



UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948) VIS-À-VIS RIGHTS UNDER SHARI'AH AND CRITICAL EXAMINATION OF RIGHTS ABUSES/VIOLATION AMONG THE MUSLIM NATIONS. EXCUSES AND DEFENCES.

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Abstract:

This write up is aimed at observing some of the Fundamental Human Rights that were guaranteed under the common wealth as well as the shariah legal system. However the Rights under the shariah legal system were not just left without exceptions or conditions. The Rights discussed here include the Right to life, right to freedom of association, right to marriage, right to give testimony and the right to wear clothes. All the right stated were not just guaranteed without hindrance of obstacles. Right to life for instances can be infringed where somebody caused the death of another, an in Qisas or law of equality. Right to freedom of association is equally curtailed where one is not allowed to sit with hypocrites. Right to marriage is not allowed to marry the women married by their fathers etc. Right to give testimony is not allowed to a person if it will create suspicion. Right to wear clothes is equally not left without limit as women were not allowed to wear transparent clothes.

Keywords: *Shari'ah, Rights Abuses/Violation, Universal, Declaration, Critical Examination.*

INTRODUCTION:

This paper is aimed at examining and tracing the History of the Universal Declaration of Human Rights 1948 and the brief explanation of what Shari'ah entails. It will however focus on five fundamental Rights as contained in the articles of the Universal Declaration of Human Rights Law and also emphasize their existence in the Shari'ah Law and how they are justifiably violated under the Shari'ah legal system.

HISTORY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948

The history of Human Rights can be traced back to the ancient times and in religious beliefs and cultures around the world. The first recorded Declaration of Human Rights in history is the Cyrus cylinder written by Cyrus the great, king of Persia (present day Iran around the year 539 BCE).

European philosophers of the enlightenment period developed theories of natural law that influenced the adoption of documents such as the Bill of Rights of England. The Bill of Right in the United States, and the Declaration of the Rights of men and of the citizen in France.

During the 2nd world war, the allies adapted the four freedoms: freedom of Speech, freedom of Assembly, freedom from Fear and freedom from want as their basic war aims.

Drafting of the Universal Declaration of Human Right Law

Canadian, John peters Humphrey was called upon by the United Nations Sec. Gen. to work on the project and became the declaration's principal drafter.

The universal declaration was adopted by the General Assembly on the Dec. 1948 by a vote of 48 in favour or against, with 8 abstentions (all Soviet Block, states (i.e. Byelorussia Czechoslovakia, Poland, Ukraine the USSR and Yugoslavia), South Africa and Saudi Arabia).

The following Countries to mention a few voted in favour of the Declaration: Afghanistan, Argentina etc, about 48 in number.

It stated thus: the following reproduces the articles of the declaration which set out the specific human rights that are recognized in the declaration. 30 articles were drafted. For the purpose of the paper; I have chosen five out of the 30 rights and discussed how they differ as construed by the Shari'ah Rights.

RIGHT TO LIFE

Article 3 – provides

“Everyone has the right to life, liberty and security of person”

Article 20 – freedom of Association

“Everyone has the right to freedom of peaceful Assembly and Association.”

Article 16 – right to marriage

1. Men and woman of full age without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are

entitling to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered in to only with the free and full consent of the intending spouses.
3. The family is the national and fundamental group unit of society and is entitled to protection by society and the state.

Article 19 – Freedom of opinion and expression.

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

Article 25 – Right to standard of living

1. Everyone has the right to a standard of living adequate for health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstance beyond his control.

DEFINITION OF SHARI’AH

Shari’ah is an Arabic word which means the path to the followed. Literally it means the way to a watering place. It is the path not only leading to Allah, the most High, but the path believed by all Muslims to be the path shown by Allah, the creator himself through His messenger prophet Muhammad (P.B.U.H).

In the Islam Allah alone is the sovereign and it is He who has the right to ordain a path for the guidance of mankind. It is only Shari’ah that liberates man from servitude to other than Allah. This is the only reason why Muslims are obliged to strive for the implementation of that path, and that of no other path.

