



DEMOCRACY, HUMAN RIGHTS AND ADMINISTRATION OF JUSTICE UNDER ISLAMIC LAW

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Following the American and France revolutions of 1776 and 1789 respectively, the paradigms shift became complete introducing a new political Philosophy of constitutional democracy where by a concept of government for the people, by the people and of the people was born. Henceforth Europe, and in the 20th century United State of America made it their responsibility to universalize the adoption of the philosophy through the medium of League of Nations and United Nations. At the same time the rule of Law and human rights had come to be accepted by some states as the basis of organized society, they remained largely undefined and were certainly not universally applied. J. Schumpter, in his attempt to defined Democracy said:-

“Democracy is a political method, that is to say, a certain type of institutional arrangement for arrival at political legislative and administrative decisions. It is a method by which the individual acquires the power to participate in decisions by means of a competition struggle for the people’s votes. It is this competition for votes that is the distinguishing character of democratic method”.¹

The main requirements according to the above view of democracy that people have the opportunity of accepting or refusing the people who are rule them. According to E.E. Schattschneider:

“Democracy is a competitive political system I which competing leaders and organizations define the alternatives of public policy in such a way that the public can participate in the decision making process”.²

Simply; it can be said that democracy is a system of government which drives it’s powers and authority from the people, which power and authority are exercise through representatives freely chosen and responsible to them. It therefore provides a conducive political system I which the principle of the rule of law and the protection of human rights could find greater practical impression.

There are however certain minimum characteristics which any democratic system of government ought to posses. Austin Rauney and Wilmove Kendal4 pointed out the following as important.

- (1) **Popular sovereignty;** This means those who are mandated to lead people be ready to do what ever is good to the people and in accordance with their requirement.



- (2) **Political Equality;** This is where each member of the community be involve in the decision making process in governance by means of electing representatives, also, and action which is assumed to give the common people the power to decide who should be their leader – (administrator).
- (3) **Popular Consultation and majority rule;** That is, there must be an understanding that when the enfranchised members of the community disagree as to what ought to be done, the last word lies, in some sense, with the large number and never the smaller.
- (4) The need for the protection and enforcement of basic constitutional freedoms.

We must however, observe that democratic institution vary widely from time to time and from place to place. To say that democratic institutions vary in form does not mean that there was no way of evaluating them. Specifically, we can evaluate any political institution in terms of how good a job it does in promoting majority control on a continuing basis, the institutional guarantees for democracy are more often then not entrenched in constitutions of countries that truly embrace the basic principles of democratic theory.

ISLAMIC AND DEMOCRACY

Islamic as represented in its system of the Sharia is often allegedly adjudged to be incompatible with democracy. This is a gross misrepresentation indeed. On the contrary, Islam happens to be a religion that is compatible with rules of democracy. Equality, which is the watch word and foundation upon which democracy is built is the guiding principle of the Sharia.

The Sharia, as a divine law, considers man as the cardinal focus of all revelation from Allah (SWT). The first visit to prophet Muhammad (S.A.W) by Angle Gabriel, was to teach him certain fundamentals concerning man where he said

“Read in the name of your Lord who created, created man from clots of blood. Read! Your Lord is the most Bountiful. One who taught by the pen, taught man what he did not know”.

Islam has made the center if its concern for man's our good and to his advantage. Allah has made man the best of his creation, despite man's general weakness. He made him (man) respectable, wherever he may be. This explains the position of the Sharia on the status of mankind on earth. Allah has appointed a man irrespective of race, gender and class to be His



vicegrece in this world as has been explained in the Holy Qur'an (chapter 2, verses 30-39). The nature of which has been explained in Chapter 6, verses 163-164 which reads:-

" Say truly, my prayer and my service of sacrifice, my life and my death, are (all) for Allah the cherisher of the worlds. No partner hath He. Thus am I commended, and I am the first to abide to His will" ³

