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AN EXPOSITION OF HUMAN RIGHT TO FREEDOM OF SPEECH UNDER THE ISLAMIC LAW

By

Abdulqadir Ibrahim Abikan (Ph.D)*, Ahmad Hussain Folorunsho**
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Abstract

Freedom of speech is one of the most important but highly controversial items of the discourse on Human Rights. Yet, little attention is paid by Muslim researchers into its basis, application and implication in Islam or its compatibility with the western notion of the rights. Western scholars also write-off the basis of freedom of speech in Islam, much as they do with other heads of Human Rights. This article therefore traces the origin of the right to the sources of Islamic law and practices of the early Muslim and debunks the claims of its western origin. It concludes by distinguishing the existence or otherwise of the rights, in law, whether written or unwritten, from its uphold by a government.

Introduction

Freedom of speech is the ability of the members of society to express their ideas, opinions and information without hindrance or restriction either from government or individuals or group members of that or other societies. This ability is an essential tool for advancement of knowledge and societal values as well as checking the excesses and aberration of both the government and individual members of the society. Whether in form of written, oral or symbolic expression, speech has remained an important means of testing an individual self-development. It is a vital component of human dignity and a vocal point of personal development. The extent to which a nation preserves and protects this freedom for its citizens also speaks volume of the quality of its governance while the receptive nature of a people to the freedom among themselves and others epitomises the level of their civility. Western scholars have always laid claim to the conceptualisation, establishment, preservation, protection and promotion of human rights including human right to freedom of speech. The claim is premised on the notion that efforts to enact legal instruments recognising the rights were initiatives of the western world. Such instrument include the Charter of Rights issued in England by King Conrad II in 1037¹, recognition of the principle of Habeas Corpus² by King Alphonso IX in 1188, the Magna Carta of 1215 and

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¹ Reference to these instruments reflects the commencement date of the Western perception of human rights as opposed

to the popular misconception of Magna Carta of 1215 being its precursor, see A translation of Magna Carta as confirmed

by Edward I with his seal in 1297, available at

http://www.archives.gov/exhibits/featured_documents/magna_carta/translation.html

² Habeas Corpus, a Latin phrase meaning "you have the body" is a judicial mandate to a prison official ordering that an

inmate be brought to the court so that it can be determined whether or not that person is imprisoned lawfully and whether

or not he should be released from custody; in *Brown v. Vasquez*, 952 F.2d 1164, 1166 (9th Cir. 1991), cert. denied, 112

S.Ct. 1778 (1992), the court observed that the Supreme Court has recognized the fact that the writ of habeas corpus is the

fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action, see also

Eshugbayi Eleko v. The Officer administering the Government of Nigeria and Anor. (judgment delivered on Tuesday,

the 19th day of June 1928 by the Judicial Committee of Privy Council); and *Harris v. Nelson*, 394 U.S. 286, 290-91

(1969).

the English Bill of Rights 1689 which clearly defined fundamental human rights. Other documents include the American Charter of Rights issued on the eve of the American Declaration of Independence 1776 and guaranteed freedom of press, creed and right of legal proceedings in the court of law. The French Declaration of Rights of Man and of the Citizens was made in 1789 while the First Amendment to the American Constitution was made in 1791.³

The end of the First World War witnessed incorporation of the fundamental human rights in the constitution of many European countries and the trend which continued after the Second World War culminated the United Nations Universal Declaration of Human Rights (UDHR) in 1948. It is conceded that many Muslim nations and non-governmental organisations formally adopted the concept during the 1948 Declaration. This explains why the adoption in their constitution, in most cases, follows the letters and criteria of the UDHR save for the introduction of some Islamic principles and the use of Islamic law (Shariah) as a tool for limiting the scope of its exercise.⁴ According to Mayer, Saudi Arabia stands out exceptional in this type of adoption as its representative at the United Nation argued against and abstained from voting for the adoption of UDHR for being at variance with the culture of the Eastern nations and violation of Shariah by some of its provisions⁵. Its constitution also declared Quran and Sunnah as its basic law while it merely give a general guarantee to human rights⁶. Nonetheless, it has been a prominent party to some of the forums where such adoption was made⁷.

