

the Nigerian Law: A Book of Readings



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PART II ISLAMIC LAW ISSUES

CHAPTER THIRTY-NINE ISLAMIC LAW POSITION ON CULTURE

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Summary of the Chapter

Islamic law treats matters of cultures on various platforms with various rules of law based on various circumstances and situations. The issue of imitation is also germane to the issue of cultures upon which nations, races, states and individuals are converging. This chapter therefore examines the notion of culture and the Islamic Law position on the constituents of a good and acceptable culture under Islamic Law.

Introduction

Islam came with a complete system that touches every aspect of human life. It superseded all systems before it and brought a legal system that become guardian over all other systems and cultures. This legal system is known as *Shariah*, i.e. Islamic Law. All laws and cultures before it imbibe Islamic forms. It created for all Muslims one community known as "*Ummah*" in which cohesion and vitality were embedded throughout its long unremitting history. The centre of this unifying force is the statement:

"I certify that there is no deity except Allah and that Muhammad was the Messenger of Allah (S.A.W)".

Every Muslim realized that his entire life's activities have been organized into a meaningful whole by this divine pattern. The sovereignty of Islamic community might change from one dynasty to another, in time and place, nevertheless, the unity of the community remains in continuity until Islam will be able to build on the earth the kind of social order that the divine imperative prescribes.

Concept of Culture
Culture is known as *adat* in Arabic language which stands for customs of group of people, tribe or nation. Under the Islamic Law, customs are recognized but divided into two: Acceptable customs and Non-acceptable customs. Any custom that goes contrary to the dictate of Islam is known as *Jahiliyyah*, i.e. ignorance. The Qur'an used this word severally to describe the practices of the unbelievers before the emergence of Islam.¹ Ibn Taymiyyah stated:²

Al-Sunnah al-Jahiliyyah means every custom that they (the unbelievers) were practicing, because the Sunnah is Al-Adah (i.e. custom) which is a way that many people follow, whether among their rituals or as part of their religion or otherwise.³

Allah says in the Qur'an:

Indeed there have been Sunan before you.

Muhammad Qutub also define *al-Jahiliyyah* as "a psychological trend that refuses to follow God's guidance and a social order that rejects to adjudicate with what Allah revealed".⁴ He further argued that it is not, as many people thought it, to be the knowledge, materialistic civilization, or mass production.⁵ From this concept, we can see that culture is not attached to any particular era or specific place. As it can be attached to the past eras, it can also be affiliated to the present and future times whenever the people refuse to be guided by Allah's guidance and deviate from His laws. They are in *Jahiliyyah*.⁶

¹ See Qur'an 33: 33, Qur'an 3: 154, Qur'an 5: 59, and Qur'an 48: 26.

² Ibn Taymiyyah, 1369 Hapudha'Ul-Siratal-Mustaqim, Al-Sunnah Al-Muhammadiyah Press, pp. 76-77.

³ Qur'an 3: 137.

⁴ Qutub, M. 1364H *Jahiliyyah al-Qami d'Dahm*, Maktabat Wahbah, p. 8.

⁵ Ibid.

⁶ See Ibn Taymiyyah, p. 162.

Islamic Law Position on Culture

In the Qur'an as well as in other revealed books before it, there are cogent evidences which prove that mankind is generated from one single soul in person of Adam then in connection with Hawa.¹ These evidences are perfect proof that the background of mankind in all aspects of their performances is one. Therefore, investigation to the conflict and differences in culture of nations is traceable to some circumstances and occurrences of events which are subjects of instances not of initial origin. The Qur'an made it clear where it says;

Mankind was one single nation, and God sent messengers with glad tidings and warnings; with them He sent the book in truth, to judge between people in matters wherein they differed;²

This verse certified that human beings are of one nation with regard to their origin, and that the Messengers were sent to adjudge among people in matters they differed. Thus, the differences of opinions tantamount to differences in understanding and perceptions which developed to ideologies and consequently what we now know as cultures which emerged in different offshoot to be claimed by different groups whom in a short time were to be known as different nations.

