



---

HUMAN RIGHTS JURISPRUDENCE UNDER ISLAMIC LAW: A CRITICAL REVIEW  
OF CONTENDING CONCEPTIONS

ORAEBGUNAM, Ikenga K.E

Dept of International Law & Jurisprudence,  
Faculty of Law, Nnamdi Azikiwe ,University, Awka, Nigeria

ABSTRACT

Recent Islamic resurgence in Nigeria has provided a sufficient impetus for a sustained reflection on the nature of the relationship between Islam and human rights idea. The most recent of these impulses is the manifest antipathy exercised by some Islamic fundamentalist sects toward non-Muslims, especially Christians. At the time of composing this essay, Christians in the north were given an ultimatum to either vacate within very few days or face attacks. This is only subsequent to numerous occasions of bomb detonations that have claimed thousands of mainly non-Muslim lives and destroyed property worth a huge amount of money. It is therefore held no longer enough for Islam in Nigeria to adopt Sharia criminal justice system, or to engage in full blown proselytism in utter violation of human rights of non-Muslims. Waging a violent jihad is now seen as the more efficient methodology to reach the logical conclusion of the Islamic fundamentalist agenda. This Nigerian scenario is however a mere modicum of what obtains in many parts of the world today. It has therefore become necessary to engage in a more fundamental discussion on the Islamic attitude to human right philosophy generally. This paper critically reviews the conflicting opinions on the subject and draws a response.

*Keywords:* Human Rights, Islamic Law, Jurisprudence, Nigeria, Sharia

1. INTRODUCTION

The question of the compatibility, or otherwise, of Islam with human rights has been in recent years the focus of attention of numerous scholars who have produced varying responses and advanced conflicting and competing views. It has been argued that “sharia law is not only compatible with human rights but also the most effective way to achieve human rights”<sup>1</sup>. However, it seems that “of all the moral challenges confronting Islam in modern age, the problem of human rights is the most formidable”<sup>2</sup>. Lupp also observes that “Islamic

---

<sup>1</sup> Ezzat, H. R. (2004). “Dear Emran” in Qureshi, E. & Ezzat, H. R. *Are Sharia Laws and Human Rights Compatible?* Retrieved on 31-05-10 from [http://www.qantara.de/webcom/show\\_article.php/-c-373/-nr-6/i-html](http://www.qantara.de/webcom/show_article.php/-c-373/-nr-6/i-html).

<sup>2</sup> Fadl, K. A. (2010). *The Human Rights Commitment in Modern Islam*, p.114. Retrieved on 12-08-10 from <http://www.musawah.org/docs/pubs/wanted/wanted-KAEF-EWpdf>.

fundamentalism in its various modern forms poses a challenge to international human rights norms”<sup>3</sup>.

Be that as it may, in spite of the argument that “human rights violations in Muslim countries are not due to sharia law but are mainly exercised by the state and dates back to the post-colonial era”<sup>4</sup>, relatively recent happenings around the world to which Islam is connected seem to fuel the hotly debated issue of whether or not Islam is amenable to human rights idea. Fadl<sup>5</sup> adumbrates some of these happenings. The death sentence issued against Salman Rushdie for the publication of the *Satanic Verses*; the stoning and imprisoning of rape victims in Pakistan; the public flogging, stoning and decapitation of criminal offenders in Sudan, Iran, and Saudi Arabia; the degradation of women by the Taliban; and the destruction of the Buddha statues in Afghanistan are some of the recent Islamic practices that have struck the world as offensive and even shocking. Other similar events include the sexual violation of domestic workers in Saudi Arabia; the excommunication of writers in Egypt; the killing of civilians in suicide attacks; the shooting in 1987 of over four hundred pilgrims in Mecca by Saudi Police; the senseless taking of hostages in Iran and Lebanon; the burning to death in 2002 of tens of school girls in Mecca because they were not allowed to escape their burning school while not properly veiled; the demeaning treatment that women receive in many an Islamic enclave, and above all the tragedy of “9/11” among many other events. Added to this is the recent bomb-killing of fifty-eight Christians by Muslims in Iraq<sup>6</sup>. One cannot also afford to skip the spiral upheavals and revolts spreading around the Muslim Arab world today as a result of sundry human rights violations and anti-democratic policies of especially sit-tight and repressive regimes. This situation certainly plays out in Tunisia, Egypt, Libya, Yemen, Bahrain, Syria, Jordan, Saudi Arabia, Algeria, Djibouti, and so on. Hence, it does not seem that Islam-motivated forms of terrorism are on the wane in spite of the demise of the al-Qaeda leader, Osama Bin Laden. All these seem to constitute a long Muslim saga of ugliness in the modern world’s sensibility on human rights, which idea and discourses have not only been globalized but also have become a significant issue for international relations<sup>7</sup>.

In Nigeria, the eve and the dawn of the new millennium have witnessed an unprecedented resurgence of Islam especially in the application of Sharia. Several states in the North have enacted an adapted version of the Sharia Criminal Code, which is a set of legal provisions based on the principles and morals of Islamic religion. The Sharia Penal Code, as adopted and applied in Nigeria is the subject of recent controversy among scholars and diverse groups who, among other opinions see the implementation as antithetical to the respect for some fundamental human rights. Although Sharia criminal law provisions safeguard some internationally and nationally protected rights in certain circumstances, such as Muslims’ freedom of religion, it is still observed that “the implementation of sharia law violates other fundamental rights such as the right of minorities to practise the religion of their choices, the right to life, and the right to be free from cruel, inhuman or degrading treatment or punishment, which attitudes in turn, violate Nigeria’s international human rights obligations”<sup>8</sup>. The victims especially the minorities have sometimes reacted to infringement on their right to religious freedom with violence, which incident had occasioned inter-religious conflicts that have claimed thousands of lives and property worth huge amount of money since the adoption of sharia in 1999. Besides, the recent post-election violence in Northern Nigeria, which claimed the lives and property of many, among other human rights assaults, are not unconnected with

---

<sup>3</sup> Lupp, J.S. (2004). *Human Rights and Islam*. Retrieved on 09-08-10 from <http://www.crvp.org/book/series04/IVA>.

<sup>4</sup> Ezzat, *Op. Cit.*

<sup>5</sup> Fadl, *Op.cit.*,p.114.

<sup>6</sup> Cable Network News, 2010, 3/11/10.

<sup>7</sup> *Ibid.*, p.116.

<sup>8</sup> Zarifis, I. (2010). “Rights of Religious Minorities in Nigeria” in *Human Rights Brief*, vol. 10 Issue 1. Retrieved on 7<sup>th</sup> April, 2010 from <http://www.statemaster.com/encyclopedia/secular-state>

religious sensibilities. This state of affairs is in concert with the recent and constant incidents of bombings taking place almost always in the northern parts of the country, with the resulting destruction of lives and property. Recently too, Nigeria was branded one of the fourteen terrorist countries alongside Somalia, Afghanistan and so on, when in December 2009 the Nigerian born teenager, Umar Farook Abdulmuttalab, was picked by al-Qaeda to blow the American Airline en route to Detroit though he was stopped aboard the Airline in Holland. It had to take a lot of pleas, lobbies, supplications and diplomatic strategies by the Yar'Adua-Jonathan government for the American deed to be undone only recently. All these have always been connected to Islamic attitude to Human rights.

The adoption by Zamfara State and later by some other eleven northern states (Jigawa, Kaduna, Kano, Katsina, Sokoto, Kebbi, Niger, Bauchi, Bornu, Yobe, and Gombe) expectedly elicited many reactions. Human rights scholars, lawyers, jurists, political analysts, moral theologians, right-based non-governmental organizations and also religious scientists demonstrate intense interest on the implications of the adoption for the nation's constitutional democracy and its tenets. Certainly, some national and international dust has been raised.

Besides, in 2001 Safiyatu Huseini, a 35-year old woman from the northern Nigerian State of Sokoto became the subject of international media attention and scholarly debate when sentenced to death in a Sharia criminal court as punishment for adultery<sup>9</sup>. This is not an isolated case, for immediately on the heels of Safiyatu case, Amina Lawal was in 2002 charged and convicted for the same offence of adultery. She was sentenced to death by stoning<sup>10</sup>. Ever since, many other convictions have been made and punishments such as amputation, *haddi*-lashings and so on inflicted on the convicts. The bottom line of the discussions on the determination of these cases no doubt touches on the question of human rights.

