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وَتَبَرَّكْتَ يَا رَبَّ الْعَالَمِينَ

Right and Freedom of Movement in Islam

by

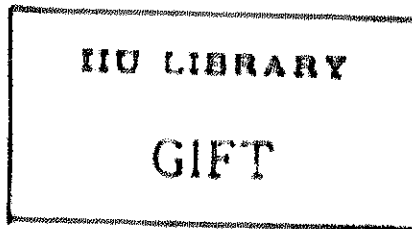
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A DISSERTATION

SUBMITTED TO THE FACULTY OF LAWS

IN PARTIAL FULFILLMENT OF THE REQUIRMENTS FOR THE

DEGREE OF DOCTOR OF PHILOSOPHY IN LAW



FACULTY OF LAWS

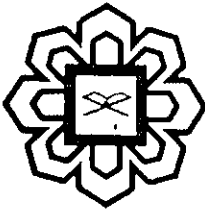
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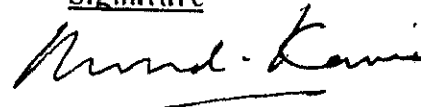


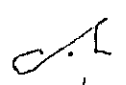
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## *Abstract*

This dissertation focuses on one of the most fundamental and basic areas of human life, that is, right and freedom of movement. It involves the following major aspects.

The emphasis is on the issue of movement as it involves two distinguishable types. The first one refers to "journey" as travelling for different purposes with the ultimate objective of achieving a desired goal, for instance, to seek knowledge and to preach Islām. According to Islamic law, such journeys are sometimes considered as duty (*wājib*) and at other times as being recommended (*mandūb*). The second type of movement is related to migration or *hijrah*, an action that implies the intentional change of one's domicile. Due to imposed circumstances, a person is arbitrarily forced to leave his homeland for any number of reasons. For instance, the impetus for migration could be perceived danger to one's life or one's property.

It is apparent that classical Muslim jurists applied the terms "*muhājir*" for the Muslim migrant and "*mustā'min*" or "*mustajir*" for the non-Muslims who seek security in the Islamic state. There is general agreement that Islam not only grants but also guarantees this right of asylum to non-Muslims without any hindrances. However, these jurists insisted that Muslim citizens in non-Muslim countries should migrate to Islamic territories and that they have no right to emigrate from Muslim lands to live permanently in non-Islamic states. Moreover, they claimed that Muslims who needed asylum had the right to seek security only in Islamic countries.

I have argued that a Muslim is not bound by such restrictions on his freedom of movement. He is free to migrate or to seek asylum anywhere he wishes, including non-Muslim countries. In some cases, such *hijrah* to non-

Muslim lands is not only recommended but may be a duty (*wājib*).

There is also the issue of a distinction between right and freedom. The majority of the classical jurists looked at the question of 'right' from the point of view that it is an abstract right (*ḥaqq ma'nawī*) which is common for all human beings. On the other hand, the minority viewed freedom as a means to acquiring a right.

Furthermore, I have looked into the Islamic Council of Europe (ICE)'s viewpoint which advocates the right of every Muslim to move freely into any Islamic state. In addition, this study has exposed the limitations of the various international instruments in safeguarding the right of movement of all human beings.

Lastly, I have proposed that the United Nations (UN) review the Universal Declaration of Human Rights (UDHR) in a more objective and justifiable manner. This may be realized by allowing equal participation and decision making by all nations of the world, irrespective of their religion, colour and race. I have also suggested that efficient jurists from Muslim communities all over the world be selected to ensure the accurate dissemination of Islamic concepts and values.