Eventually, the differences persisted among the people by the wish of their Creator, Almighty Allah, for another reason of betterment for mankind.³ The Messengers were sent in conformity with situation at hand successively, to the nations to adjudge among the people, in matters they differed until the last message came in the whole spirit of Islam which accomplished the divine orders and supplanted previous messages. The task of the Messengers concentrated on adjudication of these differences in ideologies, admirations, and inclinations which later ramified into cultures and civilizations. Our concentration in this treatise shall be on non-Muslims cultures and the *Jahiliyyah* cultures of Muslim people. From the concept we have explained that time lag has no significance in the determination of what is *Jahiliyyah*. The determinant factor is the nature and characteristics of the very cultures whether they are in harmony with Allah's guidance and His laws or otherwise. The cultures generally are matters of mundaneness, religion or morals.

¹Qur'an 4:1 passing.

²Qur'an 2:213

³See Qur'an 49:13 where it is said that mankind are created from a single pair of a male and female and they are made into nations and tribes that they may know each other.

We shall take them one by one in the following paragraphs. But we should remark that the cultures of non-Muslims and that of old cultures of the Muslims which belong to the period of *Jahiliyyah* before they became Muslims are branded the same as *Jahiliyyah*. Thus, we are discussing them as one group.

The Mundane Culture:

Even in the mundane cultures, there is obvious evidence that cultures can be conveniently divided into good or bad cultures. Islamic law always encourages its adherents to search for the goodness and obtain it wherever it is found. Therefore, the goodness in the cultures of non-Muslims and in their past customs can be obtained and utilized by the Muslims. This rule covers all areas of scientific discoveries, inventions, industries, engineering, administrations, commerce, military hardware and technology which are mundane in nature. The utilization of these sciences are only acceptable after they have been purified from heathenish notions and adapted to Islamic tincture.

The beneficiary parts of these cultures are categorized in Islamic law into two major divisions, viz;

- i. What its acquisition is compulsory; and
- ii. What its acquisition is permissible

The first division contains what Muslims are seriously in need and upon which most of their activities depend. The acquisition of this category becomes necessary like military artilleries and scientific discoveries and inventions. Thus, everything the Muslims are in need of, is compulsory to be acquired, since they cannot be made available except through them. The jurists stipulated that these cultures must not in any way result into relinquishing of Muslims' faith or lead them to the adoption of amount of their heresy or heathenism or indulging them into erotic bargaining, or forbidden contract. Imam al-Chazali averred:

...that they are in need of it and it may become Fardh al-Kifayah (i.e. semi-obligatory) when some sufficient people acquire them according to the need."¹¹

A practical example can be drawn from Prophet Muhammad's act (S.A.W) when he wanted to flee to Medina (in his Hijrah) he hired Abu al-Urayqat al-Duali to be his guide and the later was by then, an believer. Another example was in the case of the captive of war who were asked to teach the Muslim the knowledge they knew as the price of their ransom. Mustapha Sadiq al-Rafi'i argued that there is large difference from taking sciences and inventions and taking of the flattering of modernity and whims of other people.¹² Abu al-A'la al-Mawdudi also supported this argument and concluded as follows:

But instead of this, if we copy them in their dress, their way of living, eating and drinking with assumption that these are the factors of their success and development, then that attitude shows stupidity from our part."¹³

However, this division is very limited because Allah commands Muslims to take all means which will lead them to competence, self-sufficiency and to be dispensable in all what is in the possession of the unbelievers.

The second division is permissible culture which carries no necessity, except for the sake of knowledge. Although, Muslims are allowed to know them but it should not be to the extent of indulgence and imitation, because imitation is always forbidden. Imam Hassan al-Bana asserted that Islam does not prohibit us

¹¹ Al-Ghazali: 1377H. *Buyut al-Din al-Qadim*, Halabi Press, Cairo, Vol. 1, p. 17.

¹² See Muhammad al-Amin M. M. Al-Sayid, 1344H, *Adab al-Fuqah al-Islami al-Qadim al-Qadim*, Vol. IV, Al-Madani Press, p. 412.

¹³ See his book, *Ma'ad al-Qadim*, Dar al-Andalus, Beirut, Vol. III, p. 203.

¹⁴ See *Al-Furqan fi Manaqib al-Islam*, Dar al-Andalus, Beirut, 1391, pp. 165-166.

from acquiring any beneficial thing or to obtain wisdom where ever we get it, but it forbids us to imitate in any way those who disbelieve Allah; or to throw away the belief in Allah, His obligations, decrees and injunctions.¹⁴

The Religious and Legal Cultures

Islamic law affirms its supremacy on matters of a ritual and legal institutions, tenets, fundamental issues, ideologies, philosophy and concept of creation and life. It gives no room for liberality. The acquisition or imitations of non-Muslims or old Muslims cultures are *perfectly* forbidden. An acquisition of anything from these cultures is tantamount to renegade. And if the acquirer believes its truthfulness or he inclines to it as part of his faith, the inclination becomes heathenism itself. The acquisition could not be lesser than to be an act of *Haram* (i.e. forbidden) when the acquirer is ignorant of the essence and implication.

There are many textual evidence in Islamic law that emphasize this stand. It was narrated by Jabir that the Prophet (S.A.W) said:

*Do not ask the people of Books (Jews, Christians and their likes) of anything, for they cannot guide you when they themselves have strayed. If you follow them, you either believe a lie or you deny a truth. And if it is happened, I swear by Allah, that if Prophet Musa is to be alive among you, it will not be lawful for him unless to follow me.*¹⁵

The reason why we are warned in following the people of books is clear. Firstly, as an Arabic proverb says: "He who lacks something cannot give it to another". Similarly, he who has gone astray cannot guide another person to the right way. Secondly, if we even do ask them, we either deny a truth or believe a lie because they have altered many things in their books. And it is obvious that either of the two ways is a clear misguiding.

¹⁴ *Rasa' al-Imam Hasan al-Banna*, Dar al-Andalus, Cairo, p. 307.

¹⁵ See Imam Ahmad, *Musnad Ahmad*, Vol. II, p. 338.

In another warning, it was narrated from Abu-Sa'id al-Khudari who said that the Prophet (S.A.W) said:

*You will follow the paths of those before you, measure by measure and span by span... even when they enter a hole of lizard, you will follow them. They (the companions) asked, O Messenger of Allah! are they the Jews and Christians? He replied, "Who are they if not them?"*²¹

These warnings are very necessary because the specific forms of religion and law have their sanction in *tawqif*, i.e. the authoritative teaching of Allah. This element of *tawqif* is the real distinction of religion which accommodates neither debate nor alteration to add or to omit. The principle here is, 'You worship Allah but by what He ordained'. The people of book had been condemned for this unauthorized practices in religion. The Qur'an states;

*Say, O people of the Book! Exceed not in your religion the bounds (of what is proper) trespassing beyond the truth, or follow the vain desires of people who went wrong in times gone by, who misled many and stayed (themselves) from the even Way.*²²

The warning was also given to our Prophet, Muhammad b, Abd-Allah (S.A.W) in which his followers are included. The Qur'an states:

*Then We put you on the (right way of Religion (Shariah)) so follow that (Way), and follow not the desires of those who know not. They will be of no use to you in the sight of God; it is only wrong-doers (that stand as) protectors, one to another; but God is the Protector of the Righteous*²³

In this verse, there is a clear evidence that our *Shariah* has been given to us, we either follow it and recorded among the righteous or we follow the desires of wrong-doers then the protection of Allah misses us by our whim.

²¹ Al-Bukhari, Sahih al-Bukhari, Kitab al-Isam
²² Qur'an 5:77

To that, no leniency in the matter, it was narrated that when Prophet Muhammad (S.A.W) saw Umar b-Khattab reading from *Tawrat* (the book revealed to Prophet Musa) he was frown at him and said; "If Prophet Musa was to be alive among you, it will not be lawful for him except to follow me".²⁴

Another practical example is in *Adhan* (i.e. calling for prayer) when the Prophet Muhammad (S.A.W) was pondering on how to gather the Muslims for congregational prayer. His disciples mentioned to him the using of trumpet as the Jews used to do and it did not appeal to him. They also mentioned the bell of the Christian church to him, and it was not admired to him. Later on, Allah showed *Al-Adhan* to some of his disciples as a sign of calling for prayers.²⁵ This distinct Muslims to both Jews and Christians in their calling for prayers. It was also narrated by 'Amr b. al-'As that the Messenger of Allah (S.A.W) said: "The difference between our fasting and that of people of Book is eating of *al-Sahur* (i.e. last meal before daybreak during the month of *Ramadhan*).

These injunctions speak of prohibitions of following or imitation of Jews and Christians, as they are many injunctions too which prohibit the following the unbelievers. For example, the Qur'an says;

*Therefore, do not follow the unbelievers, and strive against them a mighty striving.*²⁶

The injunction is very clear and direct. The striving with the unbelievers must be utmost striving. Islam has brought *Shari'ah*, i.e. a system of laws which cover human life from his cradle to his grave. Islam has to break away from all cultures that did not bow down for its legal system as a religious and political complex. As the repository of the will of Allah, it insisted on the assumption of political power. *Shari'ah* gives room for assimilation of cultures into an Islamic framework.

²⁴ See the Narration in Sayid Qutub, Fasil al-Qur'an, Vol. II, Part IV pp.20-21.

²⁵ See Muslim, Sahih Muslim, Kitab al-Salat, Subayh Press, Cairo, Vol. II, p.2.

²⁶ Qur'an 25:52

Thus, it conferred upon itself a distinctive character of Muslim culture and defined its limit.²² Part of this limit is the rejection of all ethnocentric views of humanity and acknowledge man to be the vicegerent of Allah, free and responsible to realize his cosmic function. *Shari'ah* has its own system of value to which every culture is subjugated and it is a public law known to everybody.

The Moral Cultures

The morals are matters consist of etiquette and sources of ethics, literature, custom, art and dramatic products, etc. Islamic law adjudges them upon their individual merits. This is due to kaleidoscopically nature of these affairs. They can however, be divided into three categories.

- i. The customs and morals that are anathema to the principles of Islamic Law, or antagonizing to its foundations, or they are among the cultures that the law-Giver, Allah, has prohibited by His ordinance, fall into *Haram*, i.e. prohibited acts.
 - ii. The custom that their nature are hidden or ambiguous are to be considered among *Makruh*, i.e. distasteful acts.
 - iii. The customs that are considered as supererogatory in nature and they can be dispensable at will are considered to be among *Mubah*, i.e. optional acts.
- The glaring example of this aspect of cultures are in *Surat al-Nur*, i.e. chapter 24, of the Holy Qur'an where Allah promised to establish for the believers their religion which he has chosen for them.

²² See Sayid Qutub, op. cit., Vol II, pp. 26-27

The promise came up in verse 55 of the chapter and from Verse 58 to Verse 64, the promise was fulfilled. Numerous aspects of morals are ordained and explained among them are the following;

- i. Specific three times of the day are made private for the mature Muslims. The three times are (a) before Morning Prayer at the dawn, (b) at midday, time of siesta; (c) after the prayer of the nightfall. Your maids and the underage among your children and servants are required to seek for your permission during these three periods of the day. Ordinarily, every mature person must seek permission before entering into another person's lodging.
- ii. Permission is granted to the women of advanced age who are no more interested in marriage to put off their clothes but without displaying their beauty and ornaments though restraining is better for them.
- iii. Ethic of eating together or separately in one's relative house or friend is also explained and ordained.
- iv. The decorum required from the disciples to the Prophet in discussion of momentous affairs, as well as general respect for his position as their spiritual leader and the Messenger of Allah to them, was explained.

With these verses, Allah has bestowed upon the Islamic *Ummah* His abundant mercy by showing them the moral aspect of their life instead of leaving them at mercy of other nations.

