



Joseph Schacht's Concept of Right in Islamic Law: An Analysis

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Abstract:

While writing about the sacred law of Islam, Joseph Schacht expresses his concerns and doubts about the origins of Islamic law calling it Muhammadan Jurisprudence. He believed that Islamic law is not a Divine law and that Prophet Muhammad (peace be upon him) had no role as a legislator.¹ Schacht's writings influenced many Western scholars, many of whom subscribe to his thesis. This paper discusses Schacht's approach towards Islamic law which he calls Muhammadan jurisprudence and continues to analyze his assumption that Islamic Law does not recognize the term right, comparing it with thoughts and opinions of other scholars and mentioning evidences brought forth by both the parties.

Keywords:

Hadith, Hesitation in everything, except in the actions, next world, Analytical Exposition

Introducing Joseph Schacht:

Joseph F. Schacht is a leading western scholar. He was born on 15 March 1902 at Ratibor, in Upper Silesia close to the border of Czechoslovakia. He began his university training in theological studies at Breslau (now Wrocław), specializing in classical and Semitic languages; in 1922 and won a university prize for an essay on an Old Testament subject.² In 1923 at the age of twenty-one, Schacht received the degree of D.Phil. *summa cum laude*. His thesis was the edition, with partial translation and commentary, of al-Khassāf's *Kitāb al-hiyal*, a tenth-century work on legal stratagems, and the first of several publications on the problem of the divergence between theory and practice in Islamic law.

Schacht was appointed as associate professor in 1927 at the age of twenty-five, thereby becoming the youngest professor in any university in Germany. His promotion to full professor came in 1929.³ From 1925 onwards, Schacht pursued two main activities during his vacations: One was to visit Leiden as often as possible to do research with the man he considered to be the greatest expert in Islamic studies in Europe, Christiaan Snouck Hurgronje (1857-1936). The other was to spend as much time as he could in the Middle East and North Africa. He visited Syria, Egypt, and Turkey several times, and traveled to other parts of the Arab world too. Schacht took advantage of these trips to study the rare Arabic manuscripts in the rich and hardly explored local and private libraries, especially the works of the earliest masters of Islamic law. He published the results of this research in many articles and monographs. Indeed, this was his notion of research that he pursued till the end of his life.⁴ He made his first visit to England in 1928 wherein he attended the International Congress of Orientalists at Oxford. In spring 1930 Schacht accepted the invitation of the Egyptian University (later

Fouad I University, now the University of Cairo) to teach as visiting professor. In 1934 he left Germany for his own good, and showing further demonstration of his opposition against Nazism, a few years later he ceased writing in, and even speaking German. Schacht rejoined the Egyptian University as professor of oriental languages, the only European member of the faculty to lecture entirely in Arabic. He held this appointment until 1939. In 1946 he began teaching Arabic and Islamic studies at Oxford University. In January 1947 he was appointed a lecturer, and in 1948 reader in Islamic studies.⁵

Finally in 1948 he completed his most important work, *The Origins of Muhammadan Jurisprudence* (1950),⁶ a subject to which he believed all his previous studies had led him. Although he also wrote *Introduction to Islamic Law*,⁷ his *Origins* was not overshadowed by it. He died in 1969 leaving a legacy of a number of writings on different aspects of Islamic law.⁸

Schacht's Framework of Islamic Law:

Muslims believe that the origins of Islamic legal code are mainly rooted in Quran, *Sunnah*, *Ijmā'*, and *Qiyās*. This view, particularly regarding the role of *Sunnah* was challenged by a number of Western scholars, Joseph Schacht is also one of them. This section will briefly discuss the main the framework developed by Joseph Schacht for a study of Islamic Law. His framework may be summarized in the following points, as according to him,⁹