## *Acknowledgement*

It is a pleasure to express my uttermost and profound gratitude to Professor Dr. Moḥammad Kamāl Ḥasan, Deputy Rector of academic affairs at International Islamic University/Malaysia, for his enlightening guidance and invaluable time offered for the fulfillment of this research. I would also like to duly record my greatest respect and gratitude to Professor Emeritus, Tan Sri Datuk Ahmad bin Moḥamed Ibrāhīm, Dean of the Kulliyyah of Laws, IIUM, for his consistent, sincere encouragement, serious following and warm wishes. My gratitude is to Professor Dr. Moḥammad Hāshim Kamālī for his suggestions and patience in reading my dissertation.

I would also like to take this opportunity to thank most warmly all my colleagues and friends, at Yarmouk University in Jordan and International Islamic University of Malaysia, with whom I have frequently raised and discussed matters of mutual interest. I have often benefitted from their views which I have taken into account in writing the present work. As it is not possible to mention all their names in this brief acknowledgement, I would like to single out Professor Maḥmoud al-Rashdān, Dr Fathī al-Malkawī and Dr Maḥmoud Abū Suway. Similarly, I would like to express my deepest appreciation to Dr. Moḥammad Riyād Jazzār (English Department, I.I.U. Malaysia) for his help in revising this dissertation language-wise, and also to Mrs. Mohana Subramaniam (Faculty of Language

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But above all, I wish to express my humble gratitude to be expressed to the Almighty Allāh who blessed me with sufficient energy and good health to undertake this huge task. My sincere thanks to all the people in this acknowledgement are a reflection of the Prophet's ḥadīth which says:

*"He who does not thank people, does not thank Allāh."*<sup>1</sup>

---

<sup>1</sup> Sunan Abū Dā'wūd, Sunan Al-Tirmidhī and Musnad Aḥmad Ibn Ḥanbal.



## *Dedication*

*To my dearest friend, the martyr Dr. Abdullāh `Azzām, who suffered voluntary exile  
and passed away for the sake of Islām.*

*Also*

*To my father and to the memory of my mother may Allāh grant them both His mercy  
for the loving wisdom with which nourished me.*

*And*

*To my Wife for Her Utmost Care, Patience and Suffering during the period  
of my detention in Jordan, and arbitrary removal from office at Yarmouk University  
(1986-1990) for the cause of defending human rights.*

## Contents

Abstract	iii
Acknowledgement	v
Dedication	vii
Table of Contents	viii
Transliteration	xi
Abbreviations	xxi
Introduction	1

### Part One: Right and Freedom

I. Introductory Remarks	11
II. Analysis of Right	13
1. Definition	13
2. Theory	32
3. Classifications	36

### Part Two: Right of Movement

I. Concept and Scope of Movement	42
II. A Discourse on Travelling	45
1. Seeking Welfare and Truth	46
2. <i>Jihād</i>	50

a.	<i>Jihād</i> and self-defence	56
b.	<i>Jihād</i> and <i>Da`wah</i>	69
3.	Earning a Living	82
4.	Harnessing the resources of the Earth	90
5.	Seeking Knowledge	95
6.	Visiting Holy places and fulfilling social obligations	103
7.	Travelling to <i>dār al-ḥarb</i>	120
i.	Concept of <i>dār al-ḥarb</i>	120
ii.	The <i>Qur'anic</i> references to <i>dār al-ḥarb</i>	125
iii.	Legitimacy of travelling to <i>Dār al-ḥarb</i>	132
III.	Restraints on Freedom of Movement	140
1.	By the <i>Qur'ān</i>	141
2.	By the <i>Sunnah</i>	151
3.	By the State	155
IV.	<i>Hijrah</i>	163
1.	Concept of <i>Hijrah</i>	163
2.	<i>Hijrah</i> and Asylum	165
3.	Dimensions of <i>Hijrah</i> and Asylum	171
a.	Asylum as a Right of non-Muslims	171
b.	Causes of <i>Hijrah</i> and Asylum	177
i.	Physical persecution	177
ii.	Financial insecurity	184
iii.	Land where unlawfulness prevails	191
iv.	Attaching <i>Dār al-Islām</i>	202
a.	Concept of <i>Dār al-Islām</i>	202
b.	<i>Hijrah</i> as an obligation	216