Too in Nigeria, attitudes towards the introduction of the sharia regime vary. Sometimes, the variation exists along Muslim – non-Muslim divides. It is noted that “no single issue has galvanized the Muslims of Nigeria into a cohesive and vocal force as the Sharia and no other issue has evoked the hostility of, compounded and left bewildered, non-Muslims in the country”. Many Muslim scholars view sharia as the God-sent panacea to the mosaic of socio-economic and ethical problems of Nigerians including the poor human rights record<sup>11</sup>. Further, sharia is seen as a positive social force that could contribute to greater stability<sup>12</sup>. Accordingly, it is often shown that sharia and Islam promote and protect individual rights based on the dictates of divine revelation to and the traditions of Prophet Muhammad. However, other scholars especially non-Muslims understand sharia as prone to infringing and actually does infringe on the socio-economic and political rights of non-Muslims<sup>13</sup>. This understanding has frequently labeled the sharia justice system a form of militant religious extremism which is often discriminatory<sup>14</sup>. Further, this approach stresses the divisive potential of sharia law and characterizes its implication as a step on the path to religious and social conflict on par with that

---

<sup>9</sup> Richardson, E. (2010). *Sharia Criminal Courts and Nigeria's Constitution*. Retrieved on 31-05-10 from <http://www.rfiaonline.org/extras/articles/614-sharia-criminal-courts-and-nigeria's-constitution>.

<sup>10</sup> Babaji, B. & Dankofa, Y. (2003). “Assessing the Performance of the lower courts in the implementation of sharia penal law in Northern Nigeria” in Ezeilo, J. N., Ladan, M.T. & Afolabi – Akingode, A. (eds.). *Sharia Implementation in Nigeria - Issue & Challenges on Women's Rights and Access to Justice*. Enugu Women's Aid collective, pp. 118 – 123.

<sup>11</sup> Ladan, M. T. (2003). “Women's Rights, Access to and Administration of Justice under sharia in Nigeria”, in Ezeilo, J. N., Ladan, M. T. & Afolabi – Akiyode, A. (eds.). *Sharia Implementation in Nigeria: Issues & Challenges on Women's Rights and Access to Justice*, pp. 19-43; Abdelisalam, A. H. (2003). “Islamic Law and Women's Rights: Sudan Experiences as a Model” in Ezeilo, J. N..... pp 74-85; Uthman, M. B. (2003). “Protecting the Rights of Accused Persons through the Proper Implementation of the Sharia Procedural Guarantees in Northern Nigeria” in Ezeilo, J. N., Ladan, M. T. & Afolabi – Akiyode, A. (eds) (2003). *Sharia Implementation in Nigeria*....pp. 171-205.

<sup>12</sup> Richardson, *Op.cit*.

<sup>13</sup> Odey, J. O. (2000). *The Sharia and the Rest of Us*. Enugu: Snaap Press Ltd; Okike, B.O.(2000). *The Practice of Sharia in Nigeria: A Democratic Secular State*. Enugu: Snaap Press Ltd.

<sup>14</sup> Kirwin, M. (2009). *Popular Perceptions of Sharia Law in Nigeria*. Retrieved on 06-08-10 from <http://www.afrobarometer.org/papers/AfroboiefNo.58.pdf>.

existing in states such as Sudan and Chechnya<sup>15</sup>. It is in accordance with this notion that Marshall refers to the adoption of sharia as “Talibanization”<sup>16</sup> of Nigeria. Yet some other observers have characterized sharia as a political vertical created and supported by elites seeking short-term political benefits<sup>17</sup>. No wonder such phrases like “political sharia”, “politicization of sharia” and so on continue to make newspaper headlines.

Such as the above excursus constitutes the background of this review. The study does not pretend to do an analytical investigation into the sharia praxis in Nigeria today. The paper is only aimed at exposing and comparing the different theoretical perceptions of Islamic attitudes to the idea of human rights.

### 1.1 DEFINITION OF KEY TERMS

For a better appreciation of this review, it is apt to delimit the connotations of the key terms employed in this paper. Hence, a word or two may be germane on the following terms.

#### (a) *Rights*

There is considerable disagreement about what is meant precisely by the term ‘rights’. It has been used by different groups and thinkers for different purposes, with different and sometimes opposing definitions. Hence the precise definition of the concept, beyond having something to do with normative rules of some sort or another, is controversial. Be that as it may, the Modern English word ‘right’ derives from Old English ‘*riht*’ or ‘*reht*’, and in turn from Proto-Germanic ‘*rixta*’ meaning ‘right’ or ‘direct’, and ultimately from Proto-Indo-European ‘*reg-to*’ meaning ‘having moved in a straight line’. Many other words related to normative or regulatory concepts derived from this same root including ‘correct’, ‘regulate’, and ‘*rex*’ (king) ruler, ‘rule’, ‘regal’, ‘royal’, ‘erect’ (as in upright), ‘rectangle’ (literally ‘right angle’), are therefore normative rules that direct what is allowed of or owed to the beneficiary, to some legal system, social connection, or ethical theory<sup>18</sup>. The concept of right is often fundamental to civilized societies, and it is of vital importance in such disciplines as law, religion and ethics especially theories of justice and deontology.

However, in this paper, ‘rights’ refers to the legal, social or ethical principles of freedom or entitlement. Even though ‘rights’ does not exclusively pertain to human beings for arguably, there can be animal rights, state rights, corporate rights and so on, the concept of right in this study is limited to human rights.

#### (b) *Human Rights*

Craston defines human right as “something of which no one may be deprived without a great affront to justice”<sup>19</sup>. For Dorwick, human rights are “those claims made by men, for themselves or on behalf of other men, supported by some theory which concentrates on the

---

<sup>15</sup> *Ibid.*

<sup>16</sup> Marshall, P. (2002). *Sharia Law Threatens Nigeria’s Stability*. Retrieved on 20/4/10 from <http://www.domini.org/openbook/nigeria20020327.htm>.

<sup>17</sup> Last, M. (2000). “Sharia in Northern Nigeria”, *Politique Ajuicaine* 79, pp. 141-152; Loiemeier, R. (2007). “The Quest for a Viable Religious Option” in Miles, W.F.S. (ed.). *Political Islam in West Africa: State-society Relations Transformed*. Boulder: Lynn Reinner; Miles, W.F.S. (2000). “Religious Pluralisms in Northern Nigeria” in Levzion, N. & Pouwels, R. L. (eds.). *The History of Islam in Africa*. Ohio: Ohio University Press; Paden, J. (2005). *Muslim Civic Cultures and Conflict Resolution: The Challenge of Democratic Federalism in Nigeria*. Washington D. C.: Brookings Institution’s Press.

<sup>18</sup> Wikipedia, the Free Encyclopedia. (2009). *Islam*. Retrieved on 6/1/2010 from <http://en..wikipedia.org/wiki/islam>.

<sup>19</sup> Craston, M. (1967). “Human Rights: Real and Supposed” in Raphael (ed.). *Political Theory and the Rights of Man*. Bloomington, p.52.

humanity of man, on man as a human being, a member of human kind....”<sup>20</sup>. Hence, human rights are “rights and freedom to which all humans are entitled merely by reason of being human”<sup>21</sup>. These include the civil, political, economic, cultural and social rights of individuals and persons.

(c) *Islam*

Shorter Encyclopedia of Islam describes ‘Islam’ as a technical term used to denote “the system of beliefs and rituals based on the Koran”<sup>22</sup>. Islam is referred to as a belief system extending beyond that based on the Koran to other sources. Hence, Islam is described as “a religion articulated by the Quran ...and by the Islamic Prophet Muhammad’s demonstrations and real life examples...”<sup>23</sup> As an Arabic term, “Islam” derives from the recurrent use of the verb “*aslama*” meaning ‘to submit oneself’<sup>24</sup>. The term is equally seen as a “homograph having multiple meanings, and a triliteral of the word “*salaam*” which directly translates ‘peace’<sup>25</sup>. When the two root words are put together, the word Islam gives the meaning ‘peace’ acquired by submission to the will of God. An adherent of Islam is called a ‘Muslim’, which is the active participle of the same verb of which ‘Islam’ is the infinitive.

(d) *Sharia*

Sharia is Arabic word that literally means a “drinking place or a path leading to a watering hole”<sup>26</sup>. It is interchangeably used with the phrase “Islamic law”. ‘Sharia’ or ‘shariah’ is seen by Muslims as “the clear path to be followed and which is technically referred to as the canon law of Islam”<sup>27</sup>. Farlex describes sharia as a “code of law derived from the Koran and from the teachings and examples of Mohammed”<sup>28</sup>. The meaning of sharia is often expanded to connote a rule “inspired not only by Islam and Koran but also by Arabic traditions and early Islamic scholars”<sup>29</sup>. No wonder sharia is often regarded as the “totality of Allah’s commandments as revealed in the Quran and elaborated in the Hadith and Sunna and interpreted by Ijma”<sup>30</sup>. For Aliyu, “sharia jurisprudentially means a clear and straight path designed by Allah the creator of man to walk on”<sup>31</sup>. Several studies show that Muslims claim that Sharia governs the entirety of a man’s life from cradle to the grave<sup>32</sup>. Differences in interpretation have, however, given rise to multiple legal theories: Hanafi, Shafi, Hanbali, Maliki, Shiite schools of jurisprudence, to say the least.