1. Law in the case of Islam fell outside the sphere of religion. The Prophet (peace be upon him) did not aim to create a new system of jurisprudence. His authority was not legal but for the believers it was religious and political.¹⁰ He emphasizes that Muhammad had little reason to change the existing customary law. His aim as a Prophet was not to create a new system of law; it was to teach men how to act, what to do, and what to avoid in order to pass the reckoning on the Day of Judgment and to enter Paradise.¹¹
2. The ancient schools of law, which are still the major recognized schools today, were born in the early decades of the second century After *Hijrah*. By *Sunnah* they originally understood the living tradition that is the ideal practice of the community expressed in the accepted doctrine of the school of law. This early concept of *Sunnah*, which actually was not related to the sayings and deeds of the Prophet (peace be upon him), formed the basis of the legal theory of these schools according to Schacht.
3. These ancient schools of law gave birth to a state of opposition, religiously inspired, that falsely produced detailed information about the Prophet (peace be upon him) in order to establish a source of authority for its views on jurisprudence.
4. The ancient schools of law tried to resist these factions, but when they saw that the alleged traditions from the Prophet (peace be upon him) were being imposed more and more on the early concept of *Sunnah*, they concluded that "the best they could do was to minimize their import by interpretation, and to embody their own attitude and doctrines in other alleged traditions from the Prophet"¹² that is, they joined in the deception.

5. As a result, during the second and third centuries A.H. it became the habit of scholars to project their own statements into the mouth of the Prophet (peace be upon him).
6. He thinks that hardly any legal tradition from the Prophet can be considered authentic.¹³
7. The system of *Isnād* (Chain of Transmitters) used for the authentication of *Ḥadīth* documents, has no historical value. It was invented by those scholars who were falsely attributing their own doctrines back to earlier authorities; as such, it is useful only as a means for dating forgeries.

Schacht, through his above mentioned thesis attempts to prove that Islamic law is not a legal system, but rather a religion containing rituals and morals, therefore he denies any source of evidence that support the idea of considering Islam a complete legal code. He says:

“During the greater part of the first century, Islamic law, in the technical meaning of the term, did not as yet exist. As had been the case in the time of the Prophet, and as far as there were no religious or moral objections to specific transactions or modes of behavior, the technical aspects of law were a matter of indifference to the Muslims.¹⁴

It is difficult to see how, in the face of all this evidence, Schacht could maintain that law fell outside the sphere of religion and that the Prophet (peace be upon him) did not intend to create a new system of law. He challenges that his authority was religious and political but not legal.

The problem with Schacht's opinion is that he made arbitrary use of source material, tended to overgeneralize it,¹⁵ and considers Islamic law to have a narrow legislative and moral character; every implemented law is followed by a system of interpretation which is an evidence of its execution, in this case the interpretation is reflected in *Sunnah*. This element was ignored by Schacht.

The absurdity of the assumption that anything not found in early works but found in later sources must have been fabricated in the interim period, this assumption can be demonstrated to be faulty by turning the method upside down, that is, by testing *Aḥādīth* found in early works that are not found in the later works.¹⁶

His concept about Islam seems prejudiced and based on ignorance of Islamic historical literature. For instance, in his book *An Introduction to Islamic Law* while debating about the early days of the Prophet Muhammad Peace be upon him, it is revealed that he surprisingly fabricated his opinion about *Hijrah* that and its cause, which was based on a series of incidents as it is known in the Islamic History. The picture of early Islamic history as painted by Schacht seems to be incomplete and the events therein disconnected.

Greco Roman Law and Islam:

Schacht claims that Islamic law has borrowed its details from foreign elements. In the following lines a quotation of his claims suffices in this regard:

Many prominent features of Islamic civilization, notwithstanding a deceptive Arab appearance, turn out to be borrowings from the Hellenistic and the Iranian world.¹⁷

“The difference between the spirit of Islamic law and the spirit of Roman law, for instance, which is indeed striking, does not in itself preclude the possibility of more or less extensive influences”¹⁸

The parallels between Roman and Islamic law, however, are not restricted to rules and institutions of positive law; they occur in the field of legal concepts and principles.¹⁹