Part Three:

Right and Freedom of Movement According to International Instruments	245
I. Right and Freedom of Movement	246
II. Right to Asylum	254
iii. Concept of Nationality	262
iv. Right and Freedom according to the Universal Islamic Declaration of Human Rights	266
Conclusion	274

ADDENDA

APPENDIX I.	283
APPENDIX II.	293
APPENDIX III.	298
APPENDIX IV.	300
APPENDIX V.	302
APPENDIX VI.	306
APPENDIX VII.	309
Glossary	314
Bibliography	326

# Rules for Transliteration of Arabic

## Letters of the Alphabet

Initial	Medial	Final	Alone	Romanization
ا	ا	ا	ا	omit (see Note 1)
ب	ب	ب	ب	b
ت	ت	ت	ت	t
ث	ث	ث	ث	th
ج	ج	ج	ج	j
ح	ح	ح	ح	h
خ	خ	خ	خ	kh
د	د	د	د	d
ذ	ذ	ذ	ذ	dh
ر	ر	ر	ر	r
ز	ز	ز	ز	z
س	س	س	س	s
ش	ش	ش	ش	sh
ص	ص	ص	ص	ṣ
ض	ض	ض	ض	ḍ
ط	ط	ط	ط	ṭ
ظ	ظ	ظ	ظ	ẓ
ع	ع	ع	ع	' (ayn)
غ	غ	غ	غ	gh
ف	ف	ف	ف	f (see Note 2)
ق	ق	ق	ق	q (see Note 2)
ك	ك	ك	ك	k
ل	ل	ل	ل	l
م	م	م	م	m
ن	ن	ن	ن	n
هـ	هـ	هـ ة	هـ ة	h (see Note 3)
و	و	و	و	w
ي	ي	ي	ي	y

## Vowels and Diphthongs

أ	a	آ	ā (see Rule 5)	إي	ī
أ	u	أ	á (see Rule 6(a))	أو	aw
أ	i	أ	ū	أ	ay

## Letters Representing Non-Arabic Consonants

This list is not exhaustive. It should be noted that a letter in this group may have more than one phonetic value, depending on the country or area where it is used, and that the romanization will vary accordingly.

ك	g	چ	ch	ق	v
گ	g	ج	zh	ق	v
پ	p	ث	zh	پ	v

### Notes

1. For the use of *alif* to support *hamzah*, see rule 2. For the romanization of *hamzah* by the consonantal sign ' (alif) see rule 8(a). For other orthographic uses of *alif* see rules 3-5.
2. The *Maghribī* variations ب and ف are romanized *f* and *q* respectively.
3. ð in a word in the construct state is romanized *t*. See rule 7(b).

## RULES OF APPLICATION

### Arabic Letters Romanized in Different Ways Depending on Their Context

1. As indicated in the table, و and ي may represent:

- (a) The consonants romanized *w* and *y*, respectively

waq'	وضع
'iwaq	عوض
dalw	دلو
yad	يد
ḥiyal	حيل
ṭahy	طهي

- (b) The long vowels romanized *ū*, *ī*, and *ā* respectively

ūá	أولى
ṣūrah	صورة
dhū	ذو
īmān	إيمان
jīl	جيل
fī	في
kitāb	كتاب
saḥāb	سحاب
jumān	جمان

See also rules 11(a) and 11(b1-2).

(c) The diphthongs romanized *aw* and *ay*, respectively

awj	اوج
nawm	نوم
law	لو
aysar	ايسر
shaykh	شيخ
'ayn Ā	عيني

See also rules 11(a)(2) and 11(b)(3).