ISLAM AND HUMAN RIGHTS

The notion of rights of man or human rights as it is known today found its origin from the writings of spinoze, Hobbes, Montesquieu Locke among others. John Locke argued that all individuals are endowed by nature with certain claims and rights, chief among which are right to life, liberty, freedom from arbitrary rule and to own property. The argument of John Locke was never a new thing except confirming what Allah (S.W.T.) said in His Qur'an

"We have bestowed blessings on Adam's children and carried them by land and sea, we have provided then with good things and exalted them above many of our creatures." ⁴

In his historic final sermon, the prophet (S.A.W), declared a number of principles that lay the foundation of human rights. These principles were not merely empty motton meant for public consumption, rather, they were the very principles he had preached and practiced ever since the beginning of his mission. In his farewell hajj sermon on the day of Arafast, the Prophet (S.A.W), declared the God-given rights of all mankind to life, property and dignity irrespective of religion, race, gender, social status or nationality. He spoke in detail of the right of the oppressed segment of the society like women and slaves. He spoke of rights and duties of both subjects and rules, and declared that every human being has the right of security and stability. These right being sacred and God given, he declared, can never be undermined, deffered or abrogated.

The present human atrocities and violation of sanctities that have become a predominant feature of today's world makes us admire the sanctity of life, personal possession and honor stated in the fare well sermon of the prophet (S.A.W). The Sharia has some defined objectives which are none other than the protection of the basis or fundamental right of mankind. These objectives known as Magasids al-tashri' are six in number, and are to be fund abundantly in the Holy Qur'an, and the Sunnah of the Prophet (S.A.W.) and they are as follows: Tirmithi narrated that the Prophet (S.A.W.) asked:

" which day is the most sacred?" The day of the greater Hajj, O Allah Messenger" his companions answered. Then, your blood,



possessions, and honour, the Prophet (S.A.W.) said” are as sacred as this day of yours, in this town of yours, in this month of yours”

The analogy employed by the Prophet (S.A.W.), between that day, month and place and the human life is not worthy, because the pilgrims were certain of the sanctity of that time and place, unlike human life and possessions, which, in the pre-Islamic era, were considered a fair game.

1. PROTECTION OF LIFE

Unlike other legal systems which are lop-sided in their aims or objectives, the Sharia has the overall welfare of man as its target. Whatever Allah provides, is for the betterment of man, here and in the hereafter. This has dramatically distinguished the Sharia from all other legal system as others have failed to address the position of a man in the Hereafter.

Man is the central focus of all divine guidance, and life to him is continuity from here to the next life. This means that life is an essential right without which no other right would be meaningful. Thus, it is the foremost right to be protected by the Sharia. This is because without life, the law is a waste, as it will have no subjects and will therefore lack jurisdiction. And in the broadest sense, no distinction is made by the Sharia on the superiority, or quality of life. All human life, irrespective of status are equal. There exists, no distinction between the life of a centenarian and an embryo (fetus) in the womb, nor between male and female, free-born or slave, the rich and the poor, the leader and the subject. Life is generally made inviolable, as no blood is to shed unjustifiably. And in order to guarantee a right to life, the Sharia prohibited some actions of violence to the human body like murder and infanticide.

(i) Murder or homicide

Murder or homicide, is prohibited in the Qur'an chapters, 5:45; 16:74; 2:178; 17:33 and 25:68. Generally, a punishment of death is prescribed for this, even though the right of waiver thereof is granted to the heirs of the victim through the option of diyyah or blood compensation, as indicated in Qur'an 2 verses 178-179. Which reads:-

“ O ye who believe! The law of equality. Is prescribed to you. In cases of murder. The free for the free, The slave for the slave, The woman for the woman, But if any remission, Is made by the brother, Of the slain, then grant any reasonable demand, And compensate him. With handsome gratitude, This is a concession, And a Mercy, From your Lord. After your Lord. After this whoever. Exceeds the limits shall be in grave penalty. In the Law of Equality there is



(saving of) Life to you, O ye men of understanding; that ye may restrain yourselves” .