The Prophet (S.A.W) in playing his role of exemplary and guide to his *Ummah*, he warned us against imitations of other nations in the matters of morals as he did in ritual and religious matters. Examples are eating from golden plates and cups; wearing of pure silk; attachment of hair for ladies; celebration of feast; and greeting by indication of fingers or hand. The nature of the warning indicates the type of rules of law that applies to the act in question.

For example, in the case of building mosque on the grave tomb, when Ummi-Salama and Umm-Habibah informed the Prophet (S.A.W) what they saw in a church in Ethiopia land with various pictures of ancestors, the Prophet (S.A.W) replied them; "Verily those people usually when a Pious person died among them, they build church on his tomb and drew the picture inside the church. They were the worst creatures before Allah in the Day of Resurrection."²³ This hadith shows that this custom is *haram*, because it subjects the doers to be among the worst creatures whom worst punishment is awaiting.

The greeting by indication of fingers is a custom of Jews, while greeting by indication of hand is a custom of Christians and the Prophet (S.A.W) prohibited us from these practices where he said;

*It is not among us who imitates another nation rather than us. Neither imitate Jews nor Christians, for the greeting of Jews is indication by fingers while the greeting of Christian is indication by hand.*²⁴

It was also narrated in matter of attachment in weaving hairs, a rampant custom among ladies. It was narrated by Jabir (R) where he said that the Prophet (S.A.W) warned women against attaching anything to their hairs.²⁵ The neglecting of wives during menstruation is among the customs of other nations which it was stated that Jews regard women in their menses as routine thing of which it is needed to be kept off. But when the companions asked about this custom from the Messenger of Allah (S.A.W), he replied them: "Do to them (during their menses) everything except intercourse".²⁶

²³ See Al-Shawkani, 1383H, *Tajfir Fatah al-Qadir*, Halab Press, Cairo, Vol. V, p. 302.

²⁴ Al-Tirmidhi, *Jami' al-Tirmidhi*, Al-Muktabah al-Salafiyyah, Madinah, p. 119.

²⁵ See Muslim, *Sahih Muslim*, Vol. II, p. 254.

²⁶ Ibid, Vol. I, p. 169.

The celebration of feasts is another rampant custom. Most Muslims find it difficult to differentiate between Islamic feasts and non-Islamic feasts. The teaching of *Shari'ah* in this regard is in the hadith narrated by Anas b. Malik (R.) who said: "The Messenger of Allah (S.A.W) came to Al-Madinah and the Madaness had, as feast, two specific days which they used to play in them. The Messenger asked them, "What are these two days?" They replied, "We used to play in them since the period of *Jahiliyyah* (i.e. Pre-Islamic era)". The Messenger of Allah (S.A.W) then replied them: "Allah has changed them for you with better days; *Al-Adha* day and *Al-Fitr* day."²⁷ It is clear in this hadith that the Prophet (S.A.W) nullified their previous two days of feast and directed them to adhere to Islamic Feasts. Similarly, it was narrated from 'Umar b. Khattab (R.) where he said: Distance yourselves to the enemies of Allah in their feasts".²⁸

The mentioned customs and etiquette of past nations are like atoms in their numerous cultures which Islamic law nullified and they are *haram* for the Muslims. This is because the nullification comes from the legislator of *Shari'ah* and it is not a matter of *Ijtihad*.

Conclusion

We have delved into the position of Islamic Law to the cultures of non-Muslims and the old cultures of the Muslims before Islam. Although the subject-matter is a very wide area, we have endeavoured to bring out the major aspects and divisions of cultures from legal perspective of the *Shari'ah*.

We explained in the concept what cultures are known to be under the Islamic law when they are anathema to it. The word *Jahiliyyah*, i.e. ignorance was designated for all un-Islamic cultures by the Law-Giver, Allah in His book, the Holy Qur'an. Nevertheless, Islamic law accommodated many cultures that are beneficent to mankind in their totality. Islamic law abhorred any culture that affiliates to heathenism and disbelief, and prohibited all believers from its imitation.

²⁷ See Ibn Taymiyyah, *Iqtadha'u al-Sir'at al-mustaqimah bi Mukhobot a'zhab al-Jahim*, pp. 76-77.

²⁸ Ibid p. 77.