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JUSTICE AND EQUALITY AS FUNDAMENTAL RIGHTS IN ISLAM

Ahmad Hussein Folorunsho*

Abstract

As it is in the Western parlance, human rights in Islam is all encompassing and long lasting concept. In the light of the above, this paper looks into the concept of justice and equality as fundamental human rights under Islamic Law. The two concepts are examined with relevant affirmative evidence from the Qur'an and Sunnah. Attention is given to other issues under the two concepts, such as administration of justice, family relationship and gender equality as they connote fundamental human rights in Islam. Reference is also made to relevant international instruments on human rights vis-a-vis their correspondence with the Islamic position on the issues under discussion. The paper concludes by explaining the purpose of Islam's insistence on justice and equality in all human affairs for the purpose of creating a peaceful co-existence among human beings without discrimination of any kind.

Keywords: Justice, Equality, Rights, Islam

Introduction

If right is defined as "that which is proper under law, morality or ethics; or something that is due to a person by just claim, legal guarantee or moral principle"[1], human rights in Islam basically aims at protecting and preserving human dignity[2]. If justice means giving every person what is due to him without hindrance, fear or favour and equality connotes the practice of possessing the same right, privilege, immunity

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[1] Garner A.B.,(ed) Black's Law Dctionary(second Pocket edition) st paul. Minnesota: West publishing Co.2001 p.631

[2] See Qura'n 17:70

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and liable to the same duties and obligations[3], then some issues under the concepts of justice and equality such as administration of justice, family relationship and gender equality will definitely have places as fundamental rights in Islam. These issues are essential in order to maintain a peaceful society, this is more so because, Islam as a religion gives emphasis not only to individual affairs but also to communal affairs. It is against this backdrop that the concept of human rights in Islam introduces a duty-based human right idea, though it does not deny the right-based human rights idea.[4]

In the same vein, if justice is synonymous to equality[5], the likely question then is, 's inequality injustice?' The above are some posers to be addressed in this paper; herein, concepts of justice and equality shall be succinctly discussed, affirmative evidence in respect of the two concepts from Qur'an and Sunna will be outlined. Selected issues such as administration of justice, family relationship and gender equality shall be given attention as they constitute fundamental rights in Islam. Although there are many other issues under the above mentioned concepts, our discussion is restricted to these three issues due to the limited scope of this paper, as the selected issues are related to individual and public rights.

In addition to this, relevant articles from international human rights instruments such as the United Nations Declarations on Human Rights (UNDHR), Universal Islamic Declaration of Human Rights (UIDHR) and Convention on the Elimination of all Forms of Discriminations Against Women (CEDAW) shall be examined with a view to ascertain their compliance and areas of convergence and divergence with the Islamic position on the issues under examination. The aim of this work is to evaluate the position of Islam on the itemised

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[3] Francis J. Ludes. (ed)et al. Corpus Juris Secundum.st paul, Minnesota: west publishing co. 1965 vol.30.p.752

[4] [4] Shamrahayu A. Aziz, "Islamic concept of Human Rights" in Abdul Ghafur Hamid @ Khin Maung Sein (ed.) Human Rights Law: International, Malaysia and Islamic Perspectives (Malaysia: Sweet & Maxwell Asia, 2012) at 321

[5] Dawid van Wyk (ed)"Rights and Constitutionalism(The new South African Legal order) Juta & co. P 197

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issues with a view to seeing the extent of the protection given to the issues under the Islamic law as rights of individual and or communal rights. The methodology adopted in this work is doctrinal approach which involves theoretical research method and to achieve this, sources of materials used include and are not limited to; constitution, books, chapters in book, articles in academic journal and other resources available on the internet.

Justice and Equality: A Conceptual Framework

Justice

Justice ordinarily means sharing or distribution of things among two or more people with fairness; it is a wheel that drives towards stability and peace in every society. A just treatment is naturally a reasonable expectation of every human being, the benchmark for the determination of what constitutes justice therefore vary from society to society and from person to person. Justice is believed to be a moral concept in some people's view; to behave unjustly is wrong because that is to breach the term of fair agreement. Brian Barry in his theory considered justice as impartiality, he maintained that the basis of justice as impartiality resides in our common humanity and that, it is a concept which appeals to the reason of each person.[6]

Equality

Equality simply means the practice or condition of possessing the same rights, privilege, immunity and been subjected or liable to the same duties and obligations. According to Aristotle:

> Equality in morals means those things that are alike should be treated alike, while things that are unalike should be treated unalike in proportion to their unlikeness! Equality and justice

[6] Michael Freeman, "Universalism, Particularism and Cosmopolitan Justice" in *International Justice,* edited by Tony Coates, (Burlington USA: Ashgate Publishing Company,2002), p.73-74.

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are synonymous: to be just is to be equal, to be unjust is to be unequal [7]

However, Dennis in his opinion said the Aristotelian proposition failed to provide guide as to which things are equal, or which persons are equal for the purpose of determining equality and equal treatment; furthermore, the claim that equals shall be treated equally does not define who equals are.[8] Equality in essence is an admirable trait for any society to possess, it is a way by which all may be treated equally without discrimination of any kind either racial, colour, language, age or sex. It is noteworthy that as lofty a goal as it is, it is a very difficult goal to achieve. Moving closer to what equality means, the following questions are necessary: what is equal? Equal in what way? Does equality require an even distribution of all the nation's resources so that every citizen has exactly the same amount of everything? Does distribution based on race, age, gender constitute arbitrariness or inequality?[9]etc. It is worth of note that equality is not alien to Islam and Shariah, it is known as *musawah* and it is the distinguishing feature of the Islamic governance.[10]

Justice and Equality in Islam

The concepts of justice and equality in Islam are comprehensive but not ambiguous and controversial as in the western perspective. In Islam, Justice otherwise called *'adl* ordinarily connotes fairness, impartiality, even-handedness, honesty and integrity. It has been defined as the appropriate placement of things to where they belong; equal

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[7] Dennis Davis ,"Equality and Equal Protection" In *Rights and Constitutionali: the new South African Legal Order*, edited by Dawid van Wyk, (Kenwyı uta & Co Ltd,1994) pp. 197.

[8] ibid

[9] Maryann Zihala, *Right, Liberties & The Rule of Law,* (University Press of America(R) Inc., 2005,) 75.

[10]Haniff Ahamat, "The Right toEquality and Non-Discrimination" in Abdul Ghafur Hamid @ Khin Maung Sein (ed.) Human Rights Law: International, Malaysia and Islamic Perspectives (Malaysia: Sweet & Maxwell Asia. 2012) at 138

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treatment to others; or the act of maintaining the position of equilibrium[11]. Equality on the other hand is called *Musawat* in Arabic, meaning evenness and equivalence of human nature. This seems to be a general rule in Islam that is, human beings are equal in creation; however, under Islam there are exceptional circumstances where differences are unavoidably present among human beings. Unlike the western perception upon which the present agitation for absolute equality is premised, in Islam there is no and cannot be absolute equality if human nature and activities are properly studied. Although, the two concepts are said to be synonymous, in Islam not too identical as justice could only be achieved in some circumstances through inequality.[12]

Affirmative Evidence

Justice and equality are two Islamic fundamental concepts which have their gene is traceable to the Qur'an, Sunna and the exemplary leadership practices of the *Sahabah* (the companions of the Prophet). For instance Allah mentioned that justice is one of the purposes of sending His messengers and as an essential mission to be propagated by them on earth. He says:

> Certainly we sent Our Messengers with clear signs and sent down with them the Book and the measure in order to establish justice...[13]

In Suratun Nahl, Allah expects strict adherence to justice by all mankind by using the words of command "*Amr*" where He says:

> Most surely GOD commands justice, the doing of good deeds and generosity to near of kin, and He forbids indecency, abomination and tyranny He admonishes you that you may remember[14]

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[11] Mohd Hashim Kamali, Freedom, Equality and Justice in Islam, (Malaysia, U.K: Ilmiah & the Islamic Foundation, 1999), 140.
[12] Ibid
[13] Qur'an 57:25.
[14] Qur'an 16:90.

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The use of the word *Ya'muru* (commanding) in this verse is a clear indication of command, thus making justice an obligatory act in Islam and since the message of Qur'an is universal in nature, all human beings are under the duty to be just. In addition to this, a specific command to the believers to be just is found in *Suratul Maidah* where Allah says:

> O you, who believe, be upright for God, bearers of witness with justice, and do not let detestation of a people move you to be unfair, be equitable, that is closer to piety, and fear GOD, surely GOD is well aware of all that you do.[15]

One of the most relevant textual authorities for the proper understanding of the establishment of human equality in Islam is contained in *Suratul Hujuraat* where Allah says:

> O mankind, surely, We have created you from a male and a female, and made you tribes and nations, that you may know each other. Surely the noblest of you in the eyes of God is the most pious among you.[16]

The above verse made the general rule in the sense that, human beings are equal, as we are all from one and the same source. It provides the exception that although we are equally created and as such equal in the sight of Allah, the only thing that basically differentiates us is the level of our piety and submissiveness to the commandment of Allah. The supreme law giver is just and He maintained equality among His servant by promising that anyone, be it male or female who observes some itemised acts or maintain certain recommended virtues or a particular degree of piety shall be awarded the same reward.[17]As earlier mentioned that equality is not absolute in Islam, there are natural differences in human beings in terms of talents and skills, and these are unquestionable natural endowments from Allah, the creator.[18] It is to be noted that differences in wealth and knowledge are natural exceptions; these

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[15] Qur'an 5:8.
[16] Qur'an 49:13.
[17] Qur'an 33:35
[18] Qur'an 39:9, 61:66, 46:19 and 99:7-8

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differences will not interfere with the ideals of justice, and justice in most cases can be better served when these differences are acknowledged.[19]

As a primary source of Islamic law, there are numerous *Sunnah* of the Holy Prophet that established justice and equality. The Prophet was reported to have said in a *hadith Qudsi*:

> O my servant! I have forbidden injustice on myself and also forbade it to you. So avoid being unjust to one another.[20]

In Islam, if Allah commands an act, it becomes obligatory and when He forbids an act, it becomes a sin. In view of the above *hadith* therefore, the act of injustice is sinful in the sight of Allah. As it is an established fact that, punishment awaits any person who commits a sinful act or disobeys the commandment of Allah, so, great reward is definitely the promise for those who abide by Allah's commandment. Apart from the worldly reward for anyone who acquires the virtue of been just, the Holy Prophet was reported to have expressed the heavenly reward specially meant for such person among the special class of people for whom special provision shall be made by Allah (S.W.) on the day of accountability as follows:

> There are seven categories of people whom Allah will shelter under His shadow on the Day when there will be no shadow except His, The just leader (imam 'adil)...[21]

The Holy Prophet enjoined and practiced equality among Muslims and non-Muslims in accordance with the Quranic injunctions. In what can as well be said to mean the interpretation of Qur'an 49:13 by hadith, the Prophet was reported to have said:

> O people! Your creator is one, and you are all descendants of the same ancestor. There is no superiority of an Arab

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20 Mohd Hashim Op.cit p 69.
21 Tabrizi, Mishkat, Vol. II, hadith 2325.
Muslim, ***Mukhtasar Sahih Muslim***, p. 147, hadith 537.

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over a non Arab nor the black over the red except on the basis of righteous conduct.[22]

Among the doctrines of equality established by Islam is the unique approach adopted for freedom of slaves and declaring them as equal with others. Slaves were not believed to have soul spirited by God, but Islamic declaration of Allah as one, the only God and the sole creator of both the slave and the master, indicates the fact that slaves are normal human beings; it is the socio-political and economic factors of the society that made them slaves. Quranic doctrines through the spiritual emphasis made it clear that a master is no better creature than his slave, all being members of human race by virtue of creation and their souls, they are equal; and above all, all human beings are slaves to the supreme God, the creator of their souls.[23] Every member of human race is considered as a spiritual entity, keeping master and slave on the same footing in the Islamic perspective and that was the reason why Islam invites both master and slave to spiritual salvation without any class difference or hatred. Equality in Islam can as well be further proved by the fact that many close associates of the Prophet (S.A.W) were of slave origin who embraced Islam due to the discovery of their spiritual identity and faculties as not different from their master's. Many masters also acceded to the Islamic doctrines of slave freedom and released not on compulsion, but to express their commitment to Islamic faith which opened their reasoning faculties to the oneness of Allah.

Examples can be found through history in the attitude of the Holy Prophet (S.A.W) who was given some slaves as gift immediately after his marriage with Sayyida Khadija (R.A). The Prophet did not only free them but also distributed some properties to them; a gesture which was followed by the Muslims having realised the equality status between them and their slaves. For instance, Zaid bn Usama and Bilal were

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[22] Extract from the prophet's farewell pilgrimage sermon: Ibn 'Abd Rabbih,*al-'Aqd al-Farid*,II,357;Mahmassani,Arkan,p. 266

[23] Maimul Ahsan Khan, *Human Rights in the Muslim World, Fundamentalism, Constitutionalism and International politics*, (Carolina Academic Press, 2003). 218.

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typical examples of freed slaves who eventually became close associates of the Prophet (S.A.W). Both of them rose to the status of Commanders of the Muslim Army, Zaid married a white Arab lady called Zaenab, while Bilal added to his own status the post of first *Muadhin* of Islam.[24]

Justice and Equality as Fundamental Rights: Matters Arising

Justice is not only prominent as a theoretical concept in the philosophy of law , but also equalled in importance as the law itself. It is a regular feature of public life as it is readily understood by everybody, just like some other concepts such as 'being and truth', especially in the context of its negation, 'injustice'. It is also a fundamental moral concept which can be ascribed to consciousness, rationality and a moral sense; for example, the suffering cause of flood, windstorm or elephant stampede is not an injustice, but failure to relieve such suffering is what can be thought to be an injustice; the presence of conscious purpose is therefore a condition in the discourse of justice.[25]Justice in Islam is considered sacred having regards to various textual authorities on the concept, since it is a fundamental factor for the maintenance of natural and social order in an ideal society. This is why the Qur'an emphasises the relevance of the concept of justice. For example Allah says:

> O you who believe, stand out firmly for God, as witness to fair dealings, and let not the hatred of others of swerve you to wrong and depart from justice. Be just, that is next to piety; and fear God, for God is well acquainted with all that you do.[26]

It is in no doubt one of the essential missions for which Prophets were sent;[27] hence, it is one of the greatest contributions of Islam to the preservation of human dignity, welfare, contentment and human rights

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[24] Ibid 219.

[25] Mark Tebbit, *Philosophy of Law An Introduction*, 2nd edition, (Taylor& Francis Group, 2005), 6.

[26] Qur'an 4:135, see also Qur'an 6:15, 57:25, 4:58-59, and 42:15

[27] Qur'an 57:25.

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protection generally. It is indeed the aim of all human rights.[28] If this statement is true, justice then is a collective responsibility of the state and individuals, since it is the greatest expectation of every human being. Justice in Islam could therefore be classified among others as: spiritual, social political, economi , and legal justice. Allah the most High is just in everything He does, *Al-adil*(just and equitable) are no doubt His attributes, and man will then be spiritually just by striving to attain a high spiritual status before his creator through his *'ibadah.*[29] Political leaders would be considered just only when the interest of the state is paramount and overrides their personal interest, while an individual appointed as a judge is expected to be just in the administration of justice among the people. Justice can then be said to mean natural right. According to Maryann Zihala, rights are been described as government granted, government guaranteed such as; due process and equal protection under the law.[30] Justice in Islam therefore is an essential instrument for the procurement and maintenance of peace and tranquillity in the society. From the Islamic perspective, administration of justice is seen in a different and unique way. Justice is *fard kifayah* upon the whole community, while it is *fard 'ain* on individual members of the community, depending on the surrounding circumstances.[31]

Equality is said to be synonymous to justice, it connotes maintaining the position of equilibrium. The question is equality of what? Why equality? Human beings are ordinarily created equally with some natural endowments as exceptions to this general rule. Lukas observes as follows:

> We respect and honour those who are descendants of noble fathers while not respecting and honouring those

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[28] Shamrahayu A. Aziz, "Basic Human Rights in Islam" in Abdul Ghafur Hamid @ Khin Maung Sein (ed.) Human Rights Law: International, Malaysia and Islamic Perspectives (Malaysia: Sweet & Maxwell Asia, 2012) at 367

[29] Qur'an 33:35

[30] Maryann Zihala, *Rights, Liberties & The Rule of Law,* (University Press of America, Inc., 2005), 4.

[31] See M.A. Ambali, "The Practice of Family Law in Nigeria" (Zaria, Nigeria: Tamaza Publishing Company Limited, 2003) at 85

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> who are not from a noble house. In doing so, we relate to each other as do Barbarians, for by Nature, we are created equally in all respects, whether we be Barbarian or Hellenes. This emerges clearly once we stop to consider those things that by Nature all people need. All will acquire them in the same way and where those things are concerned we are different neither from the Barbarians nor from Hellenes. We all, each and every one of us breathes out of our mouth and noses, and we eat by using our hands.[32]

Islam attached importance to equality as another driving force for societal stability. Although there is no absolute equality, the purpose of creating us in gender 'male and female' is to serve different purposes of creation, a man is hard in nature while a woman is considered to be fragile, this is the first natural difference which could be the first exception to equality.[33] Mankind therefore have duties and rights toward one another with a common focus of fair and considerate treatment to everyone. The tone of Qur'an on justice and equality could then be translated to mean, according people their rights without discrimination of race, sex, colour or language and preventing oppressive behaviours and violence. Islam as well treats everybody equal in terms of human value except with distinction in respect of individual's effort in his service to the community. Islam does not see a hardworking person as equal to a lazy person in term of remuneration; neither does it treats good and evil doers equal in terms of reward and punishment. Allah says in the glorious Qur'an, *Al-an'am*

> To all are degrees (or ranks) according to their deeds: for Your Lord is not unmindful of anything that they do".[34]

Justice and equality are fundamental rights in Islam; these are strong pillars upon which the Islamic state was built by the Prophet (S.A.W)

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[32] Lukas H. Mayer, 'Cosmopolitan Community', in *International Justice*, edited by Tony Coates,(Ashgate Publishing Limited, 2002), 90.
[33] Qur'an 4:1.
[34] Qur'an 6:132

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and the *Sahabah*. There are numerous instances of just and equal treatments exemplified by the Prophet (S.A.W.) such as: equality before the law in the administration of justice; for instance, where the Prophet (S.A.W.) was reported to have remarked in a case of theft that, if *Sayyidah* Fatimah (R.A) stole the value of *Nisab*, he will cut her hand; administration and sharing/distribution of state resources among the citizen, vide the establishment of *Baetul-Maal* (public treasury) where *Zakat* were paid to; teaching and admonition on duties and responsibilities of individuals toward his creator, family members, neighbours and kinsmen, were factors that gave people of the Islamic community confidence, security and sense of belonging.

In the light of the above therefore, if justice and equality are established as fundamental rights in Islam, the following issues falling under the two concepts shall be examined in order to determine their relevance as fundamental rights in Islam.

Administration of Justice

Since the objective and purpose of Shariah (*maqasid al-shar'iah*) generally is the promotion of human welfare and prevention of harm (*maslaha*), administration of justice is an area where the Islamic legal system and Islam as a culture have excelled in the protection of human rights generally and particularly in the area of equality before the law and access to justice. The Islamic judiciary was established upon the guidance from the Qur'an.[35] It is a mechanism put in place to preserve justice.[36] In other to attain justice and equality in the administration of justice, equality of treatment and equality of opportunity are to be essentially considered especially when it comes to distributive justice. The rationale behind this is to create a non-discriminating avenue for everybody and a levelled playing ground for the exercise of their basic rights. Islam has given equal opportunity and equal treatment to all, both in the area of spiritual/religious observance and acts of worship otherwise called *ibadat* likewise the inter-human relationship and

[35] See Qura'n 4:59

[36] See Qura'n 57:25, Qur'an 4:105, Qur'an 42:15 and Qur'an 6:115

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worldly affairs generally referred to as *mu'amalat* (transactions). In the acts of *ibadat*, all are required to observe the five pillars of Islam in the same way without any segregation or preferential consideration on ground of gender, race, colour or language starting from *Shahada* up to the last pillar which is Hajj and no discrimination as to their reward in this respect.[37]/ Equal treatment is accorded to everyone in other aspects of life especially in the administration of criminal justice. The Prophet of Allah (S.A.W) formed the state of Madinah around the year 622 C.E.[38] The formation was the basis for the issuance of the Madinah Charter otherwise called the *Sahifah* of Madinah (the Madinah Constitution).[39] The state and Madinah Charter, under which rights and duties of every citizen were spelt out, for the main purpose of doing justice, giving equal treatment, equal opportunity and freedom to all in the state including the rights of the Non-Muslims and the Jews residing within the Islamic state. This was the first system of civic rule introduced by the Holy Prophet to the Arabian Peninsula which was described as follows:

> The state of Madinah was marked by high moral standard. It was the standard-bearer of Muslim behaviour and model for the implementation of human rights under Muslim religious state authorities. The Muslim statehood established by the Prophet in Madinah was the symbolic representation of the Islamic civilisation and Muslim brotherhood.[40]

Administration of justice in Islam has a viable structure and it is straight forward since the time of the Prophet. The Prophet (SAW) was a multi-

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[37] Qur'an 33:35

[38] See Maimul Ahsan Khan "Human Rights in the Muslim World: Fundamentalism, Constitutionalism and International Politics" (Dorham, North Carolina: Carolina Academic Press, 2003) at 146

[39] Ibid., 149. The Madinah Charter is the constitution of the city-state of Madinah and the first ever world written constitution. It was the grand norm of the state due to its binding effects on the people. It creates structure of the government and stipulates rights, duties and responsibilities of individuals and that of the government. It is hence regarded as the legal philosophy of the socio-political and economic system of the Muslim state of Madinah.

[40] Ibid., 167

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functional leader; he was not only a political and religious leader, but a judge who administered the law among the people impartially.[41] By the expansion of Islam in the peninsula, there was the need to appoint governors, military commander and judges to various parts of the land, the judges were independent of other functionaries and have autonomous power to discharge their duties while other functionaries were subjected to the jurisdiction of the judges.[42] Both the civil and criminal adjudication systems were laid down by the Prophet, and procedural rules and principles as well.[43] Examples of this were the appointment of Mu'adh bn Jabal and the famous rule of *ijtihad* formed there from,[44] the establishment of a special department known as *wilayah al-mazalim* conferred with special jurisdiction.[45] The administration of justice in Islam as laid down by the Prophet, was built upon by the *Kulafaa* (his successors) and it was tremendously improved upon particularly during the reign of 'Umar bn Al-khattab with particular reference to land mark development occasioned by his famous letter written to the then judge of *Basrah,* Abu Musa Al-ashari.[46] This is the platform upon which administration of justice is built in Islam.

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[41] See Muslim bn Al-hajjaj, "Sahih Muslim", (Beirut: Dar al fikr, 2003/1424), hadith no. 1829/4617 at 930. Also see Anwar Ahmad Qadri, "Justice in Historical Islam" (Lahore Pakistan: SH Muhammad Ashraf, 1980) at 3

[42] See Shamrahayu A. Aziz, R.K Salman, "Mechanism for Protection and Enforcement of Human Rights in Islam" in Abdul Ghafur Hamid @ Khin Maung Sein (ed.) Human Rights Law: International, Malaysia and Islamic Perspectives (Malaysia: Sweet & Maxwell Asia, 2012) at 371

[43] See Almawardi, Ali bn Muhammad, "Al-ahkam al-sultaniyyah", (Dar al-fikr, 1960/1380) at 77

[44] Ibid., at 67

[45] See Qadir, no. 34, at 10

[46] See Almawardi, no.35 at 71. See also M.A. Ambali, "The Practice of Family Law in Nigeria" (Zaria, Nigeria: Tamaza Publishing Company Limited, 2003) at 93

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Equality before the Law

Unlike the western doctrine of immunity from legal proceedings enshrined in most modern constitutions where it becomes the common feature that, a calibre of people are excluded from legal proceedings, ranging from their political status and other reasons. For instance, Akande[47] quoted the Attorney-General of the United State as follows:

> it is not upon any peculiar sanctity belonging to him as an individual, as it is the case with one who has royal blood in his veins; but it is on account of the office that he holds that I say the President of the United State is above the process of any court or jurisdiction of any court to bring him to account as President...[48]

In a similar mode, a category of people have constitutional immunity under the Nigerian Constitution. The constitution specifically under the doctrine of immunity protects the President, Vice President, Governor and Deputy Governor from legal proceedings of any kind while in office.[49]

In Islam there is no sacred cow, the ruler and the ruled, the rich and the poor, the male and female, the king and the servant are subject of the same law, appear in the same court and are subjected to the same punishment and relief. On theft, Allah did not separate woman from man for the punishment where He says:

> As to the thief; Male or female cut off his or her hands: A retribution for their deed and punishment from Allah, and Allah is exalted in power, full of wisdom.[50]

In a related instance, equal punishment is prescribed for man and woman in case of *Zina* (fornication) where Allah says in Suratun Nuur:

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[47] See Jadesola o. Akande, "The Constitution of the Federal Republic of Nigeria: with Annotations" (Lagos Nigeria: MJI Publishers, 2000) at 430

[48] See *Mississippi v Johnson* 71 (1867 U.S. 475, 484)

[49] See section 308(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

[50] Qur'an 5:38

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> The woman and the man guilty of fornication, flog them with a hundred strips:[51]

In addition to the fact that Islam emphasizes that criminal responsibility is of individual responsibility and no one shall be made liable for the offence committed by another,[52] the Prophet (S.A.W) manifestly exhibited the principle of justice and equality before the law in the case of the Makhzumi women who committed theft and became liable to corporal punishment. Prominent members of the noble clan of Quraesh who were interested in the case then sent Osamah bn Zaid to intercede before the Prophet on her behalf. The Prophet was said to have admonished them to the effect that act of injustice premised on preferential treatment, immunity for the noble ones before the law can cause destruction as it has caused it for the previous generation, then concluded that if his beloved daughter, Sayyida Fatimah, stole and it attracts corporal punishment, he will cut her hand.[53] The *Sahabah* followed this practice afterward, during the period of the first Khalipha, Abubakar (R.A), Umar Bn Khattab (R.A) despite his religious and political status, he appeared before Khalipha Abubakar in a case of custody of a child where judgement was given against him but in favour of his onetime wife from the *Ansar*.[54]

In a similar development, Umar as *Khalipha* was reported to have ordered an Egyptian to take vengeance from the son of 'Amr bin al-As, the then governor of Egypt and he further said this to the governor; "O 'Amr when did you start to enslave the people, though they were born free of their mother." Equality before the law is a unique feature of the Islamic judicial system from inception as Muslim leaders could be brought to court in both their private and official capacities; this confirms the independence of judiciary in Islam and its autonomy in the

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[51] Qur'an 24:2

[52] See Shamrahayu A. Aziz "Issues on Enforcement of Islamic Criminal Law in Malaysia" (Malaysia: Malik Teraju Ria, 2011) at 15

[53] See Muslim, no. 34, hadith no. 1688/4301, at 848

[54] Ambali M.A. *The Practice of Muslim Family Law in Nigeria,* (Nigeria, Tarmaza Publishing Company Ltd, 2003), 258.

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dispensation of justice. Other instances are the dispute that arose as a result of a horse purchased by Khalipha 'Umar who personally appeared in court and the case was adjudged impartially, an event which fetched the judge promotion by the Khalipha. Also, during the reign of 'Ali as the Khalipha, in the case of his war gown, judgement was given against him for want of evidence as the leader of the Ummah. The complainant in the case, a Jew, was impressed and confessed 'Ali's ownership of the gown and consequently embraced Islam.[55] Umar bn Khattab (R.A) during his reign as the second Khalipha of the Prophet was said to have imposed corporal punishment on his own son in a case of *Zina.*

Under the Islamic Criminal Justice, in other to see that justice is done to all without any prejudice, there are many recognised rights of an accused person such as: right to fair hearing, right to defence, right of presumption of innocence,[56] right to counsel and similar other rights during interrogation/ investigation.

Family ***Relationship***

Family is a small unit of the community; it comprises of husband wife or wives in polygamy and children. In a family set up, Islam made the rights of individual member explicit, justice is done by imposing duties on parties to the relationship by Allah through nature, and husband and wife should ordinarily consider themselves as two complementary beings in the discharge of their duties and responsibilities. For instance, the principle of Islamic law makes the husband the provider, the maintainer and the head of the family. Whereby he is duty bound to make available for the family: feeding, clothing, shelter and other required necessities of life for the maintenance of the family. While Islam placed the woman in an honourable position for the purpose of the biological responsibility of procreation, child upbringing and duty of

[55] See Qadri, no. 34 at 23

[56] See Shamrahayu, no. 33 at 93 where the author referred to Qur'an 17 verse 15 and Qur'an 28 verse 59 as the basis for the presumption of innocence in the Islamic criminal justice.

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protecting the interest and properties of her husband in his presence and in his absence. Qur'an says:

> Men are maintainers of women as Allah has made some to excel others and as they spend out of their wealth (on women). So the good women are obedient, guarding the unseen as Allah has guarded. And (as to) those on whose part you fear desertion, admonish them, and leave them alone in bed and chastise them. So if they obey you, seek not a way against them. Surely, Allah is ever Exalted, Great.[57]

This verse has although been interpreted in some quarter to claim man's superiority over woman, however the intent of the law giver is different taking cognisance of the *Sababun Nuzuul* (purpose of revelation) of the verse which borders on the settlement of domestic rift between a *Sahabah* and his wife. Islam made justice and equality condition precedent for the practice of polygamy as Qur'an permits polygamy but with a proviso that equality and just treatment must be maintained among the wives, otherwise, monogamous home should be maintained.[58] The notable difference in the duties imposed on individual members of the family connotes justice in Islam. This is because Islam takes into account the natural differences in the creation of man and woman. Men are stronger in nature while women are naturally the weak party, and this is why the most rigorous duty of maintenance is placed upon man.

Gender Equality

Islam has suffered constant attacks from the Western feminist on accusation of gender inequality on marginalisation of women in some areas of life. A poser is that, which other system could be said to have done justice to women more than Islam?. History has shown that Islam has come to give everybody his due right without discrimination. It is on record that Islam came over one thousand four hundred years ago to emancipate women from oppression by liberating them from been considered as property to be inherited. Women were also rescued from

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[57] Q 4:34
[58] Q 4:4

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been buried alive as prevailed during the *Jahiliyyah* period (period of ignorance).

The protagonists of gender equality want men and women to be treated exactly the same way in the society, disregarding the natural factors such as: strength, ability, disability and morphological nature of individuals in the discharge of their societal responsibilities.

In maintaining equality and justice, Islam has placed every human being on equal footing in general obligation especially in the area of religious functions without discrimination on account of colour, race, sex or language.[59] Man is made the maintainer and the head of house hold for the purpose of discharging social responsibility placed on him, and this does not render women inferior to men in this regard. This is ordinarily just, because two persons cannot head an institution at a time, as two persons cannot lead a particular congregation at a time.[60]

Inheritance ratio in Islam is a specific area of attack by the West in their agitation for gender equality, claiming that Islam is unjust to female due to the ratio allotted to them in the Qur'an.[61] It is ideal to note that Allah provides for every one according to the responsibility He places on him;[62] men have heavier social economic burden to discharge as the head, maintainer and provider of the family. It is noteworthy that in the light of the provision of Qur'an 2:221 and Qur'an 60:10, it the consensus of the jurists that a Muslim woman is prohibited from marrying any non-Muslim man, while Muslim men are permitted to marry women from 'the people of the book (Christian and Jew). This from the western human right ideology is discriminatory.[63] But the argument of the jurists in justifying the position of Islam here is that, under the Islamic law a Muslim man who marries a non-Muslim is under obligation to respect her religion and ensure she is free to practice same. While men of other religion are not under the same obligation; hence, the

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[59] Q 33:35
[60] Q 4:34
[61] Q 4:11 & 176
[62] Q 2:286
[63] See the General Comment 28, para. 24 of the HRC

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justification is proclaimed to protect the religious rights of Muslim women.[64]

The general rule of inheritance is that the male gets a portion equal to that of two females, a rule which is considered inconsistent with the western principles of equality for women. As a matter of exception, there are some instances where the female gets the same share of inheritance with male. That is particularly found in the (a sixth) share of a father and a mother each, who survive their son as parents.[65] Also a uterine sister gets equal share with her uterine brother[66] and so many other instances of such in the Islamic rule of inheritance. Similar instances are found in the issue of dissolution of marriage where the western advocate of gender equality advocates for equal and the same ground of dissolution of marriage for both men and women. However, under the Islamic law, dissolution of marriage could be initiated by both man and woman but the procedure is more favourable to man than woman in his unilateral right of repudiation of marriage (*talaq*). This has been premised on the fact that, it is men who usually propose marriage; he pays the dowry and stands as the security guard who stands firm to address difficulties in the relationship.[67] Rather than the western idea of gender equality, gender equity is emphasised in Islam, because in Islam gender equality is a mirage as it is not realisable due to the different responsibilities given to men and women.[68] While specifying duties and responsibilities of husband and wife with emphasis, Allah says;

> The mother shall breastfeed their offspring for two whole years, if the father desires to complete the term. But he (the husband) shall bear the cost of their food and clothing on

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[64] See Mashood A. Baderin, "International Human Rights and Islamic Law", (New York: Oxford University Press, 2003) at 144

[65] Qur'an 4: 11

[66] Qur'an 4: 12

[67] See Baderin, no. 56 at 150

[68] Umar A. Oseni, Yusri Mohamad "Islamic Human Rights versus International Human Rights instruments" in Abdul Ghafur Hamid @ Khin Maung Sein (ed.) Human Rights Law: International, Malaysia and Islamic Perspectives (Malaysia: Sweet & Maxwell Asia, 2012) at 353

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equitable terms. No soul shall have a burden laid on it greater than it can bear. No mother shall be treated unfairly on account of her child, nor father on account of his child.[69]

Provisions of International Instruments on Justice and Equality

International Instruments like Universal Declaration of Human Rights (UDHR)[70] Convention on the Elimination of all forms of Discrimination Against Women (CEDAW),[71] and Universal Islamic Declaration of Human Rights (UIDHR)[72] are of great importance in the discourse of justice and equality as fundamental rights in Islam. Ordinarily the paramount objectives of these Instruments should be seen as ensuring the establishment of welfare states across the globe. In the attempt to achieve this, the instruments have common features in the area of equality and dignity of human being by virtue of creation as a free born. The preamble to the UDHR declared the recognition of the inherent dignity, equal and inalienable rights of all members of the family as the foundation of expected freedom, justice and peace in the society. This is

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[69] Qur'an 2:233

[70] This is the first and mother of all other human right rights instruments of the modern day, it was a declaration issued after the successful conduct of the "Congress of Europe" held from 7-10 May, 1948 and subsequently adopted on the 10th of December, 1948

[71] This is a United Nations' instrument adopted on the 18th of December, 1079 but came into force as an international treaty on 3rd September, 1981

[72] This a declaration made in Paris on the 21st Dhul Qa'dah 1401(19th September, 1981). This Declaration was the second fundamental right document proclaimed by the Islamic council, the first one was the Universal Islamic Declaration announced in 1980, at the International Conference on the Prophet Muhammad (S.A.W) and his Message, held in London. Just like the Cairo Declaration, this Declaration is based on Qur'an and Sunnah and it is aimed at ensuring and upholding the dignity already conferred on mankind some fourteen centuries ago. It is focused on the same objectives like the Cairo Declaration especially in the area of protecting man against injustice and oppression, and to serve as a guide to Muslim countries in preserving and ensuring the rights of citizen in all aspect of life.

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corroborated in articles 1 and 2 of the instrument.[73] It recognises equality before the law and equal protection of the law as rights accrued to all.[74] CEDAW on its part is sectional in nature, it is specifically meant to protect the right of women although its preamble re-affirmed the United Nations' Charter on equal right of men and women. The convention maintained the concern that, in situation of poverty, women have the least access to food, health, education, training and employment opportunity. Hence, it canvases for the change in the traditional role of men and women in the society as the appropriate measure to achieve the purported equality between men and women, with a view to eliminating discrimination against the women fold of the society. The convention calls for policy and incorporation of the legal framework in the national constitutions of the states. Also states are required to put other necessary machineries in place for the enforcement and protection of the rights of women against discrimination of all kinds.[75]

The UIDHR on the other hand is an instrument composed in line with the Qur'an and Sunnah of the Holy Prophet. It recognised that human rights are decreed by the Divine Law and the same is aimed at conferring dignity and honour on mankind, also to eliminate oppression and injustice in all forms. And by virtue of Divine source of these rights, they can neither be curtailed, abrogated, disregarded surrendered or alienated by authorities, assemblies or any other institution.[76] Taking cognisance of the differences in the nature of men and women, the instrument among other rights guaranteed equal rights to justice,[77] right to equality and prohibition against impermissible discrimination.[78] The instrument provides generally for the rights of men and women in accordance with the dictates of Islam, and specifically provides for specific rights of both in area where Allah has designated duties on

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[73] Article 1 and 2 of the UDHR
[74] See article 7 of the UDHR
[75] See articles 1 and 2 of CEDAW
[76] See the preamble to the UIDHR
[77] See article 4 of the UIDHR
[78] See article 3 of the UIDHR

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them.[79] All the above referred instruments have uniformity in the area of preservation of human life, equality before the law, right to justice, right to personal security, right to education and other necessities of life[80].

As there are areas of convergence in the instruments, there are also some points of divergence. [81]The provisions of UDHR and UIDHR on the above issues are in conformity with the Islamic principle, for example human equality and dignity by creation as contained in Qur'an 49:13 and Qur'an 17:70. On the issue of family relationship, other instruments uphold the Islamic doctrine of man as the head, maintainer and the provider of the family, except CEDAW which canvasses for outright equality of man and woman in all aspect of life including the same responsibilities during marriage and at its dissolution, maintenance of home, guardianship of children e. t. c. It also intends to abrogate the concept of *Waliyyun Nikah* (marriage guardianship).[82]

Conclusion

The goal of Islam as a religion upholds the concept of justice and equality purposely to establish peaceful co-existence among human beings, despite the undisputable natural differences in them. The historical testimony of Islamic principle on abolition of slavery is a proof justifying justice and equality in Islam, the respect Islam accords women in the area of preservation of human dignity through the early Islamic women liberation over a thousand year ago is another. The promise of the same reward for every Muslim without sexual discrimination, non existence of principle of immunity for any person under the law, subjecting the rulers and the ruled, the rich and the poor, the strong and the weak to the same legal obligations and penalties, are strong and incontrovertible evidences of justice and equality among human beings in Islam.

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[79] See generally articles 1-23 of the UIDHR

[80] Article 2,3,7,UDHR., I(a, b), articles 7, 8, 9, 10-13 of CEDAW and articles II,III,IV,V, and XXI ,of the UIDHR,

[81] Umar A. Oseni, Yusri Mohamad, no.68 at 344-347

[82] Article16. 1(a, b, c, d and f)

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If Islam has these as its cardinal principles, which other system or culture could be said to have done more justice and equality to human being than Islam.? Moreover, if these have been the manner at which Islam has maintained justice and equality from the period under reference, then the present agitation for gender equality can only be regarded as western propaganda and ill motivated mission towards Islam. To buttress this further, it has been observed by Javaid and Susan that the United Kingdom as one of the world powerful advocates of human right has not deem it fit to incorporate by way of domesticating into its domestic legal system, the International Covenant on Civil and Political Rights (ICCPR) 1976. Furthermore, the United Kingdom has refused to undertake many of the obligations in the European Human Right System, for instance, non ratification of protocols 4, 7 and 12 to the European Convention on Human Rights (ECHR), which substantially ensure an independent right of equality and non discrimination.[83] Islam has taken good care of human rights, after all, human beings never bargained for all the blessing of Allah Who has designed the best living packages for mankind. Also the reason why *Shariah* was revealed is to give *rahmah* to mankind[84] through the Islamic message as Qur'an says, "we have not sent you except to a blessing for the world"[85]

If we therefore totally submit to His ways and unequivocally follow His commandments, we will have less or no evil and tranquillity will overwhelm our private life and we will reside in peaceful society. This is Allah's promise where He says:

> ...And for those who fear Allah, He (ever) prepare away out, And He provides for him from (sources) he never could expect. And if anyone puts his trust in Allah, sufficient is (Allah) for him. For Allah will surely accomplish His purpose: Verily, for all things Has Allah appointed a due proportion.[86]

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[83] Javaid Rehman & Susan C. Breau, 'Religion, Human Right and International Law' (ed), Leiden, (Martinus: Nijhoff Publishers, 2007) p.548-549.
[84] Ramizah Wan Muhammad "Islamic Criminal Law and Human Rights" in Abdul Ghafur Hamid @ Khin Maung Sein (ed.) Human Rights Law: International, Malaysia and Islamic Perspectives (Malaysia: Sweet & Maxwell Asia, 2012) at 390
[85] Qur'an 21: zz107
[86] Qur'an 65:2-3

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