<sup>20</sup> Dorwick, F. E. (1979). *Human Rights, Problems, Perspectives and Texts*: Westmead, UK: Saxon House, pp.8-9.

<sup>21</sup> Wikipedia, *Op.cit.*

<sup>22</sup> Gibb, H. A & Kramers, J. H. (eds.). (1953). *Shorter Encyclopedia of Islam*. Leiden: E. J. Brill, p.13.

<sup>23</sup> Wikipedia, The Free Encyclopedia, 2009: [http://en-wikipedia.org/wiki/women\\_and\\_Islam](http://en-wikipedia.org/wiki/women_and_Islam).

<sup>24</sup> Gibb & Kramers, *Op.cit.*, p.13.

<sup>25</sup> Wikipedia, *Op.cit.*

<sup>26</sup> Ubaka, C. O. (2000). *Sharia in Nigeria: its Implications for Non-Muslims*. Enugu: Snaap Press Ltd, p.11.

<sup>27</sup> Nzomiwu, J..P.C. (1989). *The History and Message of Islam*, Awka: Meks- Unique Publishers, p.117.

<sup>28</sup> Farlex, P. (2009). “Sharia” in *The Free Dictionary on Line*. Retrieved on 23/12/09 from <http://www.thefreedictionary.com/sharia>.

<sup>29</sup> Johnson, B. (2009). “Sharia” in *About.com World News*. Retrieved on 23/12/09 from <http://worldnews.about.com/od/qt9/sharia.htm>.

<sup>30</sup> Nzomiwu, *Op.cit.*, p.117.

<sup>31</sup> Aliyu, I.A. (2007). “Sharia Implementation in Nigeria 1999 – 2005: A Review of its Legal, Institutional and Social Establishments” in *Ahmadu Bello University Zaria Journal of Islamic Law*, Vol. iv – v, p. 142.

<sup>32</sup> Nzomiwu, *Op.cit.*, p.117; Aliyu, B. B. (2001). *The Sharia: Its Place in Islam and Application in Nigeria*, Paper Presented in Missiological Symposium, SIST, Atakwu, Enugu, pp.3-4; Ozigbo, I.R.A. (1988). *An Introduction to the Religion and History of Islam*. Enugu: Fourth Dimension Publishers, p.48.

## 2. ISLAM AND HUMAN RIGHTS

A good amount of literature has emerged on Islamic perspectives on human right issues. Yet a review of these works reveals widely conflicting conceptions that range from the liberal to the most repressively conservative. In this connection, Machowski holds that “there appears to be a strong ambiguity towards the issue of human rights stemming from possible multiplicity of understandings of fundamental Islamic texts”<sup>33</sup>. However, we observe that the endless theoretical polemics on the subject were triggered off mainly by the promulgation of the United Nations Universal Declaration of Human Rights 1948. Hence, most of the views are reactions, positive or negative, to the tenets and implications of the Declaration. Certainly, the reactions pivot around the consideration of whether or not the notion and respect for human rights are embedded in Islamic religious practice and doctrines *ab initio* and thus predate the UDHR. In other words, can the idea of human rights be deciphered from the original sources of Islamic teachings? Therefore, the review attempts to delineate the various theories of the human rights concept in Islamic religion and studies. It is good to note that both Muslim and non-Muslim scholars and institutions have tried to respond to these issues.

Two predominate orientations of Muslim intellectual response to the question of human rights, namely, apologetic and puritanic<sup>34</sup> are discernible. The apologetic orientation consists in “an effort by a large number of Islamists to defend and salvage the Islamic system of belief and tradition from the onslaught of westernization and modernity by simultaneously emphasizing both the compatibility and the supremacy of Islam”<sup>35</sup>. On the other hand, the puritan paradigm regards Islam as perfect and which perfection meant that “ultimately Islam does not need to reconcile itself or prove itself compatible with any other system of thought”<sup>36</sup>. In other words, puritanism “insists on an Islamic particularity and uniqueness and rejects all universalism except the universalism of Islam”<sup>37</sup>.

In line with the apologetic view, it is believed that “Islam liberated women, created a democracy, endorsed pluralism, and protected human rights, long before these institutions ever existed in the West”<sup>38</sup>. No wonder Bielefeldt suggests that the concept of human rights “is not exclusively western cultures”<sup>39</sup>. According to Fadl, “a common heuristic device of apologetics was to argue that any meritorious or worthwhile modern institutions were first invented and realized by Muslims”<sup>40</sup>. Hence, apologists generated a large body of texts that claimed Islam’s inherent compatibility with international human rights or even claimed that Islam constituted a fuller and more coherent expression of human rights<sup>41</sup>. Most of the times, the “texts followed the same basic pattern and methodology; they produced a list of rights purportedly guaranteed by Islam and the rights listed coincided or were correlated most typically with the major human rights articulated in the UDHR”<sup>42</sup>. It is in line with this practice that Khan has written an excellent book that compares all the articles of the UDHR with the Quraic teachings<sup>43</sup>. Such

<sup>33</sup> Machowski, M. (2010). *(In) compatibility of Human Rights and the Islamic Doctrine: Implications for the Future of Human Rights in the World of Islam*. Retrieved on 05-08-10 from <http://www.mathewmachows.ki.com/2010/07/humanrightsin-Islam.html>.

<sup>34</sup> Fadl, *Op.cit.*, p.118.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*, p.121.

<sup>37</sup> *Ibid.*

<sup>38</sup> Ramadan, T. (2001). *Islam, the West and the Challenges of Modernity* Markefield: Islamic Foundation, pp.286-287.

<sup>39</sup> Bielefeldt, H. (1995). “Muslim Voices in the Human Rights Debate” in *Human Right Quarterly* 17.4, p.54.

<sup>40</sup> Fadl, *Op.cit.*, p.118.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> Shah, M. D. (2010). *The Universal Declaration of Human Rights and Islam*. Retrieved on 17-09-10 from [http://ahamdiyyatimes.blogspot.com/2010/01/universal-declaration-of-human-rights\\_23.html](http://ahamdiyyatimes.blogspot.com/2010/01/universal-declaration-of-human-rights_23.html).

apologetic cleverness is realized with the Universal Islamic Declaration of Human Rights (UIDHR) 1981, and the Cairo Declaration on Human Rights in Islam 1990.

Furthermore, it is in accord with the above frame of mind that Zulhuda maintains that “the protection of human fundamental rights is an inherent principle of Islamic teaching...”<sup>44</sup> He writes that the “Cairo Declaration believes that fundamental rights and universal freedoms in Islam are an integral part of the Islamic religion”, and that “the concept of human rights as understood in modern paradigm is not foreign notion”. Zulhuda observes that the Cairo Declaration has incorporated almost all essential rights as stipulated also in the UDHR. Accordingly,

The Declaration consists of 25 articles stipulating essential human rights like equality in dignity and rights being the subjects of God (art. 1); right to life (art. 2); women’s rights (art. 6); children’s rights and good standard of living (art. 7). Whereas the equality before the law is also provided in art. 8; right to liberty (art. 11); freedom of movement (art. 12); right to work (art. 13); and right to ownership (art. 15)<sup>45</sup>.

However, it is discovered that the right to freedom of peaceful assembly and association which is article 20 of UDHR, is not embodied in Cairo Declaration<sup>46</sup>. And conversely, the specific exclusion of usury (*riba*) in the Cairo Declaration does not have place in the UDHR”. Nonetheless, three fundamental differences between the Cairo Declaration and the UDHR are noted:

First is that the different perspectives are used in perceiving the human rights notion in each of these declarations. The UDHR is very much colored by the concept of natural law from the Greek philosophy, while the Cairo Declaration is based on the Islamic concept and Islamic worldview.... Secondly, the UDHR presumes inherent human right due to the birth per se, the Cairo Declaration, on the other hand, affirms the inherent human rights in a person for his status as God’s viceregent in this world.... Last...the UDHR is a UN-governed covenant and falls in the domain of the international law. In one way or another, the UN can do many things to uphold any enforcement, and to act against violations. The Cairo Declaration, on the other hand, is poor in terms of enforcement body. In this sense it is far less practical than the UDHR<sup>47</sup>.