The ancient schools of law share the essentials of legal theory, not all of which are historically necessary and systematically self-evident.²⁰

It will appear from the evidence collected here that this common body of doctrine is, generally speaking, not the result of a converging development from original diversity towards later unity, but that the common ancient doctrine came at the beginning and was subsequently diversified in the several schools.²¹ At another stance he held that about a proposition of oath that:

“Oath of abstinence (إبتيان): The ancient Arab oath of abstinence from marital intercourse was regulated by the Quran (2:226). The common ancient doctrine interpreted this passage as meaning that the oath of abstinence, if kept, produced a divorce automatically at the end of four months. This remained the constant doctrine of the Iraqians and was projected back to Ibn Mas‘ūd and other ancient authorities. In *Hijaz*, it was ascribed to Zuhri, Ibn al Musaiyyib, Abu Bakr b. ‘Abd al Rahman and others.”²²

Zakat Tax of the minor: ²³

“The existence of common body of ancient doctrine in the earliest period of Muhammadan Law and its later diversification in the ancient schools of law show that Muhammadan jurisprudence started from a single centre. It does not ofcourse imply that Muhammadan Jurisprudence was cultivated exclusively in one place, but that one place was the intellectual centre of the first theorizing and systematizing activities which were to transform Umayyad popular and administrative practice into Muhammadan Law. The ascendancy of a single centre of Muhammadan Jurisprudence must have been maintained over an appreciable period as we find that the common ancient element sometimes comprises several successive stages of legal doctrine.”²⁴

He also claims that “Muhammadan Jurisprudence originated in Iraq”²⁵

“The method which we used for investigating the origins of Muhammadan Jurisprudence is equally applicable to the development of positive law.”²⁶

Replying to the claims of Schacht about Islamic law being borrowed from Roman law, Imran Ahsen Khan Nyazee dedicated few lines in his book, *Theories of Islamic Jurisprudence*:

“The answer to this is that all civilizations borrow something from other civilizations; the same is true of legal systems”. “Even Roman law has borrowed many things from the earlier civilizations... even the Jewish law borrowed many things from the areas now called Iraq and Iran”²⁷

He further says:

“All human mind works in the same way and there is no reason why legal concepts cannot be developed in different systems independently. The true nature of these concepts depends on the material to which they are applied”.²⁸

Discussing ‘*urf* as source of Islamic Law Mr. Nyazee says:

“All new concepts or rules must be subjected to the Islamization test before being absorbed into the end. This what the jurists did and the same is being done today or should be done.”²⁹

Joseph Schacht's Concept about Rights in Islamic Law:

Schacht does not recognize the concept of rights in Islam and holds that the subject of right or the concept of individuals having inherent rights does not fall under the scope of Islamic law since Islam is a collection of rituals, morals, culture and politics. In other words Islam does not recognize the idea of an individual having inherent rights, fundamental or otherwise. Regarding the purpose of law Schacht believes that its main function is to regulate human behavior in order to ensure order and to ensure justice and to determine what is allowed and what is not..

While writing about the sociology of Law he writes, is the degree to which the legal subject matters are distinguished and differentiated from one another. “There is no such distinction in Islamic law” he adds “Even a systematic arrangement of the legal subject-matters is lacking. Public powers are as a rule, reduced to private rights and duties, for instance, the right to give a valid safe-conduct, the duty to pay the alms-tax, the rights and duties of the person who appoint an individual as Imam or Caliph and the rights and duties of this last [prophet]”³⁰

Schacht distinguishes between the rights of God and the rights of humans. Only the rights of God have the character of a penal law proper, of a law which imposes penal sanctions on the guilty. Even here in the center of penal law, the idea of a claim on the part of God predominates, just as if it were a claim on the part of a human plaintiff. This real penal law is derived exclusively from the Koran and the traditions the alleged reports of the acts and sayings of the Prophet and his companions.³¹

Schacht writes:

“It was created and developed by private pious specialists. Islamic jurisprudence or *fiqh* did not grow out of an existing law, it itself created the law; and the formation of Islamic law took place neither under the impetus of the needs of practice nor under that of juridical technique, but under that of religious and ethical ideas. At the very time that Islamic law came into existence, its perpetual problem, the contrast between theory and practice was already posed. Because Islamic law is a jurists' law, legal science is amply documented, whereas the realities of legal life are much less well known and must be laboriously reconstructed from occasional evidence.”³²

"The legal integration of the wife into the family of the husband had begun with the Qur'an, when the wife was guaranteed a share in the inheritance, and the ancient lawyers followed the same tendency by giving the right to inherit to certain female relatives who did not possess it originally."³³

Schacht is not alone who opines against the existence of rights in Islamic law because most of them consider Islam a combination of rituals and morals and denies its legal philosophy for i.e. Schacht's definition of Islamic Law states that "Islamic law is a system of duties, ritual, legal and moral obligations, all of which are sanctioned by the authority of the same religious command."³⁴ This definition denies the legal sanctity of Islamic law and narrows down its scope to rituals and morals. It seems that he is inspired by the command theory of law which states that: law is a set of principles backed by punishments. According to his approach the punishments mentioned in Quran are moral punishments and not necessarily to be implemented by the state.

Joseph Schacht also observes that in Islamic law "a woman' [testimony] is only half a man".³⁵ Women who are struggling for the emancipation of women and the acceptance of their rights in Muslim countries have objected seriously to such a status granted to them.

Quranic Concept of Rights:

Rights in Islamic law originate in the Quran and authentic *Sunnah* of the Prophet (peace be upon him). In Quran, no formal distinction is made between fundamental and other rights, or between constitutional and ordinary law. A fundamental methodological error committed by Schacht is that he appears to have virtually ignored the evidence of Quran itself, as far as legalistic injunctions are concerned, in the formulation of his thesis.³⁶

Qur'anic vision of human destiny is embodied in the verse: (وَأَنَّ إِلَىٰ رَبِّكَ الْمُنْتَهَىٰ) Meaning by "Towards Allah is thy limit"³⁷ therefore, every action is accountable. And while talking about rights, every person who violates a right of another human is liable to punishment. The roots of the fundamental rights are not limited to the members of Muslim community but also extended to all mankind. And rights granted by Allah cannot be abolished by any temporal ruler or human agency. We find that one of the objectives of Shariah extracted from the context of the verses of Quran is to free human being from the bondage of tribalism, racism, slavery or anything else.

The historical aspect of the concept of human rights in Islam is as old as man himself. Some Muslim authors have traced the declaration of the human rights in Islam from the creation of Adam by Allah.³⁸

1. Right to Life:

A number of Quranic verses prohibit ceasing the life of mankind without a just cause. Surat Al-An'am (6:151) states:

(وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ)

"And do not take any human being's life-[the life] which God has declared to be sacred -otherwise than in [the pursuit of] justice"³⁹

Surat Al-Ma'idah (5:32) points out that, in essence, the life of each individual is comparable to that of an entire community:

مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ
فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا

*"Because of that, We decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely."*⁴⁰

Not only taking life but even injuring a human being without justified cause is a punishable crime:

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ
بِالسِّنِّ وَالْجُرُوحَ قِصَاصًا

*"And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution"*⁴¹

2. Right to Dignity and Respect:

The Qur'an deems all human beings dignified and to be worthy of respect therefore they are distinguished and considered as the best of His creations. It is stated in Surat Al-Isra (17:70):

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَىٰ كَثِيرٍ
مِّمَّنْ خَلَقْنَا تَفْضِيلًا

*And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference.*⁴²

Allah has created human being in the best shape, having the ability to think, to have knowledge of right and wrong, to do the good and to avoid the evil. Thus, on account of the promise which is contained in being human, namely, the potential to be Allah's vicegerent on earth, the humanness of all human beings is to be respected and considered. This proves that Allah wanted human to live with dignity and respect. Allah says:

لَقَدْ خَلَقْنَا الْإِنْسَانَ فِي أَحْسَنِ تَقْوِيمٍ

*"We have certainly created man in the best of stature"*⁴³

The highest level of respect and dignity is observed in a number verses in Quran when the Creator (Allah) ordered angels to bestow to Adam (the first human being):

فُلْنَا لِلْمَلَائِكَةِ اسْجُدُوا لِآدَمَ

*{We said to the angels, "Prostrate to Adam,}"*⁴⁴

3. Right to Justice:

The Qur'an puts great emphasis on the right to seek justice and the duty to do justice. Allah Says:

اغْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ ۖ وَاتَّقُوا اللَّهَ ۚ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ

*“Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is acquainted with what you do”.*⁴⁵

قُلْ أَمَرَ رَبِّي بِالْقِسْطِ

*“Say, [O Muhammad], “My Lord has ordered justice.”*⁴⁶

The spirit of justice in Islam is reflected in Allah’s Commandment to be just even with the enemies. Allah says:

فَإِنْ جَاءوكَ فَاحْكُم بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ ۖ وَإِنْ تُعْرِضْ عَنْهُمْ فَلَنْ يَضُرُّوكَ شَيْئًا ۖ وَإِنْ

حَكَمْتَ فَاحْكُم بَيْنَهُم بِالْقِسْطِ ۚ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

*“So if they come to you, [O Muhammad], judge between them or turn away from them. And if you turn away from them - never will they harm you at all. And if you judge, judge between them with justice. Indeed, Allah loves those who act justly.”*⁴⁷

4. Right to Freedom:

It is pertinent to note that Islam has been the major contribution in ending the culture of human slavery. The provisions of Islam in making any transformation are gradual, the result of which appeared after decade from the death of the Prophet Muhammad. First of all, Islam did not approve of making people slaves who were born free. Then Islam considered freeing a slave an act of goodness, later Islam imposed penalty on certain acts which was to be paid by freeing a slave.

This transition can be observed in the following verses:

مَا كَانَ لِيَشْرَ أَنْ يُؤْتِيَهُ اللَّهُ الْكِتَابَ وَالْحُكْمَ وَالنَّبُوءَةَ ثُمَّ يَقُولَ لِلنَّاسِ كُونُوا عِبَادًا لِي مِنْ دُونِ

اللَّهِ وَلَكِنْ كُونُوا رَبَّانِيِّينَ بِمَا كُنْتُمْ تُعَلِّمُونَ الْكِتَابَ وَبِمَا كُنْتُمْ تَدْرُسُونَ

*It is not (possible) for any human being unto whom Allah had given the Scripture and wisdom and the prophet hood that he should afterwards have said unto mankind: Be slaves of me instead of Allah; but (what he said was): Be ye faithful servants of the Lord by virtue of your constant teaching of the Scripture and of your constant study thereof.*⁴⁸

Then freeing a slave was considered a penalty for certain acts. Observed in the following verses:

وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقْتُلَ مُؤْمِنًا إِلَّا خَطَأً ۚ وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ

مُسَلَّمَةٌ إِلَّا إِلَىٰ أَهْلِهِ إِلَّا أَنْ يَصَدَّقُوا ۚ فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ

مُؤْمِنَةٍ ۖ وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدْيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ ۖ

فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِنَ اللَّهِ ۚ وَكَانَ اللَّهُ عَلِيمًا حَكِيمًا

And never is it for a believer to kill a believer except by mistake. And whoever kills a believer by mistake - then the freeing of a believing slave and a compensation payment presented to the deceased's family [is required] unless they give [up their right

as] charity. But if the deceased was from a people at war with you and he was a believer - then [only] the freeing of a believing slave; and if he was from a people with whom you have a treaty - then a compensation payment presented to his family and the freeing of a believing slave. And whoever does not find [one or cannot afford to buy one] - then [instead], a fast for two months consecutively, [seeking] acceptance of repentance from Allah. And Allah is ever knowing and Wise.⁴⁹