Allah, the Omnipotent God said “we made for you a law” so follow it and not the fancies of those who have no knowledge.

The absolute knowledge which is required to lay down a path for human life is not possessed by any group of people. In the words of Sayyid Qutb

“They are equipped with nothing but fancies and ignorance when they undertake the task which no concern theirs and does not properly belong to them. Their claim to one of the properties of divinity is a great sin and a great evil.”

Shariah guaranteed fundamental human rights to human beings which are spelt out either in the Glorious Qur'an or in the Hadith of the prophet (P.B.U.H) these rights are uncountable. However there are the fundamental ones which consist of the following:

- Right to life
- Right to the safety of life
- Right to respect for the chastity of women
- Right to a Basic standard of life
- The right to justice

To mention a few, the above five rights are among the fundamental ones.

However, unlike the common law Doctrine of Fundamental Human Rights which is not regulated and well followed. The Shari'ah Human Rights are basically well defined and well established. The Fundamental Human Rights under the Shari'ah were and are still applicable right from the time of revelation up to this time without the need to modification or amendment. In other words, the Rules of Shariah were and are still applicable to the end of this world.

The laws of Shariah are from the Omnipotent God who sends them down through His last prophet Muhammad (P.B.U.H) as the guide to all human beings.

The laws are therefore regulated and not left without guidelines and punishments for violating them. This is to say that even though one is having the right to do something as permitted by the Shariah, but nevertheless in some situations that right will be curtailed and accordingly, the actor will be punished for performing such rights.

It is however one of the cardinal principle of Islamic law that one is allowed to do or exercise all the fundamental human rights as enshrined under Shariah but if there is a case of violation, one cannot take the law in to his hand, but he is to follow the due process of law in order to enforce the right.

I have selected five human rights as guaranteed by the Shariah by explaining them one after the other and going ahead to explain when where and how such rights will be violated by the Government (Hukumah) in a justifiable manner with reasons by quoting relevant Qur'anic verses and or prophetic traditions to support the justification for the violation of the mentioned human rights.

1. Right to life
2. Right to freedom of Association
3. Right to marriage
4. Right give testimony

5. Right to wear clothes

At the end of discussing the above rights, it will be understood that the religion of Islam is not a “private discourse” but a public discourse, and its laws are not manmade. All the laws are from the Almighty as such, one’s right may be violated in line with the laid down principles of Shariah.

RIGHT TO LIFE

Right to life is one of rights guaranteed by the Shariah to the effect that everybody has the right to live as a human being without been subjected to killings by any government, its citizens or any other person.

In fact Shariah protected all human beings to the extent that they are warned against killing themselves talk less of killing other people. The Qur’an said in Surah An-Nisa

“And do not kill yourselves”¹

In another verse

“Do not kill any person Allah has made in-violation except with the right to do so”²

For those who committed suicide, punishment awaits them in the hereafter which is equal or equivalent to the ways followed in the commission of the crime. This is to say that the one, who drank poison and died, will be drinking the poison in the Hell fire forever and ever. This is started in one of the prophetic Hadith Narrated by Abu Hurairah, the prophet (PBUH) said: he who commits suicide by throttling shall keep on throttling himself in the Hell-fire and he who commits suicide by stabbing himself shall keep on stabbing himself in the Hell-fire.³

However, even though this right is guaranteed by the Shariah, but there are situations that warrant the violation of this right for some reasons. The reasons are three as enshrined in the Shariah or Islamic Law.

- a. Qisas (law of equality or retaliation)
- b. Adultery (illegal sexual intercourse)
- c. Apostasy or Ridda

The above three cases are the major factors that can lead to the infringement of one’s right to life.

- A. Qisas- Qisas means law of equality or retaliation. This is to say that whoever kills another person shall definitely be killed if at all is an intentional killing. If however, the killing is not intentional, then the accused will be asked to pay Diyyah (blood money) to the families or heirs

of the Victim. This is based on the following rulings from the Glorious Quran.