Be that as it may, Gasiokwu maintains that the “Cairo Declaration is anchored on the affirmation that the Islamic *Ummah* having been made the best nation by God, is supposed to give mankind a universal and well balanced civilization in which harmony is established between this life and the hereafter and knowledge is combined with faith”<sup>48</sup>. Organization of Islamic Conference (OIC) in adopting the Declaration wishes “to contribute to the efforts of mankind to assert human rights, to protect man from exploitation and persecution and to affirm his freedom and right to a dignified life in accordance with the Islamic sharia”<sup>49</sup>. Besides, what is most salient is that every interpretation of the content of the Declaration is based on sharia.

---

<sup>44</sup> Zulhuda, S. (1997). *General Survey of Human Rights: A Comparative Perspective*: Retrieved on 09-10-10 from <http://www.islamic-world.net/islamic-state/right-survey.htm>

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> Gasiokwn, M.O.U (2003). *Human Rights: History, Ideology and Law. Jos; FAB EDUCATIONAL Books*, p.207.

<sup>49</sup> *Ibid.*

Hence article 24 states that “all the rights and freedoms stipulated in this Declaration are subject to the Islamic sharia”<sup>50</sup>. In the same vein, article 25 provides that “the Islamic sharia is the only source of reference for the explanation or clarification to any of the articles of this Declaration”<sup>51</sup>. The implication is that every discussion on the issue of human right in Islam is subjected neither to the provisions of international law nor to those of any national constitution but rather to the sources of Islamic sharia. Sharia then becomes, in Kelsen’s language, the *grundnorm* for every discussion of human rights in Islam. Be that as it may, Machowski observes that article 5 of the Declaration, although consistent with the established human rights nomenclature, safeguards the right of marriage “with no restrictions stemming from race, colour or nationality”<sup>52</sup> alone. He notes the effect that the Declaration is clearly discriminatory with regard to the categories of faith by comfortably excluding religion from the aforementioned restrictions. In the same way, he observes that article 10 not only presupposes the superiority of Islam over other religions, but also indicates the potential for criminalization of non-Islamic missionary activities. It presupposes the fact that apostasy in Islam is forbidden. As if this is not enough, Qureshi suggests that “by article 11, the Declaration maintains a different official approach of Muslim countries to civil and political rights distinguishable from that of non-Muslim countries by reason of their reliance on sharia rules”<sup>53</sup>.

Yet another attempt by Islam to show that its tenets are compatible with the global human rights concern today is the promulgation of the Universal Islamic Declaration of Human Rights (UIDHR) 1981. The UIDHR contains 23 articles in which various human rights and freedoms are provided for. They include in ascending order the right to life, right to freedom, right to equality and prohibition against impermissible discrimination, right to justice, right to fair trial, right to protection against abuse of power, right to protection against torture, right to protection of honour and reputation, right to asylum, rights of minorities, right and obligation to participate in the conduct and management of public affairs, right to freedom of belief, thought and speech, right to freedom of religion, right to free association, right to economic order and its consequences, right to protection of property, workers’ right to good status and dignity, right to social security, right to found a family and related matters, married women’s’ right to education, right to privacy, right to freedom of movement and residence.

In line with Fadl’s apologetic categorization, the Foreword to the Declaration states that “Islam gave to mankind an ideal code of human rights fourteen centuries ago”, which “rights aim at conferring honour and dignity on mankind and eliminating exploitation, oppression and injustice”. The Foreword goes on to hold that “human rights in Islam are firmly rooted in the belief in God, and God alone is the law Giver and the source of all human rights”. Similarly, it is categorically stated that “human rights in Islam are an integral part of the overall Islamic order and it is obligatory on all Muslim governments and organs of society to implement them in letter and in spirit within the framework of that order”. It is further enjoined that since the UIDHR “is based on the Quran and the Sunnah” and hence, “by virtue of the divine source and sanction, these rights can neither be curtailed, abrogated or disregarded by authorities, assemblies or other institutions, nor can they be surrendered or alienated” (Cf Preamble). Maududi is convinced of this divine source of human right:

...when we speak of human rights in Islam we really mean that these rights have been granted by God; they have not been granted by any king or by any legislative assembly. The rights granted by the kings or the legislative assemblies can also be withdrawn in the same

---

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> Machowski, *Op.cit.*

<sup>53</sup> Qureshi, E. (2004). *Are sharia laws and Human Rights compatible? Retrieved on 31-05-10 from [http://www.quantara.de.webcom/show\\_articleptp](http://www.quantara.de.webcom/show_articleptp)*.



manner in which they are conferred. The same is the case with the rights accepted and recognized by the dictators. They can confer them when they please and withdraw them when they wish; and they can openly violate them when they like. But since in Islam human rights have been conferred by God, no legislative assembly in the world, or any government on earth has the right or authority to make any amendment or change in the rights conferred by God. No one has the right to abrogate them or withdraw them. Nor are they the basic human rights which are conferred on paper for the sake of show and exhibition and denied in actual life when the show is over. Nor are they like philosophical concepts which have no sanctions behind them<sup>54</sup>.

He challenges the claim that the world got the concept of the basic human rights from the Magna Carta of Britain. He maintains that “until the seventeenth century no one even knew that the Magna Carta contained the principles of Trial by Jury, Habeas corpus, and the control of parliament on the Right of Taxation”<sup>55</sup>. Maududi claims that since “the framers of the Magna Carta were not conscious of all these concepts which are now being attributed to them”<sup>56</sup>, it means that, “the Westerners had no concept of human rights and civic rights before the seventeenth century”<sup>57</sup>. It is therefore held that basic rights “are part and parcel of Islamic faith. Every Muslim or administrators who claim themselves to be Muslims will have to accept, recognize and enforce them”<sup>58</sup>. The universal character of the basic rights is equally underscored.

The first thing that we find in Islam in this connection is that it lays down some rights for man as a human being. In other words, it means that every man whether he belongs to this country or that, whether he is a believer or unbeliever, whether he lives in some forest or is found in some desert, whatever be the case, he has some basic human rights simply because he is a human being, which should be recognized by every Muslim. In fact it will be his duty to fulfill these obligations<sup>59</sup>.

Islamic enforcement of human rights has also been compared with what obtains with regard to the United Nations UDHR:

In the middle of the present century, the United Nations, which can now be more aptly and truly described as the Divided Nations, made a Universal Declaration of Human Rights, and passed a resolution against genocide and framed regulations to check it. But as you all know, there is not single resolution or regulation of the United Nations which can be enforced. They are just an expression of a pious hope. They have no sanctions behind them, no force, physical or moral to enforce them....<sup>60</sup>

Machowski (2010:n.p) moderately shares this view on enforcement of the UDHR when he observes that “the universal human rights, as the basis of global morality, are certainly not

---

<sup>54</sup> Maududi, A. (1983). *Human Rights in Islam*. London: The Islamic Foundation, p.15.

<sup>55</sup> *Ibid.*, p.16.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*, p.17.

<sup>59</sup> *Ibid.*, p.19.

<sup>60</sup> *Ibid.*, p.20.

effectively enforced yet”<sup>61</sup> though he believes that “the idea of their existence and their legitimacy grows stronger in people’s minds all across the national and cultural boundaries”<sup>62</sup>. More still, a human right group called No to Political Islam Campaign follows the apologetic model by arguing that “Islam was the first to affirm human rights and urge for the respect and upholding of these rights by those who are in power”<sup>63</sup>. For this reason, the group believes “the rights of the individual and the group were considered in Islam’s teaching as divine rights”<sup>64</sup>. It puts it more poignantly:

The notion of right constitutes the focal point of legislation in Islamic sharia. Therefore, human rights in Islam are Allah’s rights and be observed and exercised in the best manner possible, in order to achieve purity of worship, total subjugation and obedience to the Almighty, and full compliance with His teachings<sup>65</sup>.

Hence, it is strongly claimed that “the Islamic concept of human rights thus ascends to the sublime status of an act of worship, these rights being in Islamic sharia no less than religious duties”. It is more elaborately put thus:

Right then is a constant which deepens faith in all rights, individual or collective, and strengthens certainty and conviction that human rights spring from the core of Islamic teaching. This affirms the conviction that human rights in Islam are the cornerstone that upholds Muslim society. They are not constitutional or political rights only, they are not the intellectual result of a phase in the development of the human mind, nor are they natural rights as stipulated in organic laws. They are in fact duties of faith, entrusted to the individual and the society; each within their domain and depending on their degree of responsibility<sup>66</sup>.

It is further argued:

If the Universal Declaration on Human Rights, adopted by the General Assembly of the United Nations Organization on 18 Safar 1369/10 December 1948, has covered the rights of contemporary men, the Islamic conception of these rights goes beyond the time difference, Islam having affirmed them fourteen centuries ago and elevates them from a status of “rights” to that of “necessities” and to the level of “duties and obligations”<sup>67</sup>.

