deal with them in the context of human rights and fundamental freedoms.

1. The Qur'aan - This aims at abolishing all practices and customs regarded as unreasonable in human life. It promotes reform of the society through its beliefs, its structure and humanitarian and legislative concepts. It seeks a more abundant life without any racial discrimination whatever; universal equality in the exercise of rights and duties; exhortation to good and condemnation of evil; the obligation to obey the prescriptions of the law in regard to a proper, just and sincere behaviour in individual relations for an ever better society; prohibition of any deed reproved by the law or detrimental to society; an appeal to believers to keep the peace unless they are persecuted for their faith and expelled from their dwellings; an obligation to conform in all these matters to the norms of logic, reason and science for the safe-keeping of the general interest.

2. The *Sunnah* which is an explicit statement of the Qur'aan and obliges believers to conform to it. The words, deeds and decisions of the Holy Prophet (upon whom be peace) must be respected.

3. The unanimous judgments (*al Ijma*) of the jurisconsults (*the Ulema*) in accordance with the general principles of the Qur'aan and *Sunnah*. When the Qur'aan and *Sunnah* provide no solution to a particular problem, it belongs to the jurisconsults to find one and whatever they unanimously declare must be accepted.

4. Al *ijtihad* or jurisprudence. This applies where the Qur'aan or *Sunnah* makes no provision and there is no unanimous judgment of the jurisconsults. They must endeavour to find a solution consistent with the general principles as declared by the Qur'aan.

It is from these sources of Islamic Law that one can derive the precepts and rules of human rights and fundamental freedoms in Islam. I will now enumerate some of these: