



Universal declaration of human rights and the shariah; A case of “the radical muslim” in Ghana

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Abstract

The researchers adopted the black letter law methodology to make a comparative study on the law, the Universal Declaration of Human Rights and Islam (with focus on the shariah). It was observed that the Islamic rules on fundamental human rights adopted about fourteen hundred years (1400) ago, following the emergence of Islam are no different to those enshrined under the Universal Declaration of Human Rights. There is no doubt that some people might hide behind the concept of shariah to perpetuate injustice but the fact also remains that this, respectfully, does not represent the true state of Islamic Laws. It was therefore humbly concluded that the world should carefully reconsider its view on shariah, as Islamic laws has more to offer towards the general development of legal jurisprudence of the world most especially, on the rules of fundamental human rights.

Keywords: human rights and the shariah, radical muslim, Islamic rules

Introduction

The present day Islam as it is practiced by Muslims world over can be traced to Prophet Muhammad, born in the Arabian Peninsula between the periods (570 –632AD). Muslims believed that during a period of devotional withdrawal in a cave in the hill or mountain of Hira (located within the vicinity of Mecca), the angel, Gabriel appeared to him in an overwhelming encounter and thought him the opening verses of *surah 96 of the Qur'an*:

1. Read in the name of thy Lord who has created
2. Created man out of a germ-cell
3. Read, for thy Lord is the Most Bountiful One
4. Who has taught (man) the use of pen
5. Taught man what he did not know (*The Qur'an 96:1-5*)

Over a period of time, after series of Qur'anic revelation denying the potency of man-made gods other than the one true God (Allah) which did not sink well with the religious beliefs and practices of the Quraysh tribe, tensions arose between Muhammad and his small circle of adherents, on the one hand, and the remaining inhabitants of Mecca, on the other hand. As a result, some of Muhammad's followers were forced to seek temporary refuge with the Christian ruler of Ethiopia (Enan, 2007) ^[11].

At about 622AD, Muhammad and about two hundred (200) of his followers migrated to Madina otherwise known as the 'Hijra', which became the most significant turning point in the history of Islam. It was within this period that the Islamic calendar started and not from the birth of Muhammad, or the date of the first revelation. It is of great importance to note that Muhammad played the role of both a Prophet and a political leader within the religious hemisphere of Madina. The Hijra was followed by years of fighting between the Muslims of Madina on the one hand and the unbelievers in Mecca on the other hand, where the Muslims step by step grew stronger due to Muhammad's political and diplomatic skills (Malin, 2004) ^[19].

In Ghana, the advent of Islam can be traced to about the 15th

century, it is believed that Islam as a religion was introduced to Ghanaians (more specifically the Northern territories) by traders and scholars from Mande or the Wangara tribes, however, some also hold the believe that Islam came to Ghana through 'Da'wah' (invitation) by scholars from neighbouring countries. Whatever the true accounts are, it still remains a fact that Islam was introduced to the Ghanaian Populace by foreigners through some form of 'Da'wah'.

Even though Ghana's history of religious tolerance is the envy of many countries, there is no doubt that *September 11, 2001* still remains the most crucial date in the modern day 21st century as far as the relationship between Muslims and other religious sects are concerned. It was on this date that the world experience one of the greatest terror attack as the World Trade Centre was in flames, and consequently, the world experienced for the first time in decades that there probably exists a massive cultural gap between East and West, as well as among the rich North and the poorer South (Malling, 2004) ^[19].

Flowing from the consequences of the terror attack, most especially, in Christian dominated countries (of which Ghana is no exception); Islam out of the blue was pointed out as a source of “barbarism and terrorism”. A more common statement often heard from non-Muslims usually has to do with the “Sharía” (Islamic Laws), and how it is seen as inconsistent with and repugnant to the general principles of law, most specifically, the rules on fundamental human rights such as the relating to ‘jus cogens’ or peremptory norms (‘inhuman punishments and discriminatory rules and practices’).

It is in light of the above that the researchers will investigate and answer the following question;

1. What is/ are the general scope of “shariah” (Islamic Islamic Laws)?
2. Whether Islamic laws are inconsistent with the general principles of law most especially the Universal Declaration of Human Rights? Or

- Whether the violation of personal rights in the name of Islam is a radical consequence of cruel regimes and historically established traditions?

Methodology

The researchers adopted the “black letter law” or Doctrinal Methodology; as this method will enable the researcher reduce the study to an essentially descriptive analysis of technical and coordinated legal rules to be found in primary sources (Terry and Nigel, 2012). The rationale behind the adoption of such method is to be able to organize, gather and describe the legal rules and to offer interpretation on the development and importance of the authoritative legal sources in which such rules are considered with much emphasis on case laws (Mumin and Hamid, 2021) [20].

The black letter law or doctrinal methodology mainly focuses on the law itself as an internal self-sustaining set of principles which can be accessed by reading the law itself, judicial decisions and scholarly opinions on the subject matter of the study (Mike and Wing Hong, 2013).

The researchers are confident that the black letter law will help limit the study to only primary sources of legal data such as;

- Rules of international law;
- General principles of the universal declaration of human rights;
- The shariah;
- Case law; and
- Academic commentary on the area of law under study.

This paper consists of Four (4) main sections. Section one (1) captures the introduction. Section two (2) does a review of the literature. Section three (3) contains the main discussion. Section five (4) concludes the paper and captures the necessary proposed recommendations.

Literature Review

Brief Historical account on Human Rights

Going back in time, Dalacoura (1988) [8] asserts that the modern concept of Human Rights trace its roots mainly to two main philosophical theory of thought of which includes; “Western philosophical and political thought and natural law and the Enlightenment” (Donally, 1998, p6) [10]. The earlier natural law concept of law based on the facts that laws are from a higher being and that it is based on reason and conscience.

One of the most famous pioneers of the naturalist theory of law is the Italian philosopher, Thomas St. Aquinas (1225-1274) whose theory of law was hugely influenced by the doctrine of the Church (Catholic Church) (Donally, 1998) [10]. According to St. Aquinas, for any law to acquire validity, it must have four main tentacles of which include:

- It must be eternal: that God’s grand plan for the whole of the universe;
- It must be Divine: this refers to those laws that were revealed in scriptures;
- It must be natural; this has to deal with the facts that law in themselves must conform to the laws of nature; and
- It must be Man-made: refers to those laws that were reduced by man into various legal documents such as; the constitution, statutory laws, among others.

St. Aquinas’s theory of law predominantly emphasised on the basic principle that a person must participate in divine

law and must also be guide to morality and ethics (Daclacoura, 1998) [8]. In general, the proponents of the natural law school of thought hold the firm believe that there were rights and obligations, which belonged to the individual based on the simple facts that they were born humans as opposed to the mere facts that they were members of a particular State or Nationality (Daclacoura, 1998) [8].

However, Daclacoura (1998) [8] argued that the earlier concept of the natural law legal theory lacked a political content. He went further state that the natural theorist failed to determine the relationship between the individual and the state (“the right-bearer and the duty- holder”). Notwithstanding the above it must be noted that the individual’s rights as enjoyed today, emanates from enlightenment. This period of enlightenment, according to Steiner and Alston (2000) [23], held the individual paramount (as the central core of its theory) and “divorced knowledge from revelation” ((Steiner & Alston, 2000)) [23].

According to Steiner and Alston (2000) [23], somewhere the seventeenth (17TH) century marked the period of the rise in the level of enlightenment. The authors assert that it was within this period that the western world metamorphoses into a secularized society, and this they argued separates the western world from other parts of the world, where religion is still seen to play a major role in the lives of people on a daily basis. However, over the years, the concept of religion (as proposed by the natural law school of thought) has been detached from law can be traced back to the English philosopher John Locke, who arguably is the most significant natural law theorist in our modern day world.

Per Locke’s concept of law under the naturalist theory; as humans, we ought to enjoy certain fundamental rights and that these rights are inherent in us based on the simple fact that we were born humans. Flowing from Locke’s theory, the most fundament rights that and individual must enjoy based on the facts that she or he was born human includes; ‘the rights to life, liberty and property’, nonetheless, due to the principles enshrined under the concept of “Social Contract”, an individual surrenders his right of enforcement of those basic rights she or he ought to enjoy the State (however not given up the right itself) (Steiner, 2000, p.324) [23].

Later in the period of enlightenment, saw the rise of other liberal philosophers such as Montesquieu, Rousseau and Voltaire, which later became the very foundation (liberal ideas) that the American, the English and French revolutions. The principles enshrined under the natural rights ousted other philosophical principles such as divine rights of kings, since no political regime was justified unless it satisfied the natural rights of its citizens. The nexus that exists between these new ideas and the revolutions of the people was apparent. In the world, the idea of human rights seen as a universal principle “rooted in natural law and rationalism did however have many critics” (Malin, 2004) [19]. Citing the example of England, Steiner & Alston (2000) [23] stated that the conservatives such as Burke and Hume strongly condemned the doctrine partly in fear of that a “public affirmation of natural rights would lead to social upheaval or natural rights becoming a substitute for effective legislation” (Steiner & Alston, 2000, p325-326) [23].

According to Jeremy Bentham, a leading pioneer of the Utilitarian doctrine of law and a chief critic of the naturalist

approach to law, asserts that natural law could only exist as a “imaginary rights” and that associating law to a divine being is nothing but “nonsense on stilts”, as the doctrine itself is nothing but an imaginary law (Steiner & Alston, 2000) [23]. Bentham went further to assert that Real rights could only emanate from real laws. The utilitarian theory (which is based on the economics theory of utility or ‘utils’ thus the maximum satisfaction driven) based on the greatest happiness derived out of sacrificing the basic rights of some individuals in order to gain happiness for the larger group persons. Per the utilitarian theory, human rights do not have independent moral status or force (Steiner & Alston, 2000) [23].

In modern times, the dawn of the 19th century saw the birth of the United Nations (UN) in the year 1945 to serve as an intergovernmental organisation with the aim maintaining international peace; develop friendly relations among nations and to achieve international corporations (Charter of UN chapter I). In December 1948, the UN General Assembly adopted the Universal Declaration of Human Rights, which till date serves as a binding norm under international law on matters pertaining to the rules of fundamental human rights. The Universal Declaration of Human Rights is considered as resolution and not a treaty, therefore it can be argued that it has no binding force of treaty made law. However, in the year 1966 saw the codification of the rules was finally completed, and as a result, it was called the ‘*International Rights Covenants*’. The covenant was intern broken in two namely; ‘the International Covenant on Civil and Political Rights’ (ICCPR) and the ‘International Covenant on Economic, Social and Cultural Rights’ (ICESCR). The combination of the two Covenants (ICCPR and ICESCR) together with the Universal Declaration is collectively referred to as the International Bill of Human Rights (Donally, 1998) [10].

The concept of ‘human rights’

The concept of Human rights according to Donally (1998) [10] and Malin (2004) [19] can be said to refer to those rights that a person must enjoy based on the simple facts that she or he was born human. These rights are enjoyed by all irrespective of one’s skin colour, religion, disability, among others. Dalacoura (1998) [8] argued that these rights mentioned of are inherent in the very existence of Man of which includes the rights to basic freedom and security, without which a person’s existence would be considered less than human.

It must be noted from the above that the whole idea of Human rights is centered on the concept of ‘universality’, that is to say those rights have general application world over, and as such they should be given higher importance and recognition as compared to other ‘notions’ of rights given to human beings for some other reasons that are not particularly inherent to the human survival. Consequently, Donally (1998) [10], duly stated that the concept of human rights are to be enjoyed and appreciated equally by all human races based on the simple fact that “being human cannot be renounced, lost, or forfeited, human rights are inalienable” or non-derogable (Donally, 1998) [10].

The Shariah/ Islamic Laws

Shariah is derived from the religious precepts of Islam, most specifically, the Quran and the hadith. Based on Arabic linguistic, the term Shariah refers to Allah’s

immutable divine law and is contrasted with *fiqh*, which refers to its human scholarly interpretations (John, 2014) [14]. The authoritative sources (‘dalil’ or guide) of ‘Shariah’ of Islamic law can be categorised into two namely; the primary and secondary source (Khan, 2006) [18]. The sources of ‘Shariah’ includes; Quran and Sunnah. The main primary sources (Quran and Sunnah) are considered as the ‘Shariah’ (pathway), which represents the authoritative legal source of all Islamic law principles (Ramadan, 2006) [21]. On the Quran, it is seen as that which ought to be studied, read (recited) and as well refers to the supreme revelation as it was brought down by Angel Gabriel on the command of Allah to Prophet Muhammad (Ramadan, 2006) [21]. There is no doubt that there is only one authentic, authoritative and uniform text of the Quran in Arabic that is in use throughout the Muslim world.

The ‘Sunnah’ on the other hand can be literally translated to refer to the “traditions and practices” of Prophet Muhammad during his lifetime. Basically, the sunnah as a source of Islamic laws can be categorised into three namely; (1) The sayings of the Prophet (Sunnah Qawliyyah/Hadith); (2) The actions of the Prophet (Sunnah Al Filiyya); (3) Practices prevailing at the time of the Prophet which he did not oppose or prohibit (Sunnah Taqrriyyah) (Ramadan, 2006) [21].

The secondary sources of Islamic laws include; Tafsir (Interpretation of Quran); Fiqh (Islamic Jurisprudence) and Madhhabs (Schools of Fiqh) of which are briefly discussed below.

Firstly, the Tafsir (interpretation of Quran) refers to the interpretation as well as rendering logical commentary on the Quran (exegesis). In Islam, the sources of Qur’anic commentary can be chiefly categorised into four (4): (i) the Quran itself because a verse of the Quran is often used to explain another verse; (ii) the Hadith (The sayings of the Prophet); (iii) accounts of Sahabah (the companions of the Prophet Muhammad); (iv) accounts of Taibun (the generation that had direct contact with the Sahabah). A few of the prominent Tafsirs are listed below. A search in a library catalog for Tafsir will yield many others (Aslihan, 2020) [5].

1. *Tafsir ibn Kathir (~1370)*. Isma`il ibn `Umar Ibn Kathir; Muhammad Nasib Rifa`i. Tafsir ibn Kathir. London: Al-Firdous, 1998. 6 vols. in English.
2. *Tafsir al-Qurtubi (~1273)*. Muhammad ibn Ahmad Qurtubi; Aisha Abdurrahman Bewley. Tafsir al-Qurtubi: classical commentary of the Holy Quran. London: Dar al-Taqwa, 2003.
3. *Tafsir al-Tabari (~922)*. Jāmi’ al-bayān ‘an ta’wīl āy al-Qur’ān, ta’līf Abī Ja’far Muḥammad ibn Jarīr al-Ṭabarī. Misr, Mustafá al-Babi al-Halabi, 1954-1968. 30 vols. in Arabic.
4. *Tafsir al-Jalalayn (1460-1505)*. Jalal al-Din Muhammad ibn Ahmad Mahalli; Suyuti; Feras Hamza. Tafsir al-Jalalayn. Al-Qāhirah: Dār al-Qalam, 1966.
5. *Tafsir Ibn Arabi*. Ibn al-`Arabi, (1165-1240) and Mu.hammad `Ali, `Abd al-Warith. Tafsir al-Quran al-Karim. Bayrut, Lubnan: Manshurat Mu.hammad `Ali Bay.dun: Dar al-Kutub al-`Ilmiyah, 2001. 2 vols. Sufi tafsir.

Secondly, the ‘Fiqh’ (Islamic Jurisprudence) refers to the process of deducing and applying Islamic law (shariah) principles. Fiqh can also be said to refer to the collective

body of laws deduced from Shariah. The 'Ijtihad' (effort, physical or mental, expended in a particular activity) falls under the fiqh because, under the ijthad, an independent and experienced Islamic jurist makes a legal decision by focusing on the original interpretation of the primary legal sources (the Quran and the Sunnah). It can therefore be argued that Ijtihad is basically centered in the works of jurists of various schools of thought, however, as a point of caution, the ijthad and fiqh should not and should never be equated with divine revelation and, therefore, they are considered secondary to Quran and Sunnah.

There are several methodologies of fiqh, listed below, recognized by Islamic jurists and ijthad occurs in a variety of forms. More specific sources discussing the methodologies below can be found by searching these terms: ijma (general consensus of opinion from among the companions of Muhammad or the learned scholars), qiyas (analogical reasoning/deduction), istihsan (juristic preference to ensure equity/public interest), istihab (presumption of continuity), urf (local custom) (Aslihan, 2020) ^[5].

Lastly, The Madhhabs (Schools of Fiqh), this refers to the nineteen schools of "fiqh madhhabs" that came into existence during the first four centuries of Islam which was subsequently condensed to five of which four are of the sunni school of thoughts and only one, belongs to the shia (Hallaq, 2005 and Kamali, 2006) ^[12, 15]. The four sunni schools are: Hanafi, Maliki, Shafi'I, Hanbali and the shia school is Jafari.

Islamic Concept of Human Rights

In Islam, the ideas of rights are seen as those that have been granted by Allah (God) to mankind. This is because; laws in Islam are chiefly seen as divine in nature.

Once shariah is mentioned, there is the temptation especially from non-muslims to presume the penal laws (the cutting of hands, stoning people to death, beheading of people, among others) forgetting that the word shariah simply means (laws) and it is divided into several aspects including; rules of human rights, family law, commercial law, among others. It is paramount to note that the shariah, according to Allamah (1986) ^[3], has categorically laid down certain basic fundamental humanity at large. By way of emphases, the shariah has already put in place a laws to govern humanity irrespective of the person's nationality, believes, gender, race or any other descriptions, such person is entitled to enjoy those basic based on the mere facts that that person is born human and such should be recognised and respected by all Muslims. Some basic fundamental rights under the shariah includes but not limited to the following;

Rulers not above the Law

This principle can be equated to the general provisions under the principle of the rule of law, which provides for the supremacy of the law. It is clearly visible that Islam as a religion insists and demands that all officials of the Islamic State irrespective of the status must be subjected to the law, without the provisions of any 'immunity' granted to any person or group of persons. The second Caliph in the sunni theology, Umar is quoted to have stated that "I have myself seen the Prophet, may God's blessings be on him, taking revenge against himself (penalizing himself for some shortcoming or failing)" (Aslihan, 2020) ^[5]. On the occasion of the Battle of Badr, the Prophet whilst straightening the

rows of the Muslim army mistakenly hit the belly of a soldier in an attempt to push him back in line. The soldier complained "O Prophet, you have hurt me with your stick." The Prophet immediately bared his belly and said: "I am very sorry, you can revenge by doing the same to me" (Aslihan, 2020) ^[5]. The soldier came forward and kissed the abdomen of the Prophet and said that this was all that he wanted.

The right to life and property

There is no iota of doubt that the right to life remains the most basic and fundamental right that a person can enjoy as far Islam is concerned. Pursuant to the verses of the holy Quran and the Traditions of the Prophet, the word "nafs" (soul) has been given a broader connotations and a rule of general applications without any reservations or distinction. The Prophet's usage of the word "nafs" pointed out that no soul irrespective of nationality, citizenship, race or religion should be killed. This statement strongly prohibits a person taken another's life unjustly and has a general application to all human beings (Aslihan, 2020) ^[5].

This can be supported by *Quran chapter 5:32*, which provides that "whosoever kills a human being without (any reason like) man slaughter, or corruption on earth, it is as though he had killed all mankind". Again, in *Quran Chapter 6:151*, it provides that "Do not kill a soul which Allah has made sacred except through the due process of law." Additional, the Quran provides that; "And whoever saves a life it is as though he had saved the lives of all mankind" (Quran Chapter 5:32). Again, the Quran provides that:

"Anyone who kills a believer deliberately will receive as his reward (a sentence) to live in Hell for ever. God will be angry with him and curse him, and prepare dreadful torment for him" (4:93).

On property, the Quran provides that: "Do not devour one another's wealth by false and illegal means" (2:188).

Respect for the Chastity of Women

Under the Islamic Charter of Human Rights, one of its fundamental provisions is the respect and protection of a woman's chastity at all times, irrespective of her nationality, religion, race, colour, or even if she is from an enemy nation. A Muslim is at all times obliged to respect and protect her chastity. The words of the Holy Quran in this respect are: "Do not approach (the bounds of) adultery" (17:32).

The Right to a Basic Standard of Life

Under the shariah, the right of the needy over the wealthy has been acknowledge. It must be noted that in Islam, the right of the needy must be duly observed by those who believe. This is justified by *Quran 51:19*: "And in their wealth there is acknowledged right for the needy and destitute."

Individual's Right to Freedom

The shariah has unambiguously and unequivocally prohibited the practice of capturing a free man with the intention turning him into a slave of selling him into slavery. Prophet Muhammad is quoted to have stated that:

"I will be against three persons on the Day of Resurrection: -1. One who makes a covenant in My Name, but he proves treacherous. -2. One who sells a free person (as a slave) and eats the price, -3. And one who employs a labourer and gets

the full work done by him but does not pay him his wages.” (Sahih al-Bukhari 2227: Book 34, Hadith 174, Vol. 3, Book 34, Hadith 430)

The Right to Justice

Under Islamic laws, an individual's right to seek and obtain justice is unquestionable. Every person irrespective of their affiliations, nationality, religion, gender or colour is entitled to be heard and tried justly. The Holy Quran provides that: “Do not let your hatred of a people incite you to aggression (5:2). And do not let ill-will towards any folk incite you so that you swerve from dealing justly. Be just; that is nearest to heedfulness (5:8).”

By way emphasis on the significance of justice, the Quran again provides that: “You who believe stand steadfast before God as witness for (truth and) fairplay” (4:135).

Equality of Human Beings

Islam considers all human beings as equal; the Holy Quran categorically provides that: “O mankind, we have created you from a male and female.” This verse presupposes that all humans were created or descended from one father and one mother. “And we set you up as nations and tribes so that you may be able to recognize each other” (49:13). This division of the human race to prove dominance over one another but to peacefully cooperate and coexist with one another. This is sealed by the verse “Indeed, the noblest among you before God are the most heedful of you” (49:13).

The Right to Co-operate and Not to Co-operate

The Shariah has prescribed a general principle of utmost importance and can be said to have universal application principle. The words of the Quran provide that: “Co-operate with one another for virtue and heedfulness and do not co-operate with one another for the purpose of vice and aggression” (5:2).

The Protection of Honour

Under the shariah, one of the most important rules of human rights is the right of the citizens to the protection of their honour. The Prophet in his Farewell Hajj message did not only prohibit the unjust taken of another's life and property, but also any encroachment upon the honour, respect and chastity of another person or group of persons were forbidden. This has been solidified by the verses of the Holy Quran which provides that:

1. “You, who believe, do not let one (set of) people make fun of another set.
2. Do not defame one another.
3. Do not insult by using nicknames.
4. And do not backbite or speak ill of one another.” (49:11-12).

The Right to Protest against Tyranny

Islam frowns upon any form of tyrannical leadership or governance. It is in light of this that the Shariah grants humans the right to protest against tyrannical regimes or government. The Quran provides that: “God does not love evil talk in public unless it is by some- one who has been injured thereby” (4:148).

Freedom of Conscience and Conviction

Islam also gives the right to freedom of conscience and

conviction to its citizens in an Islamic State. The Holy Quran provides that: “There should be no coercion in the matter of faith” (2:256).

Protection of Religious Sentiments

In tandem with an individual's right to freedom of conviction and freedom of conscience, Islamic laws also guarantees an individual's right to his or her religious sentiments, beliefs or convictions. It has been ordained by Allah (God) in the Holy Quran that: “Do not abuse those they appeal to instead of God” (6:108) and also “Do not argue with the people of the Book unless it is in the politest manner” (29:46).

Protection from Arbitrary Imprisonment

Islam also frowns against the right to unlawful arrest and imprisonment for the offence(s) she or he has not committed or for the offence of others. The Holy Quran has laid down this principle clearly: “No bearer of burdens shall be made to bear the burden of another” (6:164).

Shariah vis-à-vis Western positive Laws

According to Baderin Mashood, there is no doubt that there exist differences between the shariah concepts of laws vis-à-vis the western positive concept of law. One of the most significant difference between this two ideology has to do with the Shariah having Allah (God) as the central point core and the test of validity for laws is that it must be divine (religion plays a key role), whereas the Western positive concept man to be the main focal point (*they believe that the law can exist even without a God, thus it is 'secular' in nature*).

The Islamic concept of law is based on the notion that God is omnipotent, he knows what human beings know not, and human knowledge is limited (Qur'an 3:66), therefore it is imperative that the law giver must be Him and that there is absolutely no reason for man to make laws to protect the individual; the divine law of God is perfected in the best interest of the individual and the community. The rules of International human rights are chiefly of western origin and therefore religiously follow the western approach and the test of validity for laws. Being based on a secular philosophy, it grants the individual rights on the sole base of its humanity and makes no direct reference to God. Although freedom of religion is recognized as a human right, it is however not considered as a yardstick for the recognition of human rights.

Most civilization not only in the Islamic world have criticize the secular notion of the western approach to human rights and the making of such the basic barometer for measuring standards and this has to chiefly deal with cultural differences. Islamic clerics being no exception have also voiced their displeasure o this approach and as a result international human rights documents has raised the question in the debate among Muslims, whether this makes the documents themselves irrelevant and non-binding under Islamic law (Hassan Riffat, 1982) ^[13].

Flowing from the above argument, Riffat (1982) ^[13] stated: “Reference to God does not necessarily make sacred, nor does non-reference to God necessarily make profane any human document...a document such as the Universal Declaration of Human Rights which, though “secular” in terminology, seems to me more “religious” in essence than many “fatwas” given by Muslims and other religious

authorities and agencies.” P.52

Notwithstanding the above, it must be duly noted that the Muslims have not been the only ones to advocate a reference to God on matters of human rights under the Universal Declaration of Human Rights (UDHR), Brazil’s delegation made such proposals (though rejected by the UDHR) suggesting that a reference to God in the second part of the first article should be included by saying;

“All human beings are born equal in dignity and rights. (Created by God in his own image and resemblance) They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

The Attitude of the Court towards Shariah

The European Court of Human rights has in most cases ruled that Sharia as both a legal and political order is inconsistent with the fundamental values of the Convention. Such is evidenced in case laws like; *Refah Partisi (The Welfare Party) and Others v. Turkey [GC]* (nos. 41340/98, 41342/98, 41343/98 and 41344/98, ECHR 2003-II), *Kasymakhunov and Saybatalov v. Russia* (nos. 26261/05 and 26377/05), *Khan v. the United Kingdom* (no. 11579/85), and *Z.H. and R.H. v. Switzerland* (no. 60119/12), however, this is not necessarily true as far as other aspects of the shariah is concerned. In situations involving the real or possible application of Islamic law, both the Court and the former Commission have given priority to the European order public (and other autonomous considerations like the best interest of the child), while trying, to some extent, to accommodate other interests like cultural diversity (Council of Europe/European Court of Human Rights, 2017) [7].

Discussions

The research was conducted to do a comparative study between the universal declaration of human rights and the Shariah. The researchers for the purpose of this paper raised the following legal questions;

1. What is/ are the general scope of “shariah” (Islamic Islamic Laws)?
2. Whether Islamic laws are inconsistent with the general principles of law as well the Universal Declaration of Human Rights? or
3. Whether the violation of personal rights in the name of Islam is a radical consequence of cruel regimes and historically established traditions?

Analysis of legal questions

Scope of “shariah” (Islamic Islamic Laws)

Shariah is derived from the religious precepts of Islam, most specifically, the Quran and the hadiths, which together forms the primary sources of shariah. Based on Arabic linguistic, the term Shariah refers to Allah’s immutable divine law and is contrasted with *fiqh*, which refers to its human scholarly interpretations (John 2014) [14]. Shariah, to most people (non-Muslim) is only seen as a household name emanating from what they have heard in the media and other media/ social media platforms. However for Muslims, the Shariah is duly seen as a medium via which Allah (God) communicates mankind. To Muslims, the shariah is not considered as only laws, but also a way life, though, not codified.

It must be noted that as far as the shariah is concerned, Muslim clerics have argued that it is design to protect the human welfare, which is divided into six (6) main core

universal interest: *Life; religion; reason; wealth, Family and honour* (Andrew, 2019) [4]. In order to further elaborate these six (6) core universal interest, the prohibition of alcohol in Islam will not be seen as just a straight jacket law based on the facts that it was ordained buy God, but the reason for such prohibition would be that it is the Will of God that mankind protect, protect and preserve their intellects and or sense of reason. On the prohibition of sexual relationship before or outside marriage and also false accusation, the rationale for such prohibition will be to protect human dignity and as well as promote morality.

These rules of shariah is seen above (section 2) is deduced from four main sources; the Quran, the hadiths, the universal agreement among scholars and last intellectual analogy. However, it must be noted that notwithstanding the facts that shariah is seen as a divine law, not any person can just get up and start imposing shariah on others by way of force since the shariah itself is about promoting, protecting and upholding the fundamental basic human interest (*Life; religion; reason; wealth, Family and honour*).

Shariah vis-à-vis Universal Declaration of Human Rights

Though the European Court of Human rights has in most cases ruled that Sharia as both a legal and political order is inconsistent with the fundamental values of the Convention. Such is evidenced in case laws like; *Refah Partisi (The Welfare Party) and Others v. Turkey [GC]*, *Kasymakhunov and Saybatalov v. Russia*, *Khan v. the United Kingdom*, and *Z.H. and R.H. v. Switzerland*, however, this is not necessarily true as far as other aspects of the shariah is concerned.

Flowing from the above, there is no doubt that there exist differences between the shariah concepts of laws vis-à-vis the western positive concept of law. One of the most significant difference between this two ideology has to do with the Shariah having Allah (God) as the central point core and the test of validity for laws is that it must be divine (religion plays a key role), whereas the Western positive concept implies that man to be the main focal point (*they believe that the law can exist even without a God, thus it is ‘secular’ in nature*).

It is again imperative to note that the rules of International human rights are chiefly of western origin and therefore religiously follow the western approach and the western test of validity for laws. Being based on a secular philosophy, it grants the individual rights on the sole base of its humanity and makes no direct reference to God. Although freedom of religion is recognized as a human right, it is however not considered as a yardstick for the recognition of human rights.

Additionally, Riffat (1982) [13] in his support of the circular version of made a bold statement that:

“Reference to God does not necessarily make sacred, nor does non-reference to God necessarily make profane any human document...a document such as the Universal Declaration of Human Rights which, though “secular” in terminology, seems to me more “religious” in essence than many “fatwas” given by Muslims and other religious authorities and agencies.”p.52

The question here is: did the reference to God element under the shariah make it inconsistent to the general rules of fundamental human rights? It was stated under 2.4 above that once shariah is mentioned, there is the temptation

especially from non-Muslims to presume the penal laws (the cutting of hands, stoning people to death, beheading of people, among others) forgetting that the word “shariah” simply means (laws) and it is divided into several aspects including; rules of human rights, family law, commercial law, among others. It is paramount to note that the shariah, according to Allamah (1986) ^[3], has categorically laid down certain basic fundamental rules governing the principles of humanity at large. By way of emphases, the shariah has already put in place laws to govern humanity irrespective of the person’s *nationality, believes, gender, race or any other descriptions*, such person is entitled to enjoy those basic based on the mere facts that that person is *born human* and such should be recognised and respected by all Muslims. This to me does not sound inconsistent to the rules of human rights specifically under the Universal Declaration of Human Rights.

It must as a matter of facts be emphasized even the penal aspect of shariah must satisfy certain rules of procedural requirement which to me are even more intense as compared to the general procedural requirements of western positive law. The Holy Quran provides that:

“Do not let your hatred of a people incite you to aggression (5:2). And do not let ill-will towards any folk incite you so that you swerve from dealing justly. Be just; that is nearest to heedfulness (5:8).”

By way emphasis on the significance of justice, the Quran again provides that: “You who believe stand steadfast before God as witness for (truth and) fairplay” (4:135).

Whether the violation of personal rights in the name of Islam is a radical consequence of cruel regimes and historically established traditions?

In reference to 4.1.2 above, the researchers made efforts to establish that the supposed inconsistency of the Shariah to the western positive versions of law is even if in existence is at its minimal. The literature under section 2 has brought to light that most of the basic forms of fundamental human rights are also enshrined under the Islamic laws and even the shariah has gone to extreme to provide other rights such as the right to honour and the respect of the chastity of women which are not boldly captured under the western positive laws on human rights. As it was emphasized above under 4.1.2, that it must as a matter of facts be emphasized even the penal aspect of shariah must satisfy certain rules of procedural requirement which to me are even more intense as compared to the general procedural requirements of western positive law. The Holy Quran provides that:

“Do not let your hatred of a people incite you to aggression (5:2). And do not let ill-will towards any folk incite you so that you swerve from dealing justly. Be just; that is nearest to heedfulness (5:8).”

So the question here is why then the existence of legal rift between the east and west as far as the position on shariah is concerned? Since there are no clear-cut difference between them and both law seeks to promote freedom and justice? And also why is shariah seen as inhumane notwithstanding the facts that there are clear-cut provisions on the respect of the basic fundamental right of persons? The researchers can only reach one conclusion to these questions that the violation of personal rights in the name of Islam is a radical consequence of cruel regimes and historically established traditions and not based on the teaching of Islam since the word “Islam” means “peace.”

Conclusion and Recommendations

Conclusion

In conclusion, one of the most significant difference between Shariah on the one hand and the western positivist forms of law has to do with the concept God adopted by shariah as the central core which is considered as divine nature, whereas the Western positive concept implies that man to be the main focal point (*they believe that the law can exist even without a god, thus it is ‘secular’ in nature*).

The Islamic rules on fundamental human rights stated in this paper represents a selected few that were adopted about fourteen hundred years (1400) ago, following the emergence of Islam. There is no doubt that some people might hide behind the concept of shariah to perpetuate injustice but the fact also remains that this does not represent the true state of Islamic Laws. It is therefore; our humble suggestion that the world should carefully reconsider its view on shariah, as Islamic laws has more to offer towards the general development of legal jurisprudence of the world most especially, rules of fundamental human rights.

Recommendations

In light of the above conclusion, the researchers humbly recommend that education and media publicity is needed: people need to be educated on the tenets of Islam, with education; it helps in the development of society. That is to say that education helps to shape a better society to live in by ensuring each person respects the right, laws and regulations of the society. It is important to note that most non-Muslims no nothing or have little knowledge about Islam and so are un-accommodating on anything Islam.

Additionally, it is humbly suggested that the international community should find a way to ensure that both streams of laws are able to peacefully coexist rather than radically opposing to one without carefully studying its concept.

Lastly, the international community should in the imposition of the ‘western positivist’ legal order consider religious and cultural diversity in that there are no straight jacket of laws that can be imposed on another civilisation without due regards for their religion and or culture, in so far as those religious and cultural practices are not inconsistent to reason and common sense.

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