CHAPTER THIRTY-ONE

RIGHTS OF THE ACCUSED

1. Anatomy of Rights

The Islamic criminal justice system provides equal principles of criminal jurisdiction for all individuals irrespective of their social status. These include questions of arbitrary arrest, remand in custody, detention, equality before a public hearing, the principle of not guilty until proven otherwise before an impartial criminal jurisdiction, and equality in all procedures of prosecution and punishment.\(^1\) The 2004 Arab

\(^1\) According to one writer, "Islam has also laid down the principle that no citizen can be imprisoned unless his guilt has been proved in an open court. To arrest a man only on the basis of suspicion and to throw him into a prison without proper court proceedings and without providing him with a reasonable opportunity to produce his defense is not permissible in Islam. It is related in the Hadith that once the Prophet was delivering a lecture in the Mosque, when a man rose during the lecture and said: 'O Prophet of God, for what crime have my neighbours been arrested?' The Prophet heard the question and continued his speech. The man rose once again and repeated the same question. The Prophet again did not answer and repeated the same question. The man rose for a third time and repeated the same question. Then the Prophet ordered that the man's neighbours be released. The reason why the Prophet had kept quiet when the question was repeated twice earlier was that the police officer was present in the Mosque and if there were proper reasons for the arrest of the neighbours of this man, he would have got up to explain his position. Since the police officer gave no reasons for these arrests the Prophet ordered that the arrested persons should be released. The police officer was aware of Islamic law and therefore did not get up to say: 'the administration is aware of the charges against the arrested men, but they cannot be disclosed in public. If the Prophet would inquire about their guilt in camera I would enlighten him.' If the police officer had made such a statement, he would have been dismissed then and there. The fact that the police officer did not give any reasons for the arrests in the open court was sufficient reason for the Prophet to give immediate orders for the release of the arrested men. The injunction of the Holy Quran is very clear on this point. 'Whenever you judge between people, you should judge with (a sense of) justice' (4:58). And the Prophet has also been asked by God: 'I have been ordered to dispense justice between you.' This was the reason why the Caliph Umar said: 'In Islam no one can be imprisoned except in pursuance of justice.' The words used here clearly indicate that justice means due process of law. What has been prohibited and condemned is that a man be arrested and imprisoned without proof of his guilt in an open court and without providing him an opportunity to defend himself against those charges. If the Government suspects that a particular individual has committed a crime or he is likely to commit an offense in the near future then they should give reasons of...
Charter on Human Rights has also given a particular respect to the rights of the accused during criminal procedures. According to it:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant.
2. No one shall be deprived of his liberty, except on such grounds and in such circumstances as are determined by the law and in accordance with such procedure as is established thereby.
3. Anyone who is arrested shall be informed, at the time of arrest, in a language that he understands, of the reasons for his arrest and shall be promptly informed of any charges against him. He shall be entitled to contact his family members.
4. Anyone who is deprived of his liberty by arrest or detention shall have the right to request a medical examination and must be informed of that right.
5. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. His release may be subject to guarantees to appear for trial. Pre-trial detention shall in no case be the general rule.
6. Anyone who is deprived of his liberty by arrest or detention shall be entitled to petition a competent court in order that it may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful.
7. Anyone who has been the victim of arbitrary or unlawful arrest or detention shall be entitled to compensation.

However, during a criminal proceeding there may be slight differences in the procedure of the jurisdiction between those who are and those who are not Muslims. The reason for this is that because of the strong faith given to the Islamic philosophy, an Islamic court may rely heavily on an oath taken from the accused, while this method is not reliable for those who are non-Muslim. Nevertheless, there should not be any practical differences between Muslims and non-Muslims under the territorial jurisdictions of Muslim states.

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2 Article 48.
4 This is in fact one of the basic principles of Islamic international human rights