2. *ʾ* (*alif*), *و* and *ى* when used to support \* (*hamzah*) are not represented in romanization. See rule 8(a).
3. *ʾ* (*alif*) when used to support *ﻻ* (*waṣlah*) and *ﻻ* (*maddah*) is not represented in romanization. See rules 9 and 10.
4. *ʾ* (*alif*) and *و* when used as orthographic signs without phonetic significance are not represented in romanization.

fa'alū	فعلوا
ulā'ika	اولائك
'ilman wa-'amalan	علما وعملا

See also rule 12 and examples cited in rules 23-26.

5. *ʾ* (*alif*) is used to represent the long vowel romanized *ā*, as indicated in the table.

fā'il	فاعِل
riḏā	رِضَا

This *ʾ*, when medial, is sometimes omitted in Arabic; it is always indicated in romanization. See rule 19.

6. Final *ى* appears in the following special cases:

(a) As *ى* (*alif maqṣūrah*) used in place of *ﻻ* to represent the long vowel romanized *ā*.

ḥattā	حَتَّى
maḏā	مَضَى
kubrā	كَبْرَى
Yaḥyā	يَحْيَى
musammā	مُسَمَّى
Muṣṭafā	مُصْطَفَى

- (b) As  $\text{ق} \text{ } \square$  in nouns and adjectives of the form *fa'īl* which are derived from defective roots. This ending is romanized *ī*, not *īy*, without regard to the presence of  $\text{ّ}$  (*shaddah*). See rule 11(b2).

Raḍī al-Dīn                      رضى الدين

Compare the *fa'īl* form of the same root الرضى [with out *shaddah*] *al-Raḍī*.

- (c) As  $\text{ق} \text{ } \square$  in the relative adjective (*nisbah*). The ending, like (b) above, is romanized *ī*.

al-Miṣrī                      المصيرى

## 7. $\text{ة}$ (*tā' marbūṭah*)

- (a) When the noun or adjective ending in  $\text{ة}$  is indefinite, or is preceded by the definite article,  $\text{ة}$  is romanized *h*. The  $\text{ة}$  in such positions is often replaced by  $\text{ة}$ .

ṣalāh                      صلاة  
al-Risālah                      الرسالة  
mir'āh                      مرآة  
Urjūzah fī al-ṭibb                      أرجوزة فى الطب

- (b) When the word ending in  $\text{ة}$  is in the construct state,  $\text{ة}$  is romanized *t*.

Wizārat al-Tarbiyah                      وزارة التربية  
Mīr'āt al-zamān                      مرآة الزمان

- (c) When the word ending in  $\text{ة}$  is used adverbally,  $\text{ة}$  (vocalized  $\text{ة}$ ) is romanized *tan*. See rule 12(b).

## Romanization of Arabic Orthographic Symbols Other than Letters and Vowel Signs

The signs listed below are frequently omitted from unvocalized Arabic writing and printing; their presence or absence must then be inferred. They are represented in romanization according to the following rules:

### 8. $\text{ء}$ (*hamzah*)

- (a) In initial position, whether at the beginning of a word, following a prefixed preposition or conjunction, or following the definite article,  $\text{ء}$  is not represented in romanization. When medial or final,  $\text{ء}$  is romanized as ' (*alif*).



asad	أسد
uns	أنس
idha	إذا
mas'alah	مسألة
mu'tamar	مؤتمر
dā'im	دائم
mala'	ملا'
khaṭ'ā	خطن

(b) ؤ, when replaced by the sign ̣ (waslah) and then known as *hamzat al-waṣl*, it is not represented in romanization. See rule 9 below.

9. ̣ (*waslah*), like initial ؤ, is not represented in romanization. See also rule 8(b) above. When the *alif* which supports *waslah* belongs to the article ال, the initial vowel of the article is romanized *a*. See rule 17(b). In other words, beginning with *hamzat al-waṣl*, the initial vowel is romanized *i*.