On a distinct note of triumphalism, it has been asserted that in terms of human rights issues, Islam is the best thing that has ever happened to humanity:

From the all-encompassing perspective of human rights and with such deep understanding of the objectives of sharia, it is clear that Islam guarantees what no other religion, school or philosophy can claim to guarantee. It is also clear that the depth of the Islamic conception of human rights has no equal in its authenticity and harmony with

---

<sup>61</sup> Machowski, *Op.cit.*

<sup>62</sup> *Ibid.*

<sup>63</sup> No to Political Islam Campaign (NPIC) (2003). *Islam and Human Rights*.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

human instinct. The simple reason for this is that these teachings were inspired by Allah in his bounty and mercy towards humanity<sup>68</sup>.

What is manifest in these later opinions is not only that basic rights are granted by God but also that the rights are ingrained in the rights of Allah and thus evoke the idea of responsibility, obligations or duties rather than rights per se. Abdillah corroborates this view when he notes that “religious teachings generally emphasize obligations rather than rights. Rights will be achieved if the individual fulfills his obligations and responsibilities”<sup>69</sup>. This accordingly “accounts for why although since the beginning Islam has recognized the existence of human right formulated by the classical religious scholars as ‘necessities’ and needs’ that must be catered for and protected in human life, yet the term ‘human rights’ did not become popular in Muslim societies until the end of World War II”<sup>70</sup>. Hence, there is an observation that “many critics of UDHR, especially Muslim scholars, argue that the whole idea of UDHR is ‘un-Islamic’, because Islam stresses on responsibilities and not on rights”<sup>71</sup>. He regrettably notes that the attempt to sell this idea of responsibility to the United Nations failed when the Universal Declaration of Human Responsibility prepared in September 1997 as a commemoration of the fiftieth anniversary of UDHR could not be endorsed by United Nations General Assembly<sup>72</sup>. Yet, elaborate discussions have been done on the difference between the rights of God and the rights of man:

The rights of God (huquq Allah) are rights retained by God, as God’s own through an explicit designation to that effect. These rights belong to God in the sense that only God can say how the violation of these rights may be punished and only God has the right to forgive such violations. These rights are, so to speak, subject to the exclusive jurisdiction and dominion of God, and human beings have no choice but to follow the explicit and detailed rules that God set out for the handling of acts that fell in God’s jurisdiction. In addition, in the juristic theory, all rights not explicitly retained by God accrue to the benefit of human beings. In other words, any right (haqq) that is not specifically and clearly retained by God becomes a right retained by people. These are called huquq al-‘ibad, huquq al-nas, or huquq al-adamiyyin. Importantly, while violations of God’s rights are only forgiven by God through adequate acts of repentance, the rights of people may be forgiven only by the people....<sup>73</sup>

There is equally a position by some jurists which holds that “if the rights of God and those of people (mixed rights) overlap, the rights of people should, in most cases, prevail”<sup>74</sup>. Accordingly, this was justified on the basis of the fact that humans need their rights, and need to vindicate those rights on earth, whereas God asserts his rights only for the benefit of human beings, and in all cases God can vindicate his rights in the hereafter if need be<sup>75</sup>. The implication is that a claimed right of God may not be used to violate the rights of human beings

---

<sup>68</sup> *Ibid.*

<sup>69</sup> Abdillah, M. (2008). “Ways of Constitution Building in Muslim Countries” in Krawiets, B. & Reifeld, H. *Islam and the Rule of Law: Between Sharia and Secularization*. Berlin: Konrad-Adenauer-stiftung, p. 55.

<sup>70</sup> *Ibid.*

<sup>71</sup> Salman, A (2001). *Human Rights and Islam: Some Points of Covergence and Divergence*. Retrieved on 08-07-10 from <http://www.renaissance.com.pk/octyipo2y1.html>.

<sup>72</sup> *Ibid.*

<sup>73</sup> Fadl., *Op.cit.*, pp.151-152.

<sup>74</sup> *Ibid.*, p.112.

<sup>75</sup> *Ibid.*, p.153.

as God is capable of vindicating whichever rights God wishes to vindicate in the hereafter<sup>76</sup>. The above attempt to classify rights in Islam is not an isolated case. Safi had earlier observed that “the widely accepted theory of right among Islamic jurists divided rights into three types”<sup>77</sup>. Citing Al-1z bin Abdul Salam (d. 660 AH), Safi adumbrates the three types of rights:

(1) Rights of God (Huquq Allah) – These consist of all obligations that one has to discharge simply because they are divine commands, even when the human interests or utilities in undertaking them are not apparent, such as prayers, fasting, *heji*, etc; (2) Rights shared by God and his servants (Huquq Allah wa al-Ibad) – These include acts that are obligatory because they are demanded by God, but they are also intended to protect the public, such as hudud law, jihad, zakat, etc., and (3) Rights of God’s servants (Huquq-al’-Ibad) – These are rights intended to protect individual interests, such as fulfilling promises, paying back debts, honoring contracts. Still people are accountable for their fulfillment to God<sup>78</sup>.

However, unlike Fadl’s observation in which for some jurists the rights of people can sometimes override those of God, Safi believes that “people in their exercise of rights are ultimately answerable to God in all their dealings”<sup>79</sup>. Fadl’s observation is nonetheless corroborated by Yakubu who notes that “the main distinguishing feature of rights from the Islamic law perspective is that, while some rights are due to Allah alone, others, though due to Allah, the rights of human beings are dominant”<sup>80</sup>.

Ladan<sup>81</sup> has graphically outlined the human rights provisions in the primary and other sources of Islamic law. He groups them into three, namely, rights of all human beings, rights of citizens, and rights of women. It is argued that “under the sharia, every person irrespective of his/her country of origin, religion, race, sex, age or colour, has some basic human rights simply because he or she is a human being, which should be respected by every Muslim”. Ladan maintains that the first and the foremost basic right is the right to live and respect human life. The Koran lays it down: “Whoever kills a human being for any reason like manslaughter or corruption on earth, it is as though he had killed all mankind” (Koran 5:32). On yet another note, the Koran says: “Do not kill a soul which Allah has made sacred except through the due process of law...”. (Koran 6:15). And in the Hadith, it is read: “The greatest sins are to associate something with God and to kill human beings” (Hadith). Thus, save in the due process of law, the life of any person should not be taken by anybody. Indeed to underscore the sacredness of life, the Koran says: “And whoever saves a life, it is as though he had saved the life of all mankind” (Koran, 5:32).

The right to justice has also been regarded as a very important and valuable right which the sharia has given to every person as a human being. The Koran lays it down: “Do not let ill-will towards any person incite you so that you swerve from dealing justly. Be just, that is nearest to heedfulness” (Koran, 5:8). It further says: “you who believe stand steadfast before God as witness for truth and fair play” (Koran, 4:135).

---

<sup>76</sup> *Ibid.*

<sup>77</sup> Safi, L. M. (2009). *Human Rights and Islamic Legal Reform*. Retrieved on 12-08-10 from <http://www.witness-pioneer.org/vil/Articles/shaia/human3.pdf>.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> Yakubu, D. (2007). “Socio-Economic Rights under Islamic law”, *Kogi State University Law Journal*, vol. 1, No. 1, p.64.

<sup>81</sup> Ladan, M. T. (2002). “Women’s Rights and Access to Justice under the Sharia in Northern Nigeria” in Ezeilo, J. and Afolabi, A. K. (eds.) (2002). *Sharia and Women’s Human Rights in Nigeria: Strategy for Action*. Abuja, pp.37-47.

Another right that is provided for is that of equality of human beings and freedom from discrimination. The sharia not only recognises absolute equality between persons irrespective of any distinction of sex, colour, race or nationality, but makes it an important and significant principle, a reality. Hence in the Holy Koran, Allah says: “O mankind, we have created you from a male and female. And we set you up as nations and tribes so that you may be able to recognize each other” (Koran 49:13). This has also been exemplified in one of the sayings of the Prophet: “...You are all the children of Adam, and Adam was created from clay”<sup>82</sup>. Therefore no person should be discriminated against on the ground of the colour of skin, place of birth, gender, race or the nation in which he/she was born.

About right to freedom from slavery and inhuman treatment, the prophet is reported to have said: “There are three categories of people against whom I shall myself be a plaintiff on the Day of Judgement. Of these three, one is who enslaves a free man, then sells him, eats this money”<sup>83</sup>. Therefore, save in the case of prisoners of war, the sharia has clearly and categorically forbidden the primitive practice of capturing a free man or woman to make him/her a slave or to sell him/her into slavery.