(ii) Infanticide

This is the killing of babies or infant children as was practiced by the desert Arabs who used to bury their daughters alive. This act is clearly and strongly condemned in the Holy Qur'an.⁵

As stated in the famous Hadith (Supra), the protection of these rights and obligations provided in the law is among the primary duties of the State. Any legislation which intends to destroy or suspend any of these rights or obligations would not have the character of law in the eyes of the Sharia. Persons can only be deprived of their rights in consonance with the law for wrongs committed. This goes to demonstrate the supremacy of Sharia which contemplates that every person occupying the highest or the lowest position in life is equally answerable at the alter of law. No person can enjoy immunities or process of law or claim a special procedural rules or evidence in regard to himself or claim exclusion or judicial review from a class of decisions or in regard to decisions within particular period of time. No person exercising public authority can be so high as not to be answerable with that permits discrimination or provides immunities in ordinary judicial court. Any law that permits discrimination or provides immunities in regard to person would, to that extent, not come within the definition of law under Sharia.

2. PROTECTION OF PROPERTY

Next to right to life is the protection of property. Islam considers possession of property to be sacred. Muslims possessions are protected by belief, and those of non Muslims by Amman (pledge of safety). It is this Amman that the people of the would have sought ever since they signed United Nations charters on human rights and those concluded by diplomatic missions in various in modern times. Right to ownership of property is another fundamental right recognized by the Sharia. Property for a Muslim is divided in to two (1) legally protected property Al- mal Mutaquawwam: This, houses domestic that are lawful for a Muslim to acquire and own such as money, houses domestic animals and all other things. To safeguard these kind of properties sharia prohibited acts of Theft, Qur'an (5:38) robbery (5:33) usurpation, Qur'an 2:88 and many other verse on the protection of property whether owner by a Muslim or a non Muslim, and (ii) legally unprotected property (al-mal-qhar Mutaquawwam), this kind of properties are those things that are prohibited to Muslim. Whether for consumption or ownership. These include wine, pork, swine and others. Sharia does not give



any protection to these kind of properties if they are owned by a Muslim. Therefore if destroyed or stolen, no legal action will be available for him. But if it belongs to a non Muslim, the sharia has right for redress, because, to him the properties are not prohibited.

3. RIGHT TO HONOR

From the farewell sermon of the prophet (S.A.W) above, he said **"...your blood, possessions and honor are sacred..."** it is clear that after giving protection to life and property, the next is honor. Respect of human dignity is necessary under sharia. The Almighty God has given an honor to human being. Any disgrace, dehumanization, dishonor or disrespect to human being is to be met with disapproval and appropriate sanction. To safeguard this right sharia has prohibited defamation which it condemned on serious terms and prescribes a severe punishment for that. Allah (S.W.A) said in the Holy Qur'an.

"And those who launch a charge against chaste woman and produce no witnesses (to support their allegations), flog them with eighty stripes; and reject their evidence ever after: for such men are wicked transgressors."

The aim of Sharia is to protect human dignity, because of this, the law prohibits any slander or scandalous against any body without clear evidence. Not only the offender would be subjected to this disgraceful form of punishment, but he would be deprived of the citizen's right of giving evidence in all matters all his life, unless she repents and reform.

Defamation may consist in speaking it of others by spoken or written word, or in acting in such a way as to suggest a charge against a person who you are not in a position to judge. A cutting biting remark or taunt or sarcasm are prohibited. Thus in the Holy Qur'an Allah (S.W.T) says;

"O ye who believe let not some men among you laugh at others; it may be that the (latter) are better than the (Former)., not defame, nor be sarcastic to each other. Nor call each other by offensive nickname. How bad is it to insult one's brother after having faith. And those who do not desist are (indeed) doing wrong."