Riḥlat Ibn Jubāir	رحلة ابن جبير
al-istidrāk	الأستدراك
kutub iqtanat'hā	كتب أقتنتها
bi-ihitimām 'Abd al-Majīd	بأهتمام عبد المجيد

10. ̣ (*maddah*)

- (a) Initial ̣ is romanized *ā*  
ālah

آلة

- (b) Medial ̣, when it represents the phonetic combination 'ā, is so romanized.  
ta'ālīf  
ma'āthir

تأليف  
مآثر

- (c) ̣ is otherwise not represented in romanization.  
khulafā'

خلفاء

11. ̣ (*shaddah* or *tashdīd*)

- (a) Over و :

- (1) ̣, representing the combination of long vowel plus consonant, is romanized *ūw*  
'adūw  
qūwah

عُدُو  
قُوَّة

See also rule 1(b).

- (2)  $\text{شَوَّال}$ , representing the combination of diphthong plus consonant, is romanized *aww*.
- |         |         |
|---------|---------|
| Shawwāl | شَوَّال |
| ṣawwara | صَوَّر  |
| jaww    | جَوَّ   |

See also rule 1(c).

(b) Over  $\text{ي}$  :

- (1) Medial  $\text{يَي}$ , representing the combination of long vowel plus consonant, is romanized *iy*
- |              |         |
|--------------|---------|
| al-Miṣriyyah | المصرية |
|--------------|---------|

See also rule 1(b)

- (2) Final  $\text{ي}$  is romanized *ī*. See rules 6(b) and 6(c).

- (3) Medial and final  $\text{يَي}$ , representing the combination of diphthong plus consonant, is romanized *ayy*.
- |        |      |
|--------|------|
| ayyām  | أيام |
| sayyid | سعيد |
| Quṣayy | قصي  |

See also rule 1(c)

- (c) Over other letters,  $\text{ش}$  is represented in romanization by doubling the letter or digraph concerned.

al-Ghazzī	الغزّي
al-Kashshāf	الكشاف

12. *Tanwīn* may take the written form  $\text{ن}$ ,  $\text{ان}$  (نَا), or  $\text{ين}$ , romanized *un*, *an*, and *in*, respectively. *Tanwīn* is normally disregarded in romanization, however. It is indicated in the following cases:

- (a) When it occurs in indefinite nouns derived from defective roots.

qāḍīn	قاضٍ
ma'nān	معنى

- (b) When it indicates the adverbial use of a noun or adjective.

ṭab'an	طَبَعًا
faj'atan	فَجَاءَةً
al-Mushtarik waḍ'ān wa-al-muftariq	المشترك وضعاً والمفترق
ṣuq'an	صَقْعًا

## Grammatical Structure as It Affects Romanization

13. Final inflections of verbs are retained in romanization, except in pause.

man waliya Miṣr	من وُلِّيَ مصر
ma'rifat mā yajibu la-hum	معرفة ما يجب لهم
ṣallā Allāh 'alā hi wa-sallam	صلى الله عليه وسلم
al-Lu'lu' al-maknūn fī ḥukm al-akhbār	اللؤلؤ المكنون في حكم
'ammā sayakūn	الاخبار عما سيكون

14. Final inflections of nouns and adjectives:

- (a) Vocalic endings are not represented in romanization, except preceding pronominal suffixes and except when the text being romanized is in verse.

Ma'had Mawlāya al-Ḥasan	معهد مولاي الحسن
uṣūluhā al-nafsiyya-kwa-ṭuruq	اصولها النفسية وطرق تدريسها
tadrīsihā	
ilā yawminā hādhā	الى يومنا هذا

- (b) *Tanwīn* is not represented in romanization, except as specified in rule 12.

- (c) *ō* (*tā' marbūṭah*) is romanized *h* or *t* as specified in rule 7.

- (d) For the romanization of the relative adjective (*nisbah*) see rule 6(c).