This trend of events has been used as the basis by the western and westernised scholars and writers⁸ for comparing the status of human rights under the 'international law' vis-à-vis the Shariah. They have concluded, as will be shown later, that the notion of human rights is a western conception of the 18th and 19th century. That the notion is alien to Islamic law and that the attempts by the modern Muslim scholars to adapt UDHR to prove the existence of the concept in Islam are arm-twisting efforts⁹.

Freedom of speech is one of the most important and highly controversial items of the discourse on human rights. But little attention is paid by the Muslim researchers into its basis, application and implication in Islam or its compatibility with its western notion. This is most probably because of the overwhelming nature of the debate on the proprietorship of the concept as a whole and the sweeping influence its campaign from the west is having on Muslim nations and people. It is against this background that this research examines the concept of freedom of speech in Islam. It is conducted in four parts

³ Muhammad Razi Khan Afridi, *Hadith on Human Rights*, (New Delhi: Anmol Publications PVT. Ltd., 2008), p. 224.

⁴ see for example, Article XII, Universal Islamic Declaration of Human Rights (UIDHR) 1981; Article 22, The Cairo Declaration, 1990; Article 24, Constitution of the Islamic Republic of Iran and Article 25, Constitution of the Republic of Sudan, 1998.

⁵ See Mayer, A.Z., *Islam and Human Rights: Tradition and Politics*, (London: Pinter Publishers, 1991), p.218

⁶ See for instance, Articles 1 and 26, Saudi Arabia Constitution, 1992.

⁷ The country participated in Cairo Declaration of 1990; see Article 22, the Declaration.

⁸ Like Mayer A. Z., *Islam and Human Rights* Op. cit.; An-Naim, A. A. *Islam and the Secular State*, (USA: Harvard University Press, 2008); and Tibi, B., *The Challenge of Fundamentalism: Political Islam and the New World Disorder*, (Berkeley: University of California Press, 1998).

⁹ See Ali Salman, *Human Rights and Islam: Some Points of Convergence and Divergence*, available at <http://www.hidayat.org/blog/2008/11/03/human-rights-and-islam-some-points-of-convergence-and-divergence/> visited on 26/2/13

starting with this introduction. Part two discusses the principles of Islamic law laying foundation for freedom of speech. In part three, evidences from the sources of Islamic law and precedents from Muslim leaders and administrators validating freedom of speech are examined and the work ends in part four with conclusion.

Principles of Free Speech in Islam

It must be stated from the outset that there is dearth of literature on the subject of freedom of speech in Islam both in the classical and contemporary works. Although in the classical works, detailed discussion were made on various issues touching either directly or indirectly on what is being presently discussed as freedom of speech, it was not discussed as a right of the citizens couched in positive laws to be safeguarded and promoted by the rulers. Some of these issues include freedom of personal opinion (*Hurriyyah al-Ra'y*), freedom to criticise government or individual (*hurriyyah al-Mu'arahah*) freedom/duty of enjoining good and forbidding evil (*amr bil-m'aruf wa al-nahy an al-munkar*) and *ijtihad* (personal exertion of efforts to derive rule of law from the texts or *ijmā'*) amongst others. In similar length, the Muslim jurists and scholars discussed a number of principles that restricts individual or group free speech. Among these are seditious speech (*fitnah*), blasphemy (*Sabb Allah wa Sabb al-Rasul*), defamation, comprising slanderous accusation and libel (*Qasaf and Iftirā'*); utterance of hurtful speech in public (*al-jahr bi'l-su' min al-qawl*) which include publishing and broadcasting amongst others.

Muslim scholars and jurists have extended the evidences in support of *amir bi'l-ma'râf* and other practices and precedents from the prophet's companions (ra) to justify freedom to criticise (*Hurriyyah al-mu'arahah*), especially the government. They quoted the inaugural speech of Abu Bakr (ra) which was also followed by Umar Ibn Khatāb (ra) inviting the populace to correct them if they were wrong or rectify any aberration they may notice in their governance. They concluded that the duo recognised the citizens' right, protected by Islam, to criticise government activities. Such criticism is impossible except with the existence of freedom of speech and opinion¹⁰.