*“O you who believe! Retaliation is prescribed for you in the case of people killed: free man for free man, slave for slave, female for female.....”*⁴

In yet another verse Allah (S.W.T) said:

*“We prescribe for them in it: a life for a life, an Eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth and retaliation for wounds”*⁵

B. ADULTERY

This means the act of unlawful sexual intercourse between a man and a woman who are not lawfully married. It makes no difference whether marriage subsists, provided the offender has once married.

Whoever commits adultery, if it is proved by four (4) reliable witnesses or through confessional statement, that person will be stoned to death. This is provided in the Hadith of the prophet (P.B.U.H) who stated:

*“Allah has given to them (i.e. the woman who are guilty of Zina) new legislation: unmarried Offender with an unmarried one should be Scourged a hundred stripes and expulsion for a Whole year. Married offender with a married one should be scourged a hundred stripes and lapidation”*⁶

It is therefore understood that even though one is guaranteed the right to life, but if he commits adultery, this right will not be accorded to him.

This is to say that as a result of committing the offence of adultery, the life of the culprit will be unsecured and the punishment of lapidation will be carried out on him.

C. APPOSTASY OR RIDDA

This is a situation where a person renegades his religion (Islam) to any other religion in an Islamic state where Shariah law is applied. The accused will be given three days to come back to Islam, on the expiration of the three days, if he

did not come back to Islam, he will be killed. The prophet (P.B.U.H) was reported to have said on this,

From Ibn Abbas (R) who said: the messenger Of Allah (S.W.T) said: "whoever renegades his religion (among Muslims), shall be killed. Translated by Al-Bukhari.

The above offence is also another way of infringement of right to life. That is even though one has the right to life, but if he is a Muslim, and he went and change his religion to another religion in an Islamic state, which Nigeria is not, shall be given three days within which to decide either to come back to Islam or to face the wrath of the Islamic government.

RIGHT TO FREEDOM OF ASSOCIATION

This is one of the rights protected by the Shariah to the effect that every Muslim is allowed to associate with human beings by ways of trade, committee, business like musharaka, mudarabah etc. but all these forms of association are not without limit. This is because the Shariah law has preserved the ways, methods and manners of going into all forms of Association. In other words, the rights have limits. One cannot do or exercise these rights as he wishes.

One of the instances where a Muslim is not allowed to associate or to do is sitting with Hypocrites and immoral individuals. Many people whose faith has not been established firmly in their hearts associated with immoral individuals. Greater than that, yet is that they might sit with some people who defame the laws of Allah and make jest of religion and religious people. There is no controversy that this is forbidden. Allah says on this;

"When you see men engaged in vain discourse about our signs, turn away from them unless they turn to a different theme. If Satan ever makes you forget then after recollection, sit not you in the company of those who do wrong." ⁷

Islam does not permit such a relationship no matter how close and tender it is. Even if their speeches are sweet, one should not take pleasure in them except to preach to them, or to refute their falsehood, or to oppose their allegations. Allah the Almighty says:

*"If you are pleased with them, verily Allah is not pleased with rebellious (immoral) people."*⁸

Muslims are also barred from doing some kinds of dealing if they are not in line with the provisions of the Shariah. Take for instance contractual transaction which is allowed under Shariah, but there are limitations. Allah the Omnipotent God said in the Glorious Quran:

*"O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you by mutual consent..."*⁹

Another verse said; *"Allah will destroy Riba (Usury) and will give Increase for Sadaqah (deeds of charity, alms) and Allah likes not the disbelievers, sinners."*¹⁰

*"O you who believed! Eat not riba (usury) double and multiplied, but fear Allah that you may be successful."*¹¹

Going by the prophetic traditions we can see the following Hadiths

*"From Jabir (R) who said: the prophet (P.B.U.H) curses the Usury taker, the giver, the writer of the transaction and its witnesses" he then said: they are all the same."*¹²

Another Hadith said:

*"A single dirham of usury transaction consumed by a man knowingly is worse than thirty six acts of fornication."*¹³

*"If you are three, let not two people embark on a secrete conversation leaving out the third until you mix with (more) people because that will make him feel sad (the third person)"*¹⁴

Going by the above verses and prophetic traditions, it is clear that the freedom or right to associate is not left open. There are situation that may warrant the violation of these rights. In order words, there is justification for the violation of these rights.