Sharia is seen also as extolling the right to co-operate and not to co-operate. The sharia is seen as prescribing a general principle of paramount importance and universal application saying: Co-operate with one another for virtue and heedfulness and do not co-operate with one another for the purpose of vice and aggression” (Koran 5:2). This means that one irrespective of gender, race, colour, nationality has the right to or not to the co-operation of a fellow Muslim depending on the rightness or wrongness of his/her act.

Right to freedom from want and deprivation constitutes another guarantee under the sharia. The Holy Koran says: “And in their wealth, there is acknowledged right for the needy and destitute” (Koran, 51:19). Therefore, according to these wordings, without discrimination any one who asks for help and anyone who is suffering from deprivation has a right in the property and wealth of the Muslim.

Apart from the above group of rights, Ladan outlines what he refers to as rights of citizens in an Islamic state. While the above discussed rights belong to all human beings irrespective of religion, the rights of citizens are restricted to Muslims in an Islamic state. Thus, sharia guarantees to all citizens, including children and women, certain fundamental rights in an Islamic state. Right to security of life and property occupies the prime position. Prophet of Islam says: “Your lives and properties are forbidden to others till you meet your Lord on the Day of Judgement”<sup>84</sup>. Again, the Holy Koran says: “Anyone who kills a believer deliberately will receive as his reward to live in Hell forever. God will be angry with him and curse him, and prepare dreadful torment for him” (Koran, 4:93). And concerning property, the Koran says: “Do not devour one another’s wealth by false and illegal means (Koran 2:188).

The Prophet’s address also prohibited any encroachment upon the honour, respect and chastity of all citizens regardless of age, sex, or colour. This is a call for respect for the right to protection of honour. The following verses of the Koran are also quite illustrative: “You who believe, do not let one (set of) people make fun of another set; Do not defame one another; Do not insult by using nicknames; and do not backbite or speak ill of one another” (Koran 49:11-12).

Right to Privacy of Life is also guaranteed. Sharia prohibits undue interference or encroachment on the privacy of his/her life. The Koran says: “Do not spy on one another” (Koran, 49:12), and “do not enter any house except your own homes unless you are sure of their occupant’s consent” (Koran; 24:27).

---

<sup>82</sup> Reported by Al-Bayhaqi and Al-Bazzaz, in *Ibid*.

<sup>83</sup> Reported by Al-Bukhari and Ibn Majah, in Ladan, 2002.

<sup>84</sup> Prophet’s *Farewell Hajj*, in Ladan, 2002.

Sharia also prohibits unlawful arrests or detention of anyone. This is the provision for right to personal liberty. It is thus 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?”(Hadith).The Prophet heard the question and continued his speech. When the man rose and repeated the question twice, the Prophet ordered that the man’s neighbours be released. The reason for this, as reported, is that the Police officer present in the Mosque at that time did not furnish any reason for the arrests. Equally, sharia claims to hold in high esteem the Right to Freedom of Expression. In this connection, the Prophet says:

If anyone of you comes across an evil, he should try to stop it with his hand using reasonable force, if he is not in a position to stop it with his hand, then he should try to stop it by means of his tongue (meaning he should speak against it). If he is not even able to use his tongue, then he should at least condemn it in his heart. This is the weakest degree of faith. (Reported by Imam Muslim as cited in Ladan, 2002 ).

Sharia also guarantees the right to freedom of association, formation of parties or organisation. This is however exercised for propagating virtue and righteousness and not for mischief. Thus, the Koran says: “let there be a community among you who will invite people to do good, command what is proper and forbid what is improper, those will be prosperous” (Koran 3:104). Again, the Koran guarantees freedom of religion when it says: “There should be no coercion in the matter of faith” (Koran, 2:256).

Specific Rights of Women under the Sharia make up the third group of rights guaranteed under Islamic law according to Ladan (2002). They include the right to equal dignity and value, right to education, right to custody of children, right to be treated justly, right to maintenance, and right to respect to chastity. Under the sharia, women are guaranteed the above specific rights because of their special responsibilities and status in the eyes of Islam (Ladan, 2002).

Having dwelt considerably on some of the views that betray the apologetic orientation in human rights understanding in Islam, it is now apt to review some of the opinions on the other rung of the ladder, namely, those of the puritanist perspective. First and foremost, “puritanism resisted the indeterminacy of the modern age by escaping to a strict literalism in which the text became the sole source of legitimacy”<sup>85</sup>. In many respects, “the puritan movement reproduced the mental sets adopted by the apologetic movement”<sup>86</sup>. Hence, specifically on the issue of human rights, Fadl observes thus:

As to the issue of universal human rights, it is not entirely accurate to describe the puritan orientation as exceptionalist because the puritans did not seek a relativist or cultural exception to the universalism of human rights. Rather, the puritan claim was that whatever rights human beings are entitled to enjoy, they are entirely within the purview of sharia law. It is important to realize that the puritans did not deny, in principle, that human beings have rights; they contend that rights could not exist unless granted by God. Therefore, one finds that in puritan literature there is no effort to justify international rights on Islamic terms but simply an effort to set out the divine law, on the assumption that such a law, by definition, provides human beings with a just and moral order<sup>87</sup>.

---

<sup>85</sup> Fadl, *Op.cit.*, p,120.

<sup>86</sup> *Ibid.*, p.121.

<sup>87</sup> *Ibid.*, p.122.

One could therefore see from the above observation that like the apologists, the puritans view human rights as deriving from God, but unlike the apologists, who try to mimic the western paradigm in modeling Islamic human rights instruments, the puritan effort is purely anti-western and sees Islamic scholars who aim at reconciliation “as suffering from “Westoxification”, and consequently treated as betrayers of the Islamic tradition”. No wonder it is poignantly put:

...the most noticeable aspect regarding the puritan determinations was their reactive nature....Puritanism understood and constructed Islam only through the prism of seeking to be culturally independent from the West. As such, its primary operative mode was to react to western supremacy in the modern world by, effectively, constructing Islam into the antithesis of the West, or at least the antithesis of the essentialist view of the West<sup>88</sup>.

There is no doubt that this reactive stance shaped much of the puritan discourse on the idea of universal human rights<sup>89</sup>. Thus, international human rights were opposed on these grounds alone as they are seen as distinctly western in origin. In fact, “in the decades since the Declaration, the term ‘human rights’ has become an integral part of both political and popular discourse particularly among Western, and western educated persons”<sup>90</sup>. Too, Lupp observes that “many voices have been raised in recent times asserting that human rights concepts are Western, and therefore do not apply to Islamic countries”<sup>91</sup>. Perhaps this is why Panikkar argues that “though the Universal Declaration of Human Rights is called ‘universal’, it was articulated along the lines of historical trends of the western world during the last three centuries, and a certain philosophical anthropology of individualistic humanism which helped justify them”<sup>92</sup>. Khomeini bitterly maintains that “what they call human rights is nothing but a collection of corrupt rules worked out by Zionists to destroy all true religions”<sup>93</sup>. He adds further that “when we want to find out what is right and what is wrong we do not go to the United Nations; we go to the Holy Koran”<sup>94</sup>. For Amjad-Ali, “the concept of universal human rights embodies values which do not only conflict with other strongly held values and conceptions but which are incompatible with and subversive of certain forms of society and social institutions”<sup>95</sup>. Shah notes that “many of the ideas in the Declaration were borrowed from the English liberal political philosopher John Locke”<sup>96</sup>. In fact, for Machowski “many Arab nations object to the idea of universality of all human rights, as stipulated in the universal Declaration of Human Rights”<sup>97</sup>. Pollis and Schwab in holding that human rights is a western construct with limited applicability write that “unfortunately, not only do human rights set forth in the Universal Declaration reveal a strong western bias, but there has been a tendency to view human rights ahistorically and in isolation from their social, political and economic milieu”<sup>98</sup>.

---

<sup>88</sup> *Ibid.*, p.123.

<sup>89</sup> *Ibid.*

<sup>90</sup> Hassan, R. (2008). *Are Human Rights Compatible with Islam?* Retrieve on 01-10 09 from <http://www.religiousconsultation.org.hassan2.html>.

<sup>91</sup> Lupp, *Op.cit.*

<sup>92</sup> Panikkar, R. (1989). “Is the Notion of Human Rights a Western Concept?”, in *Breakthrough*, Spring 1989, p.31.

<sup>93</sup> Khomeini, A. (2003) in No To Political Islam Campai. *Islam and Human Rights*.

<sup>94</sup> *Ibid.*

<sup>95</sup> Amjad-Ali, C. (1996). “Human Rights and Spirituality” in *Human Rights Solidarity*, vol. 6. No. 2.