Another area of Islamic law which orchestrate freedom of speech is the right and duty of qualified persons to carryout independent *ijtihad*.¹¹ *Ijtihad* is an instrument for the development of Islamic law by which scholars expressed considered personal opinion on matters of private or public concern or decide cases or deduce rule of law in interpreting the sources where the sources provide only indirect indications on such issues. Freedom of speech and opinion in Islam is vindicated by the jurisprudential principle: *lā yunqad al-ijtihād bi mithlihi* (*ijtihad* is not reversible by its equivalent) and *lā inkār fī masā'il al-ijtihād*¹² (there is no contestation on issues of *ijtihad*). The principles are to the effect that every qualified *mujtahid* is entitled to his opinion. None can disavow the other and neither can be forced to or is even allowed to follow opinion of the other unless it conforms to his own reasoning¹³.

¹⁰ See al-SibÉÑÊ, MuġġafÉ, *IshtirÉkiyyat al-IslÉm*, 2nd edn. (Damascus: DÉR al-Qawmiyyah li'l-ÛibÉÑah wa'l-Nashr, 1379AH/1960), p. 50 and KhalÉl NġmÉd al-DÉn, *FÉ'l-Naqd al-IslÉmÉ al-MuÑÉġir*, 3rd edn. (Beirut: Mu'assasat al-RisÉlah, 1404AH/1984).

¹¹ For conditions to qualify as *mujtahid* (person exercising *ijtihad*) see (Ibn Qudamah, 1994), vol. 2.

¹² For further elucidation on the latter principle, see Koutoub Mustapha Sanou, *Lā inkār fÉ masā'Él al-Ijtihād*, (Kuala Lumpur, Dār Al-TajdÉd, 2004), 81-92.

¹³ See Ibn QudÉmah, *al-MughnÉ*, vol. 9, pp. 40-41

Islamic Law Evidences on Freedom of Speech

There are plethora of evidences from Quran, Sunnah and the practices of the past venerable leader of Muslim nation to support the claim that freedom of speech do exist in Islam and that rules of Shariah could be positive legal rules in its support. We shall however be guided by the need to trace out the authorities in support of the objectives of freedom of speech which is upholding human honour and dignity and discovery of truth. These objectives are reinforced both in Islam and the conventional notion of the freedom¹⁴. It must also be mentioned that Quranic legal provisions are not confined to juristic method of legal code. They are usually in form of commands and prohibition from which rights and obligations could be directly or indirectly created. The non-legal ones may also make general provisions giving room for different interpretations including text linguistic, and may create moral rights and obligations which could be developed to legal norms¹⁵. This unique style is responsible for its relevance to all era an epoch as those non-definitive provisions are admmissive of interpretations according to the changing circumstances and societal needs.

Quranic Evidences

The dignity of human being sought to be upheld by freedom of speech is guaranteed in the Quran in an unprecedented and unsurpassed, broadest, absolute and universal manner. Allah (swt) say:

And indeed We have honoured the Children of Adam, and We have carried them on land and sea, and have provided them with *Al-Tayyibāt* (lawful good things), and have preferred them to many of those whom We have created with a marked preferment.¹⁶
The highest manifestation of man's dignity is possession of reasoning faculty through which he exercises his free will.

Discovery of truth as an object of free speech is more emphasised in the Quran. This is either in direct reference to the word *haq* or its synonyms or approval of other principles which cannot be established except by truth. Quran repeatedly use the word *haq* for truth and declared it the ultimate in all affairs where Allah says: "Such is Allah, your Lord in truth. So after the truth, what else can there be, save error? How then are you turned away?"¹⁷

The emphasis is not to lower human dignity but rather to elevate it. This is because discovery of truth is closely related to attainment of justice. And while truth is an element of human dignity and can be used to salvage it on the face of denigration and desecration, the reverse does not always obtain. For example, while *qadhif* (false accusation of adultery) impugns on the victim's dignity, exposition of the truth of the accusation would remedy, to a large extent, the negative consequence of the accusation.