RIGHT TO MARRIAGE

This is also one of the fundamental rights protected by the Shariah. Every Muslim is having the right to marriage, as the prophet even commanded that we should marry and procreate children, so that he will be proud of us in the day of judgement.

Note that this right has conditions and rules as human beings are not just allowed to go about their worldly affairs without the guidance from the permissible (*mubah*), dislike (*Kiraha*), or to some extent prohibited (*Haram*).

Allah said in the Glorious Quran;

“Do not marry any woman your fathers married – except for what may have already taken place. What is an indecent act, a loathsome thing and an evil path?”¹⁵

Another verses said:

Meaning:

“...Haram for you are: mothers and your daughters, and your sisters, your maternal aunts and your paternal aunts, your brother’s daughters and your sister’s daughters...”¹⁶

The above verses talked on the total and perpetual prohibited degrees of women a Muslim is not allowed to marry forever. There are however, situations that warrant a temporary prohibition like;

- a. Marrying two sisters at the same time
- b. Marrying a woman serving Iddah
- c. Marrying the fifth wife etc

It is not allowed under Shariah for a man to marry two sisters who are either Germane (having the same father the same mother) consanguine (having the same father, but different mothers) or uterine sister (who is having the same mother, but different fathers). However, this prohibition is temporary because one is allowed to divorce a woman and after finishing her iddah (waiting period) he can marry her sister.

Secondly, a woman serving Iddah of either death or divorce is temporarily prohibited for marriage to anybody until she finishes her iddah. So, during the

subsistence of the Iddah, nobody is allowed to even betroth her except her ex-husband who divorces her for the first or second time.

Thirdly, Muslim are not allowed to marry more than four (4) wives as stated by the Glorious Qur'an

Meaning:

"If you are afraid of not behaving justly towards orphans, then marry other permissible women, two, three or four. But if you are afraid of not treating them equally, then only one or those you own as slaves." 17

However, this prohibition of marrying the fifth wife is also a temporary prohibition because one has the right to divorce one of his four wives and after she finishes her iddah, he is allowed to marry another woman. In other words, he is interdicted from marrying another woman if the fourth wife is still having or observing her iddah.

RIGHT TO GIVE TESTIMONY BEFORE THE SHARIAH COURT

This is the also one of the fundamental human rights protected by the Shariah. Every Muslim is competent and therefore has the right to give evidence or testimony before the court.

However, there are situations when giving the evidence or testimony may be compulsory, recommended or disliked.

There is also another important condition to be observed before giving testimony. That is if the testimony will create suspicion, it will not be accepted. Like a son giving testimony in favours of his fathers, a wife in favour of her husband, ward in favour of his guardian, servant in favour of his master or any case that will create suspicion. In this regard, even though one is allowed to give testimony, but this right will be infringed because of the above relationship.

Another factor that hinders a person from giving evidence is where a Muslim launched a false accusation against a chaste woman and produce or provide not four witnesses to support his allegation, he is to be flogged eighty stripes of the cane and his testimony will not be accepted forever, in addition, he will be regarded as a wicked transgressor.