<sup>96</sup> Shah, M. D. (2010). *The Universal Declaration of Human Rights and Islam*. Retrieved on 17-09-10 from [http://ahamdiyyatimes.blogspot.com/2010/01/universal-declaration-of-human-rights\\_23.html](http://ahamdiyyatimes.blogspot.com/2010/01/universal-declaration-of-human-rights_23.html).

<sup>97</sup> Machowski, *Op.cit.*

<sup>98</sup> Pollis & Schwab, p. (1996). “Human Rights: A Western Construct with Limited Applicability” in *Human Rights Solidarity*, vol. 6. No. 2.

It goes without saying that many Islamists claim that the UDHR is an attempt to force western standards and ideals on to others who do not share them. Mayer quotes the statement of the Iranian Deputy Foreign Minister after the 1993 Human Right Conference in Vienna, that “human right has come to mean Western culture and that human right is a tool for western powers to whitewash their intervention and aggression against the weaker countries”<sup>99</sup>. Mayer equally records the comments of the Saudi Arabian Minister of the Interior just before the conference:

The democratic system that is predominant is not a suitable system for the peoples of our region. Our people’s make-up and unique qualities are different from those of the rest of the world. We cannot import the methods used by people in other countries and apply them to our people. We have our Islamic beliefs that constitute a complete and fully integrated system. ... In my view, Western democracies may be suitable in their own countries but they do not suit other countries<sup>100</sup>.

Naceri gives an instance of a difference between an Islamic view and a western idea:

The Universal Declaration of Human Rights was for complete equality for man and women. For us, women are equal to men in law, but they are not the same as men, and they can’t be allowed to wonder around freely in the streets like some kind of animal<sup>101</sup>.

Mayer similarly notes of a news report from Jeddah after receiving criticism from Amnesty International concerning the Saudi Arabian government’s human rights record:

Amnesty officials are secularists and atheists. They could not infiltrate into the kingdom to spread their venomous ideas. Now they wanted to tarnish the image of shariah. The enemies of Islam are using Amnesty in their worldwide anti-Islam campaign...They say at international forums that they respect Islam and Muslims but hide their hatred and vengeance against Islam and Muslims. We have to take precautions against these enemies. And all Muslim countries should implement shariah. Let the enemies of Islam die of rage<sup>102</sup>.

In the same vein, it is strongly believed that “the Declaration was a product of Western liberal ideology” and poses the question “can we really expect non-western peoples to embrace the international human rights instruments which are by and large western in character?”<sup>103</sup>. No wonder there is a suggestion that “because UDHR is rooted in the political culture of Western society and is informed by the philosophical outlook of western liberation, its application in other societies requires that the universal validity of its principles is made evident to other peoples, particularly those whose world views and historical experiences are different from the

---

<sup>99</sup> Mayer, A.E. (1994). “Universal Versus Islamic Human Rights: A clash of Cultures or a clash with a construct?” in *15 Michigan Journal of International Law* 307, pp.318-319.

<sup>100</sup> *Ibid.*, pp.319-320.

<sup>101</sup> Naceri, M (2003) in No To Political Islam Campaign. *Islam and Human Rights*.

<sup>102</sup> Mayer, *Op.cit.*, p.320.

<sup>103</sup> Cobbah, J.A.M. (1987). “African Values and the Human Rights Debate: An African Perspective”, in *9 Human Rights Quarterly*,p.309.



west's"<sup>104</sup>. Perhaps, this is why Sorough maintains that even though "today, they are popular ideas that are compatible with Islam..., such issues like democracy and human rights did not exist in early Islamic society"<sup>105</sup>. Accordingly, Safi is of the view that "for a modern human rights tradition to take hold in modern Muslim society it should be rooted in the moral religious commitments of Muslims"<sup>106</sup>.

All the above instances of Islamic antipathy with the West seem to constitute what Huntington calls "clash of civilizations"<sup>107</sup>. A number of views have however appeared on the reasons for this thought-form. Anderson opines that colonialism and its accompanying institution of orientalism had not only played a pivotal role in undermining the traditional institutions of Muslim learning and jurisprudence, but it had also posed a serious challenge to traditional Muslim epistemologies of knowledge and the sense of moral values"<sup>108</sup>. This view is corroborated thus:

Although international human rights law was enshrined in various treaties during a period in which most Muslim countries had gained political independence, the experiences of colonialism and post-colonialism influenced the Muslim intellectual response in several important respects. Muslims did not first encounter Western conceptions of human rights in the form of the Universal Declaration of Human Rights (UDHR) 1948, or in the form of negotiated international conventions. Rather, they encountered such conceptions as part of the 'White Man's Burden' or the 'civilizing mission' of the colonial era, and as a part of the European natural law tradition, which was frequently exploited to justify imperialistic policies in the Muslim world. This experience has had a significant impact on the understanding of human rights in the Muslim social imagination, and on the construction of Islamic discourses on the subject. The most important, among Muslim intellectuals, was the perception that the human rights field is thoroughly political, and that it is plagued by widespread Western hypocrisy....<sup>109</sup>

It is also argued that "the strong opposition of Islam to the culture of human rights is deeply embedded in the historical perspective and the relationship the Islamic world has had with Western civilizations"<sup>110</sup>. Similarly there is a belief that "Islamic concepts of human rights were strongly affected by the history of the region and are extremely long tradition of distrust between the Christian West and the Muslim East"<sup>111</sup>. A fillip is added to this suggestion to the effect that "the current contempt of human rights in Arab world is not so much an opposition to the idea of those rights but rather a reaction to negatively perceived cultural and political compact of the West"<sup>112</sup>. Allied to these reasons is the one offered by Hassan who reports the

<sup>104</sup> Safi, L. M. (2009). *Human Rights and Islamic Legal Reform*. Retrieved on 12-08-10 from <http://www.witness-pioneer.org/vil/Articles/shaia/human3.pdf>.

<sup>105</sup> Sorough, K. (1997). "Iranian Intellectual Says Islam and Human Rights Must Go Together" in *The Boston Globe*, March 31, p.4.

<sup>106</sup> Safi, *Op.cit.*

<sup>107</sup> Huntington, S (1998). "The Clash of Civilizations" in *Foreign Affairs*, Summer, p.138.

<sup>108</sup> Anderson, J. N.D. (1976). *Law Reform in the Muslim World*. London: Athlone, p.10.

<sup>109</sup> Fadl, *Op.cit.*, pp.117-118.

<sup>110</sup> Dalacoura, H. (1998). *Islam, Liberalism and Human Rights: Implications for International Relations*. London and New York: I.B. Tauris Publ, p.41.

<sup>111</sup> Machowski, *Op.cit.*

<sup>112</sup> *Ibid.*

assumption of some human rights advocate that “human rights can exist only within a secular context and not within the frame work of religion”<sup>113</sup>. Substantiating this, he writes:

Underlying the stance that the concept of human rights is fundamentally secular, and, therefore, outside of, and even antithetical to, the worldview of religion, is – of course – a certain view of religion in general, or of particular religions. In Muslim countries such as Pakistan, for instance, it is often remarked by secular-minded proponents of human rights that it is not meaningful to talk about human rights in Islam because as a religious tradition, Islam has supported values and structures which are incompatible with the assumptions which underlie the Universal Declaration of Human Rights<sup>114</sup>.

A number of scholars have offered some critique of the above Islamic approach of taking a cue from UDHR apologetically or puritanically. For instance, Mayer discusses the UIDHR and compares its provisions with those of the UDHR:

The UIDHR has been published in two versions: in Arabic and in English. We are told in the English version that the Arabic text is definitive. What is not at all evident is that the Arabic version is actually different from the English in several respects, with the Arabic version being substantially more conservative in tone. In no sense would the English version be acceptable as a certified translation of the Arabic. One is left with the impression that the wording of the English version has been watered down for Western consumption<sup>115</sup>.

Again, writing in relation to the Cairo Declaration on Human Rights in Islam, it is observed generally that:

The Islamic human rights schemes...are the products of the political contexts in which they emerged. Their Islamic pedigrees are dubious and the principles they contain do not represent the results of rigorous, scholarly analyses of the Islamic sources... Instead, they seem largely shaped by their conservative author's negative reactions to the model of freedom in Western societies<sup>116</sup>.

It is further noted that this Declaration is more impressive for what is omitted than for what it includes. In particular it offers no support for freedom of religion or belief<sup>117</sup>. Moreover, reacting to the apologetic methodology of composing Islamic versions of human rights declaration in an effort to mimic the UDHR, Fadl argues extensively:

...these rights were not asserted out of critical engagement with Islamic texts or the historical experience that generated these texts or even out of a genuine ideological commitment or a rigorous understanding of the implications of the rights asserted. Rather, they were asserted primarily as a means of resisting the deconstructive effects of Westernization, affirming self-worth, and attaining a

---

<sup>113</sup> Hassan, *Op.cit.*

<sup>114</sup> *Ibid.*

<sup>115</sup> Mayer, A. E. (1999). *Islam and Human Rights: tradition and politics*, 3<sup>rd</sup> Ed. Boulder. Westview, p.125.