¹⁴ See the Preambles 1 UDHR 1948; 1 and 4 The European Convention on Human Rights, (ECHR) 1950 and Article XII (b), UIDHR, 1981.

¹⁵ Kamali, M. H. "Fundamental Human Rights of Individual: An Analysis of *Haqq* (Right) in Islamic Law," *American Journal of Islamic Social Sciences*. (1993) 10:3, p. 353

¹⁶ See Quran, al-I'srai' (17): 70; see also Quran al-Tin (95): 4), Qur'Ān, al-Baqarah (2): 30-34, and Qur'Ān, al-Mun'afiqĀn (63): 8 for similar effect; translation of all Qur'anic verses in this work are based on Muhammad Taqiuddeen al-Hilali, and Muhammad Muhsin Khan, *The Holy Qur'ān: The interpretation of the meaning of the noble Qur'ān in the English Language*, (Riyadh: Dār Al-salām, 2005).

¹⁷ Quran, Yunus (10): 32

In the same way oppression, obnoxious governmental policies and individual illicit behaviours is damaging to the dignity of citizens of a nation or the particular individual. But the truth in *amr bi al-ma'ruf wa al-nahy an al-munkar*, constructive *mu'aradah* (criticism) - verbally, in written or through print or electronic media reverse the relegation or call attention to its reversal.

The context in which Quran described the believers who recommend one another to the truth as exception among the human being in the state of loss¹⁸ also speaks volume of how freedom to discover and proclaim the truth is the main instrument in the defence of human dignity which was in the abyss of degradation.

The verse of Quran which directly establishes the principles of *a'mr bi al-ma'ruf*, and freedom to criticise (*haq al-mu'aradah*) is where Allah say:

"Let there arise out of you a group of people inviting to all that is good (Islam), enjoining *Al-Ma'ruf* (i.e. Islamic Monotheism and all that Islām orders one to do) and forbidding *Al-Munkar* (polytheism and disbelief and all that Islam has forbidden). And it is they who are the successful."¹⁹

Muslim scholars have severally upheld the principles emerging from the verse as sufficient authority to validate freedom to formulate and express personal and group opinion in all matters including governmental and political affairs²⁰

The verses directing people affairs for consultation²¹ have also been used as evidence in support of freedom of speech and opinion which is a *sine qua non* for healthy, meaningful and affective consultation²². The principle of consultation is mandatory for Islamic government according to the correct interpretation of Quran 3:159 and 42:38. Zaydan therefore views that it will amount to obligation in vain to compel government to be guided by consultation where the participant in such consultation will not be free to express their opinion²³.

In the same vein, the exercise of the freedom of speech by an individual to claim entitlement from or through the government is established when Allah says: Indeed Allāh has heard the statement of her (Khaulah bint Tha'labah) that disputes with you (O Muhammad [sal-Allēhu 'alayhi wa sallam]) concerning her husband (Aus bin As-Sāmit), and complains to Allāh. And Allāh hears the argument between you both. Verily, Allāh is All-Hearer, All-Seer²⁴.

¹⁸ Quran, 'Asr (103): 2-3

¹⁹ Quran, 'al Imran (3): 104

²⁰ Hammad, Ahmad Jalil, *Hurriyyat al-Ra'y fi'l-Maydan al-Siyasi*. (Cairo: Dar al-Wafa' li'l-Tibaah wa'l-Nashr, 1408AH), p. 221; see also Zaydan, Abdul-Karim *Majmu'at Buhuth Fiqhiyyah*. (Bagdad: Maktabat al-Qudus, 1395/1975), p. 128.