*"O ye who believe avoid suspicious as much as possible, for suspicion in some cases is a sin. And spy not on each other, no speak ill of each other behind their backs would any of you lie to each the flesh of his dead brother? Nay, ye would abhor it.. but fear God; for God is off returning, most merciful:"*⁷



The Prophet (S.A.W) also is reported to have said;

*"Beware of suspicious, for suspicion is the worst of false tale; and do not look for one's faults, and not to spy on one another, and do not practice naise (i.e offering or higher price over and above the price of another brother). And do not be jealour of one another, and do not hate one another, and do not dessert one another."*¹¹

Revenge on suspicion and random accusations are also prohibited. Justice is comprehensive law of Islam and is not confined to religions or counties. Allah (V.T) says;

*"... and do not let the hatred of people prevent you from being just (toward them). Be just for that is never to righteousness. And fear Allah; indeed, Allah I acquainted with what you doe"*¹⁸.

This however, does not mean that Islam denies the Muslims the right to defend themselves, to drive off aggressors, and prosecute and chastise offenders. But all these must be done within the framework of principles and justice that both Islamic and international laws have agreed upon. Therefore, taking advantage of some peoples weakness by the powerful countries leveling false accusation against them for no other reason than to settle old sores or to achieve their personal interest is certainly injustice, in acceptable and criminal.

ADMINISTRATION OF JUSTICE

In a democracy, the integrity of the rule of law and the legal structure is commonly protected by distributing powers among disparate governmental actors or arms that can then act as controls on one another. This connotes the concepts of separation of powers and judicial independence exposed by Montesquieu and now found in most modern constitutions. A part from the well known legislative/ executive/ judicial separation of powers, there is also the separation of more mundane public administration into various agencies, preventing any single center of power from achieving dominance. The rule of law is essentially a form of power dispersion because it sets up legal principles as a control on social, economic and other pressures in society.

The high degree of independence needed for judicial functions is primarily because of the exalted position of the judiciary as the ultimate arbiter, and the need to ensure fairness and consistency, as well as eliminate



irregular or undue influences on the process. Truly independence decisions require independent judges. The independence of judge involves not only judicial employment, court and administrative practice and discipline, but also more far reaching matters such as judicial selection, facilities, remuneration, and periodic retraining to keep judges abreast of legal and social developments.

It is pertinent to note that judicial independence and other forms of power dispersal, particular in the justice system are interdependent. Judicial independence in decision -making does not only require independent judges, but also independent input from prosecutors, other lawyers, and law enforcement. This raises a fundamental question, which is the need fro an effective administration of justice, particularly criminal justice as a necessary pre-requisite for the observance of the rule of law and the safeguard of human rights. Courts cannot deal effectively with cases if corruption or other undue influence on law enforcement or prosecutors prevent them from coming into court or distort evidence or arguments once they are before the court. The independent of layers and even the media is also important, especially in ensuring equality in legal proceedings as well as access to the law through competent and independent legal advice.

In more recent times, it has become globally accepted that human rights could best be attained under democratic system, which provide for institutional independence and an effective and accountable justice process. Ever since the advent of modern democracies the challenge has been to achieve a harmonious balance between the rights and duties of the individual and their responsibilities to their nation states, especially in the light of the increasing interdependence and complexity of the global community. National States strove to grapple with these challenges in their various constitutions, legislations, as well as institutional structure.

Nigeria has been a signatory to all principal convention on human and peoples right, and its successive constitution since independence have attempted to adapt the spirit and intent of these international initiatives and lay the foundation of a polity founded on the principles of the rule of law. Indeed, Nigeria hosted the 1961 African Conference on the rule of law by the International commission of Jurists, which resulted in a resolution known as the law of Lagos. That resolution, a part from reaffirming the basic principles underlying the rule of law, recognized that rule of law can be fully realized only under a system of government established by the will of the people.

Our successive constitution particularly the 1979, 1989, 1995 and the current 1999 Constitution have attempted to provide for representative democracy with the requisite separation of powers, institutional independent



and fundamental human rights. Section 14(1) and (2) of our current 1999 constitution states;

“14(1) The Federal Republic of Nigerian shall be a state based on the principles of democracy and social justice.