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*

measure of emotional empowerment. The apologetic orientation raised the issue of Islamic authenticity in relation to international human rights, but did not seriously engage it. By simply assuming that Islam presented a genuine and authentic expression of international human rights, the apologetic orientation made those international rights redundant<sup>118</sup>.

It is further noted that it is the above attitude that “led to an artificial sense of confidence, and an intellectual lethargy that neither took the Islamic tradition nor the human rights tradition very seriously”<sup>119</sup>. For him, “one of the serious consequences of this orientation was that, to date, a serious analytical Islamic discourse on human rights has not emerged”<sup>120</sup>. Hence, “one notices a near-complete absence of any systematic philosophical and theological treatment of the issue of human rights in Islam”, and “contemporary Islamist approaches remained superficial”<sup>121</sup>. Fadl’s opinion is corroborated by Salman who does not favour what he calls the “arm-twisting efforts of some modern Muslim jurists trying to adapt the script (of UDHR) to prove human rights in Islam”<sup>122</sup>. He rather advocates for “a reinterpretation which for him is a welcome sign and should be continued at all risks”<sup>123</sup>. However that may be, it appears that “the greatest obstacle to human rights under Islam is its strong adherence to the Sharia”. This argument is further stretched:

Many aspects of the sharia are inimical to the ideas enshrined in the UDHR. In an Islamist state no individual or group of people can have any rights that do not conform to the tenets of the Sharia. Oppression, intimidation, lack of freedom, and ferocious censorship and public executions are the undeniable facts of life in many Islamic societies. The UDHR enumerates the rights of the individual that governments are obliged to protect. But the political Islam is opposed to any concept of individual freedom that is not subordinate to its brutal interpretation of the sharia...Perhaps the most unsavory aspect of Islamic law from a human rights perspective is the severity of the punishment it prescribes. Like the most prurient voyeur, the sharia pries into every aspect of private life and condemns with utmost violence any conduct that fails to conform to the narrow standards of acceptable ‘family’ behavior. Adultery, or indeed any behavior that fails to conform, is punishable by flogging, amputation or stoning to death. Homosexuality, too, is forbidden and punishable by flogging, sometimes to death. To add to the inhumane nature of the executions, they are frequently carried out in public – to act as a warning to others<sup>124</sup>.

Perhaps, the above observations are a consequence of Islamic curtailed vision of and respect for international human rights. Certainly, the central feature of the Cairo Declaration is its implicit conception of international human rights in the civil and political arena as excessive – with the concomitant need for Islamic criteria to restrict and reduce them<sup>125</sup>. Lupp observes

---

<sup>118</sup> Fadl, *Op.cit.*, p.119.

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup> Salman, *Op.cit.*

<sup>123</sup> *Ibid.*

<sup>124</sup> No to Political Islam Campaign, *Op. Cit.*

<sup>125</sup> Lupp, *Op.cit.*

that after asserting that “fundamental rights and universal freedoms in Islam are an integral part of the Islamic religion, the authors proceed to enumerate rights and freedom on which Islamic quantifications have been imposed, indicating that in reality the authors saw in Islam justifications for restricting or denying rights and freedom”<sup>126</sup>. The above Islamic schemata on human rights have been widely criticized:

Such Islamic versions of human rights have tended in most respects to fall far below the standard of protections for civil and political rights guaranteed under the International Bill of Human Rights. Protections of religious freedoms and guarantees of full equality and equal protection of the law for women and religious ministries have been notably absent<sup>127</sup>.

The provisions of the UDHR have questionable Islamic roots as the provisions “have either a tenuous or nonexistent connection to the Islamic sources or Islamic tradition”<sup>128</sup>. It is discovered that in areas where modern human rights provisions address issues not prefigured in the Islamic legal legacy, these schemes may resort to outright borrowing from selected international human rights provisions but with a distinctive twist. They subordinate the borrowed international human rights provisions to newly fashioned Islamic derogation clauses, circumscribing them by subjecting them to Islamic conditions<sup>129</sup>. Mayer (1994:325) offers yet a more vitriolic attack on Islamic human rights schemes. She notes that:

Because the permissible scope of the Islamic qualifications was left undefined by the authors of the new Islamic human rights schemes and because there were no settled historical guidelines for how to integrate Islamic conditions with modern human rights norms, the Islamic qualifications in practice left governments free to determine the scope of the rights provided and potentially to nullify the rights involved<sup>130</sup>.

In a *reductio ad absurdum* argument, Mayer questions “why granting the government of a modern nation state, an institution borrowed from the West and unknown in Islamic tradition, such great latitude in defining the grounds for denying and restricting rights should be deemed appropriate in a system based on Islam”<sup>131</sup>. It is our conviction that it is the variety of the resultant national sensibilities that occasions diverse and even opposing approaches and attitudes to human rights issues in many an Islamic enclave. The implication is that there is no monolithic view of Islam in relation to human rights, which attitude begs the question of who actually speaks for Islam. Hence, there seems to be no real consensus on the part of Muslims that their religion mandates a culturally distinctive approach to rights or that it precludes the adoption of international human rights norms”<sup>132</sup>. Certainly going by Mayer’s observation, Lupp may be right in holding that without such agreement, “it is difficult to make the argument that the conflict over human rights is between the West and Islam; it appears more reasonable to assume that the conflict is within Islam itself”<sup>133</sup>.

---

<sup>126</sup> *Ibid.*

<sup>127</sup> Mayer, 1994, p.324.

<sup>128</sup> *Ibid.*, p.325.

<sup>129</sup> *Ibid.*

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*

<sup>132</sup> *Ibid.*, p.309.

<sup>133</sup> Lupp, *Op.cit.*

### 3. CONCLUSION

There is no gainsaying that any one's attitude to human rights perception is a function of one's idea of democracy in particular and one's view of man generally. As has been observed, by scholars, of the above varied attitudes to human right, so is Islam proved to demonstrate fluctuating anthropological conceptions. The particular reasons why this is so may not easily be discernible. The complexity of the interpretation of the primary sources of Islamic law is one possibility. The political differences and influences that characterize sundry Islamic enclaves constitute another. Quite another is the variegated levels of exposure of individual groups of Muslims in a particular country. Yet another factor is the depth or nature of contact with different cultures including those of the West. At some other times, the population ratio of Muslims and non-Muslims makes up a variable. Therefore, no one index can explain completely the vagaries of Islamic understanding and practice of human rights. The issue rather demands an integral approach. But one thing is clear. There is a general Islamic antipathy to whatever is claimed as Western ideal. This attitude peters out in Nigeria today in the activities of, for instance, *Boko Haram* sect that constitutes itself a virulent adversary to the ideals which the members, correctly or erroneously, perceive as peculiarly Western—Christianity, formal education, medicine, science, and so on. This is despite the manifest contradiction in action which the activities exude insofar as the so-called Western ideals are readily used, directly or indirectly, by the members of the sect to further their desired and often dastardly objectives. Yet, the idea of human right is not uniquely Western. While organized reflection on it may have some Western tinge and orientation, the notion of human right is of a universal and objective validity. It is a demand before the nature of man as man.

Islam is consistent in judging itself as a religion of peace. Surely, this is the meaning of *salaam* which is a cognate of the infinitive *islam*. But for us, talking about peace at all is relevant only in connection with inter-personal relationship that is made manifest in the respect for human rights. If Islam or at least any of its sects is frequently privy to violation of individual rights, then it becomes expedient to engage in critical self-appraisal. It may be necessary to look inwards with a view to reforming its ethos and pathos. We recommend that no attention should be given to any provision of sharia which detracts from the importance of respect for human dignity. It is really regrettable that Islam has been propagated along with the Arab culture that stresses the philosophy of private vengeance (tit-for-tat). There is thus a dire need to shed the Arab garb and embrace the culture of solidarity, acceptance, dialogue and trust. The fundamentalist and literalist mindset which eclipses every scintilla of rationality will have to be eschewed. Although there is always the non-rational dimension of every religion, yet such aspect need not drag the entire belief edifice to the mud of anti-intellectualism that is opposed to all forms of reasonableness. Safe separation between religion and culture, de-politicization of religion, cultivation of patriotic sense, inter-religious dialogue, avoidance of fanaticism, and obedience to the rule of law, on the part of Islamic praxis, are further instances of elements necessary to enhance better appreciation of respect for human rights.