15. Pronouns, pronominal suffixes, and demonstratives:

- (a) Vocalic endings are retained in romanization.

anā wa-anta	انا وانت
hādhīhi al-ḥāl	هذه الحال
mu'allafātuhu wa-shurūḥuhā	مؤلفاته وشروحها

- (b) At the close of a phrase or sentence, the ending is romanized in its pausal form.

ḥayātuhu wa-'aṣruh	حياته وعصره
Tawfīq al-Ḥakīm,	توفيق الحكيم، أفكاره،
afkāruh, āthāruh	آثاره

16. Prepositions and conjunctions:

- (a) Final vowels of separable prepositions and conjunctions are retained in romanization.

anna	ان
annahu	انه
baīna yadayhu	بين يديه

Note the special cases: *مما mimmā*, *ممن mimman*.

- (b) Inseparable prepositions, conjunctions, and other prefixes are connected with what follows by a hyphen.

bi-hi	به
wa-ma'ahu	ومعه
lā-silkī	لاسلكى

17. The definite article:

- (a) The romanized form *al* is connected with the following word by a hyphen.

al-kitāb al-thānī	الكتاب الثانى
al-ittiḥād	الاتحاد
al-aṣl	الاصل
al-āthār	الآثار

- (b) When *al* is initial in the word, and when it follows an inseparable preposition or conjunction, it is always romanized *al* regardless of whether the preceding word, as romanized, ends in a vowel or a consonant.

ilá al-ān	الى الآن
Abū al-Wafā'	ابو الوفاء
Maktabat al-Nahḍah al-Miṣriyyah	مكتبة النهضة المصرية
bi-al-tamām wa-al-kamāl	بالتمام والكمال

Note the exceptional treatment of the preposition *l* followed by the article:

lil-Shirbīnī	للشربيني
--------------	----------

See also rule 23.

- (c) The *l* of the article is always romanized *l*, whether it is followed by a "sun letter" or not, i.e., regardless of whether or not it is assimilated in pronunciation to the initial consonant of the word to which it is attached.

al-ḥurūf al-abjadiyyah	الحروف الابجدية
Abū al-Layth al-Samarqandī	ابو الليث السمرقندى

Orthography of Arabic in Romanization

18. Capitalization:

- (a) Rules for the capitalization of English are followed, except that the definite article *al* is given in lower case in all positions.

- (b) Diacritics are used with both upper and lower case letters.

al-Ḥijāzī	الحيجى
-----------	--------

19. The macron or the acute accent, as appropriate, is used to indicate all long vowels, including those which in Arabic script are written defectively. The macron or the acute accent, as the case may be, is retained over final long vowels which are shortened in pronunciation before *hamzat al-waṣl*.

Ibrāhīm	ابراهيم ، ابرهيم
Dā'ūd	داؤود ، داؤد
Abū al-Ḥasan	ابو الحسن
ru'ūs	رؤس
dhālika	ذلك
'alá al-'ayn	على العين

20. The hyphen is used:

- (a) To connect the definite article *al* with the word to which it is attached. See rule 17(a).  
 (b) Between an inseparable prefix and what follows. See rules 16(b) and 17(b) above.  
 (c) Between *bin* and the following element in personal names when they are written in Arabic as a single word. See rule 25.

21. The prime (') is used:

- (a) To separate two letters representing two distinct consonantal sounds, when the combination might otherwise be read as a digraph.

Ad'ham	أدهم
akramat'hā	أكرماتها

- (b) To mark the use of a letter in its final form when it occurs in the middle of a word.

Qal'ah'jī	قلعة جي
She'ikh'zādah	شيخ زاده

22. As in the case of romanization from other languages, foreign words which occur in an Arabic context and are written in Arabic letters are romanized according to the rules for romanizing Arabic.

Jārmānūs ( <i>not</i> Germanos <i>nor</i> Germanus)	جارمانوس
Lūrd Ghrānfil ( <i>not</i> Lord Granville)	لورد غرانفيل
Isāghūjī ( <i>not</i> Isagoge)	ايساغوجي

For short vowels not indicated in the Arabic, the Arabic vowel nearest to the original pronunciation is supplied.