It is equally not allowed to give a false testimony as provided in Suratul Hajj Thus:

"So shun the abomination of idols, and shun the word that is false, being true in faith and never assigning partners to Him" 18

Abdur-rahman bin Abee Bakrah (R) reported from his father saying: we were with the Messenger of Allah (P.B.U.H) when he said:

"Should I not inform you of the greatest sins (thrice): ascribing partners to Allah, disobeying parents – and he sat up while he was earlier leaning and he said: (Beware) of false speeches. He continued Repeating it until we said: How good it will be if he was silent."¹⁹

RIGHT TO WEAR CLOTHES

This is also of the rights as protected by the Shariah which signifies that Muslims are having the right to wear clothes as they wish, but it is not without limit.

On this, there is narration from the messenger of Allah (P.B.U.H). Thus:

"Allah will not speak to three people on the day of judgment. He will neither look at them nor purify them and for them is a grievous punishment, they are: one who drag lets his garments go down below ankles, one who reminds others of his grace to them, and one who sells his commodities with false oaths."²⁰

In yet another Health, the prophet was reported to have said:

"Whatever extends beyond the ankle of your Clothes will be in the Hell fire"²¹

"Whoever drags his clothes out of pride will not be looked at by Allah on the day of judgment."²²

However, there are cases of prohibition that affects one set to the expense of the other set. For instance, women are permitted to wear Gold and Silk, but men are not allowed as stated by the Hadith:

"Silk and gold have been made lawful for the Female folk of my nation and forbidden for males."²³

Henceforth, women are equally prohibited from kind of dresses to the expense of men, as in the case of wearing of short, light, tight clothes. The enemies of Islam

have wage war through the introduction of fashions any styles of clothing which have become popular among Muslims today. They do not cover the private parts properly due to their shortness, transparency and tightness.

The prophet (P.B.U.H) said that the appearance is among the signs of the last days as narrated by Abu – Hurairah:

“ There are two types of people of Hell whom I have not seen yet: they are people who possess whips like the tails of cows beating human beings with it, and women who are dressed but naked leaning and holding their heads like the bent lump of a giant camel, they will not enter the paradise nor would they perceive it's fragrance. And indeed the fragrance will be perceived from so and so distance.

”²⁴

It is therefore observed here that this right to wear clothes is not left without limitations on the part of the males and females or males or females.

CONNCLUSION & OBSERVATIONS

In the light of the foregoing discussions on human rights under Shariah that are guaranteed for the mankind or Muslim to some extent, it is hereby observed that Shariah through its codified rules set out also the extent and limits for those rights guaranteed.

In view of the above, it is understood that the five Fundamental Human Rights mentioned in this write-up are not just left without limits, they are safeguarded and at the same time checked.

The principles of Shariah through it's primary sources (the Qur'an and Hadith) had explained everything in life as the Qur'an said “nothing have we omitted from the Book. “Therefore human beings are not left to live without guidance. Abu-Huraira was reported to have said that when the verse of the Glorious Qur'an says “O you who believe.” One should listen to the command of Allah, as He is going to tell us something that we can do or something that we shall refrain from doing. God knows the best

NOTES AND REFERENCES

(1) Qur'an, 4:29

(2) Qur'an, 17:33

- (3) Sahih Al-Bukhari vol.2, Hadith no. 446
- (4) Qur'an, 2:178
- (5) Qur'an, 5:45
- (6) Imam Muslim, Al-Jami al-sahih, Dar al-Arabiyyah, Beirut, no date, vol. V, p.115
- (7) Qur'an, 6:68
- (8) Qur'an, 9:96
- (9) Qur'an, 4:29
- (10) Qur'an, 2:276
- (11) Qur'an, 3:130
- (12) Muslim 3:1219
- (13) Ahmad, 5/225, Sahih al-jami 3375
- (14) Al-Bukhari, fathul Baaree 11/83
- (15) Qur'an, 4:22
- (16) Qur'an, 4:23
- (17) Qur'an, 4:3
- (18) Qur'an, 30:31
- (19) Al-Bukhari, fathul - Baaree 5/261
- (20) Muslim 1/102
- (21) Ahmad, 6/254 sahih Al-jami 5:571
- (22) Al-Bukharee 3:463
- (23) Ahmad, 4/393
- (24) Muslim 3/1780.