(لَا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الْأَيْمَانَ ۖ فَكَفَّارَتُهُ إِطْعَامُ عَشْرَةِ مَسَاكِينَ مِنْ أَوْسَطِ مَا تُطْعَمُونَ أَهْلِيكُمْ أَوْ كِسْوَتُهُمْ أَوْ تَحْرِيرُ رَقَبَةٍ ۚ فَمَنْ لَمْ يَجِدْ فَصِيَامًا ثَلَاثَةَ أَيَّامٍ ۚ ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ ۚ وَاحْفَظُوا أَيْمَانَكُمْ ۚ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ لَعَلَّكُمْ تَشْكُرُونَ)

"Allah will not impose blame upon you for what is meaningless in your oaths, but He will impose blame upon you for [breaking] what you intended of oaths. So its expiation is the feeding of ten needy people from the average of that which you feed your [own] families or clothing them or the freeing of a slave. But whoever cannot find [or afford it] - then a fast of three days [is required]. That is the expiation for oaths when you have sworn. But guard your oaths. Thus does Allah make clear to you His verses that you may be grateful."⁵⁰

(وَالَّذِينَ يُظَاهِرُونَ مِنْ نِسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرُ رَقَبَةٍ مِنْ قَبْلِ أَنْ يَتَمَاسَا ۚ دَلِكُمْ تُوعَظُونَ بِهِ ۚ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ)

"And those who pronounce thihar from their wives and then [wish to] go back on what they said - then [there must be] the freeing of a slave before they touch one another. That is what you are admonished thereby; and Allah is Acquainted with what you do."⁵¹

It has been observed from the above mentioned ayat that the greatest guarantee of personal freedom for a Muslim lies in the Qur'anic decree that no one other than Allah can limit human freedom.

5. Right to Religious Freedom:

Religious freedom is also considered as a pure right for men and women and neither violence nor misconduct is allowed in Islam and this regard.

(لَا إِكْرَاهَ فِي الدِّينِ)

"There shall be no compulsion in [acceptance of] the religion".⁵²

(لَكُمْ دِينُكُمْ وَلِي دِينِ)

"For you your religion, for me my way of life..."⁵³

6. Right to Acquire Knowledge:

Another major right which is given to human is right to acquire knowledge, as it is observed in the following verse of Quran which states:

"وَمَا كَانَ الْمُؤْمِنُونَ لِيَنفِرُوا كَآفَّةً فَلَوْلَا نَفَرَ مِن كُلِّ فِرْقَةٍ مِّنْهُمْ طَائِفَةٌ لِّيَتَفَقَّهُوا فِي الدِّينِ
وَلِيُنذِرُوا قَوْمَهُمْ إِذَا رَجَعُوا إِلَيْهِمْ لَعَلَّهُمْ يَحْذَرُونَ"

“And it is not for the believers to go forth [to battle] all at once. For there should separate from every division of them a group [remaining] to obtain understanding in the religion and warn their people when they return to them that they might be cautious.”⁵⁴

The verses mentioned above from the Quran are evident for the recognition of human rights in Islam, therefore, the paper skips the rest of the human rights like right to work, privacy and the like as the point has been proven here.

Conclusion:

As conclusion it may be stated

1. According to Joseph Schacht “Islamic Law is the epitome of Islamic thought, the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself”⁵⁵
2. Joseph Schacht believed that Islam is not a legal system, but rather a religion comprising of rituals and morals, therefore he denies any source of evidence that may support the idea of considering Islam a complete legal code.⁵⁶
3. Schacht believed that Islamic law recognizes subjective rights as a legal rule in the narrow sense.
4. A real understanding and analysis of the language of Quran confirms that Islam has its own view on the subject of rights.