Gharsiyā Khayin ( <i>not</i> García Jaén)	غرسيا خين
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## Examples of Irregular Arabic Orthography

23. Note the romanization of الله, alone and in combination.

Allāh	الله
billāh	بالله
lillāh	له
bismillāh	بسم الله
al-Mustanşir billāh	المستنصر بالله

24. Note the romanization of the following personal names.

Ṭāhā	طه
Yāsīn	يس ، يسن
'Amr	عمرو
Bahjat	بهجت ، بهجة

25. ابن and بن are both romanized *ibn* in all positions.

Aḥmad ibn Muḥammad ibn Abī al-Rabi'	احمد بن محمد بن ابي الربيع
Sharḥ Ibn 'Aqīl 'alá Alfīyat	شرح ابن عقيل على الفية
Ibn Mālik	ابن مالك

Exception is made in the case of modern names, typically North African, in which the element *ibn* is pronounced *bīn*.

Bin Khiddah	بن خده
Bin-'Abd Allāh	بن عبد الله

26. Note the anomalous spelling مائة, romanized *mi'ah*.

## SPECIAL CHARACTERS AND CHARACTER MODIFIERS IN ROMANIZATION

<i>Special Characters</i>	<i>Name</i>	<i>USMARC hexadecimal code</i>
/	soft sign (prime)	A7
'	alif (hamzah)	AE
‘	ayn	B0
<i>Character Modifiers</i>	<i>Name</i>	<i>USMARC hexadecimal code</i>
´	acute	E2
ā	macron	E5
◌̣	dot below	F2

## Abbreviations

- C.E. = Year of the Christian Calendar.
- A.H. = After *Hijrah* = Year of the Islamic Calendar.
- D. = Date of death of an author (to show the age in which he lived).
- ICE. = Islamic Council of Europe.
- IIIT = The International Institute of Islamic Thought.
- IIUM = The International Islamic University Malaysia.
- r.A.a= *Raḍiya Allāh `anhu* = May Allāh is pleased with him; said whenever the name of one of the Prophet's companions (*Ṣaḥābah*) is mentioned.
- ṢAAS = *Ṣalla Allāhu `Alaihi wa Sallam* = May the praise and blessings of Allāh (*SWT*) be upon him; said whenever the name of Prophet Muḥammad is mentioned or whenever he is referred to as the Apostle of Allāh.
- SWT* = *Subḥānahu wa Ta`ālā* = May He be praised and may His transcendence be affirmed; said when referring to Allāh the Almighty.
- UDHR = Universal Declaration of Human Rights (declared by the United Nations on 10 December, 1948).
- UIDHR= Universal Islamic Declaration of Human Rights.
- UN = The organization of the United Nations

## INTRODUCTION

Man's interest and preoccupation are tempered by his experience and environment. The researcher's choice of a research topic is, likewise, affected by his social environment and education especially by his intellectual capacities and academic background. No researcher can be indifferent to the prevailing conditions of time, or the pressing needs of his society without taking the risk of being irrelevant and/or incomprehensible. The present researcher is no exception.

The second half of this century has witnessed a proliferation of concern about human rights. In particular, there has been an interest in the rights of certain categories of human beings such as: women, children, the elderly, the handicapped, the refugees of political crises war, and many others.

The constitutional theory has emphasized rights as fundamental building blocks of the social order, sometimes even as its 'raison d'etre'. Rights have been divided into three major branches by scholars of modern constitutional law. These branches are freedom of thought and belief, education, and personal freedom. Personal freedom, in turn, is sub-divided into the right to life, right to security of person, and right or the freedom of movement.<sup>1</sup>

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<sup>1</sup> El-'Awā, *On the Political System*, p. 102.