2) It is hereby accordingly declare that;-

- a) Sovereignty belongs to the people of Nigerian form whom government through this constitution derives all its powers and authority;
- b) The security and welfare of the people shall be the primary purpose of government; and
- c) The participation by the people in their government shall be in according with the provisions of this constitution.

Further, the powers of the Federal republic of Nigeria were distributed under section 4, 5 and 6 amongst the legislative. Executive and judicable arms of government respectively. In addition, sections 2 and 3 as well as other related sections have structured the country into a federation with a 3-tier administrative control, Federal, State and local governments. The constitution also provides for the formation of political parties and the elections into various political offices.

As for the fundamental human rights embodied in the various international conventions to which Nigeria has acceded, these have been elaborately adopted in Chapter IV of the Constitution. Such rights include:

- i. Right to live - Section 33
- ii. Right to dignity of human person - Section 34
- iii. Right to personal liberty - section 35
- iv. Right to fir hearing section 36
- v. Right to privacy section 37
- vi. Freedom of thought, conscience and religion section 38;
- vii. Right of freedom of expression - section 39
- viii. Right to peaceful assembly and association - section 40
- ix. Right to freedom of movement - section 41
- x. Right to freedom from domination - section 42
- xi. Right to acquisition and ownership of property - section 43
- xii. Freedom form compulsory acquisition of proper - section 44 and;

Unfortunately, these rights or human rights as beautifully provided in the constitution have not been able to be achieved and are unable to find practical expression, particularly in present dispensation. This is due to so many factors among which are.

- i. Lack of political will,
- ii. Socio- economic factors, and



iii. Institutional constraints.

These constraints were as a result of the successive military regimes which have at various times suspended certain portions of our various constitutions, suspended the legislative arm of logged the effectiveness of the vital institutions responsible for safeguarding these rights. The requisite political will under these dispensations was therefore inherently lacking. The present administration is also no ready to change any thing and event it is getting worst.

The United Nations that declared the charter of Human Rights is still too weak an hand tied simply because it is manipulated by worldly interests and led by racism. Moreover, the United Nations lacks the creed, the belief and the moral power to guard and guarantee these rights. That is why constant violations of human rights go unpunished even in the most advanced countries. For a long time, mankind has suffered as a result of the powerful violating the basic human rights of the weak. The signatories to the international declaration of human rights in 1948 are the same colonial powers that enslaved and oppressed people all over the world. This may also be one of the important factors that was made fundamental rights in Nigerian to be in applicable.

CONCLUSION

The foregoing analysis has attempted to explain the compatibility of Islam with democracy. The contention of the Western world and the United States of American against Islamic democracy lay in the fact that democracy values in Islam fall within the parameters or purview of moral ethics, thereby making it to partake of religious characteristics. Under Islamic law, the believers constitute or brotherhood of equals the blood, the lawfully acquired property, the freedom and honour of every Muslims and non-Muslim like is sacrosanct. As stated in the formus Hadith of the prophet (S.A.W), a his farewell pilgrimage, the protection of thee rights and obligations provided in the law is among the primary duties of the state.

Finally, I can say that form the foregoing discussions, no legal system beside the shariah today ah appreciated the wider dimensions of human rights as Islam has done. This is only a universal law like the shariah is competent to speak on human rights objectivity. In Nigeria today we need to look at our circumstances, choose the right perspective form which to look at human rights, and determine what we want human rights to do for us.



Footnotes

1. Capitalism, Socialism and democracy, (London) George and Unwin (1943) P. 242
2. The semi sovereign people Op. 141-142
3. Basic Principles for a model of Democracy in Cridde and Neusaur, eds, empirical democratic theory pp. 41-63.
4. Qur'an 96; 1-5
5. Ibid 17; 70
6. AL- Bukhari, Salih as Bukhari vol. 8, Hadith No. 120
7. Qur'an 17; 33.
8. Ibid, 16; 57- 59; 81: 8-9 and 17;31.
9. Ibid, 24;5
10. Ibid 9;11-12
11. DL- Bukhari; Salih at Bukhari Vol. 8. Hadith No. 92.
12. Qur'an 5; 8.