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References:

1. See; Joseph Schacht, *An Introduction to Islamic Law*(USA: Clarendon Press - Oxford, 1982). P.iii
2. Jeanette Wakin, "Remembering Joseph Schacht (1902-1969),", *Islamic Legal Studies Program, Harvard Law School, USA* . no. 4 (2003).
3. Ibid.
4. Ibid.
5. Ibid.
6. Joseph Schacht, *The Origins of Muhammadan Jurisprudence*(USA: Clarendon Press - Oxford, 1967)
7. Joseph Schacht, *An Introduction to Islamic Law*(USA: Clarendon Press - Oxford, 1982).
8. Ibid.
9. See: Al-Azami, "On Schacht's Origins of Muhammadan Jurisprudence."

10. See: Schacht, *An Introduction to Islamic Law*. P.11
11. Ibid.P.11 ; see also; *The Origins of Muhammadan Jurisprudence*. Preface p.v.
12. *An Introduction to Islamic Law*.p 35-36
13. Ibid.p 34
14. Ibid.p.19
15. Al-Azami, "On Schacht's Origins of Muhammadan Jurisprudence."p.76
16. Zafar Ishaq Ansari, "The Early Development of Islamic Fiqh in Kufah with Special Reference to the Works of Abu Yusuf and Shaybani" (Institute of Islamic Studies, McGill University, 1966).p.237; see also; Zafar Ishaq Ansari "Joseph Schachts Argument from Silence".
17. J. Schacht (1969). Foreign Elements in Ancient Islamic Law P-10. Paper published in Journal of Comparative Legislation and International Law, Third Series, Vol. 32, No. 3/4 (1950). Published by Cambridge University Press on behalf of the British Institute of International & Comparative Law.
18. 18 J. Schacht (1969). Foreign Elements in Ancient Islamic Law P-10
19. Ibid P-11
20. See; Joseph Schacht, the Origins of Muhammadan Jurisprudence p-214
21. Ibid p-214
22. Ibid p-215
23. Ibid p-216
24. Ibid p-222-223
25. Ibid p-223
26. Ibid p-329
27. Nyazee, Iman Ahsen Khan. *Outlines of Islamic Jurisprudence*. Adventure Legal Studies Institute (2000).
28. Ibid.
29. Ibid.
30. Joseph Schacht, "Islamic Religious Law" in Joseph Schacht and C.E. Bosworth, eds., *The Legacy of Islam*, 2nd ed. (New York: Oxford University Press, 1974), 397-8.
31. Ibid., p.398.
32. Ibid., p.400-401.
33. Schacht. *Law and Justice*, the Cambridge Encyclopedia of Islam, vol. II, pt. VIII/chpt. 4, beginning with pg. 539.
34. ibid p541
35. Schacht, *An introduction to Islamic Law*. 161-2
36. Conclusion drawn by M. Mushtafa Al-Azami, *On Schacht's Origins of Muhammadan Jurisprudence*, Suhail Academy Lahore, Pakistan, 2004. P.17
37. Quran: (An-Najm 53:42)
38. Atique Tahir, "A True Vision of Human Rights in Islam" *Al-Adwa* 28th Version Issue.No. 40 (2013). 7-16
39. Quran : (Al-An'am 6:151)
40. Quran: (Al-Ma'idah 5:32)

41. Quran: (Al-Ma'idah 5:45)
42. Quran: (Surat Al-Isra 17:70)
43. Quran: (Surat Atin 95:4)
44. Quran: (20:116), (2:34), (7:11), (17: 61), (18
45. Quran: (Surat Al-Maidah 5:8)
46. Quran: (Al-Araf: 7:29)
47. Quran: (Al-Maidah 5:42)
48. Quran: (Al-Imran 3:79)
49. Quran: (Al-Nisa 4:92)
50. Quran: (Al- Maidah 5: 89)
51. Quran (Al-Mujadila 58:3)
52. Quran (Al-Baqarah 2:256)
53. Quran: (Surat Al-Kafirun 109:6)
54. Quran: (Surat Al Tawbah 9:122)
55. Schacht. An Introduction to Islamic law, p.1.
56. See: An Introduction to Islamic Law.p 35-36