²¹ Quran, 'al Imran (3): 159; also, al-Shura (42): 38

²² Shaltut Mahmud al-Islam *Aqidah wa-Shariah*. (Cairo: Dar al-Shuruq, 1992), p. 556

²³ Zaydan, *Majmu'at Buhuth*, p. 128

²⁴ Quran, al-Mujadalah (58): 1

Evidences from the Sunnah

The Prophet (SAW) in his legislative capacity enacted some laws that either elaborated the Quranic provisions or set a complete set of principles in support of freedom of speech. We now look into some of them. In reinforcement of the foundation of the freedom i.e. discovery of truth, the prophet say: "Tell the truth even if it is unpleasant"²⁵

The hadith provides a general basis for human endeavour in pursuit of truth against all odds. The prophet was more elaborate when it comes to pursuit of truth in negation of anything abhorrent. He was reported to have said:

"If any of you sees something evil, he should set it right with his hand; if he is unable to do so, then with his tongue, and if he is unable to do that too, then (he should denounce it) in his heart."²⁶

This hadith often used to validate the concept of *Hisbah* and *mu'arahah* espouse the freedom of speech in an interesting way. It covers the whole spectrum of the manners of speech i.e. written, using hand; spoken, using tongue; and symbolic speech expressing the mind. The mind naturally sends the message of anything detested back to the organ of the body that perceived it. This causes reaction by that organ or with the assistance of other organs that expresses the detestation in a way that is understandable by a third party. Thus, when an act is detested by mind and it is not expressed by word or in writing, other mode manifesting the disapproval would include facial expression of frown or any negative expression.

The prophet legislated freedom of speech not only when the situation is favourable but also when it is risky to do so. He rated pursuit of truth in the latter situation as the best form of jihad²⁷ when he said:

"The best form of jihad is to utter a word of truth to a tyrannical ruler."²⁸

The popular hadith of Mu'adh Ibn Jabal when he was sent by the prophet to Yemen as a judge, which is used to validate the concept of *ijtihad* also support freedom of speech and reasoned opinion in legislative and judicial matters. The prophet was reported to have asked the companion about the sources on which he would rely in reaching his judgements. The latter replied saying the Quran, the Sunnah, and his own considered opinion in the order of enumeration²⁹. Although the legislative function of an individual *mujtahid* has been overtaken by the legislature and to a little extent, the judiciary in the contemporary nation state, yet, the enjoyment of the freedom of speech conferred by the concept has not diminished.

Islamic history recorded incidents of free expression of speech and opinion by the companions during the life time of the Prophet which are sometimes contrary to the

²⁵ Muhammad Ibn xibĒn, ØalĒĒl Ibn xibĒn, (Bairut: Mua'ssarah al-RisĒla, 2nd edn. 1993), vol. 2, p. 79.

²⁶ Muslim, Mukhtasar ØalĒĒl Muslim, hadith No. 34

²⁷ Jihad, literally translated to strive in the cause of Allah, is the term used to denote a religious duty imposed on Muslims to proclaim the word of Allah and spread Islam with their wealth and lives and struggle against Allah's enemies, (al-Manāwī, 1410H).

²⁸ Ibn MĒjah, Sunan Ibn MĒjah, Hadith no. 4011

²⁹ AbĒ DawĒd, Sunan AbĒ DawĒd, hadith No. 3585.

Prophet's views. One of such incident was during the occasion of signing the treaty of Hudaibiyyah. 'Umar Ibn Khatāb (ra) was reported to have objected to the Prophet's and other companions' agreement to a repatriation clause. The clause stipulated a repatriation of any member of Quraish tribe who crossed to the Prophet's side without permission from his guardian. No provision was made for reciprocal repatriation when someone crossed from the Prophet's side. 'Umar (ra) confronted the Prophet with his objections having been dissatisfied with persuasion by Abu Bakar (ra) and the Prophet responded by ordering Abu Bakar (ra) to listen and accede to his opinion³⁰. The war tactics of Salman Fārisi (ra) during the battle of *ahzab* (trench) which contradicted the Prophet's but was upheld and implemented³¹ also epitomize the freedom of speech and opinion during the Prophet's time.

The following *ahadith* (sing. Hadith) are also very authoritative and self-explanatory in respect of not only the freedom but also the duty to speak whenever the occasion demands. The Prophet was reported to have said:

'Let no one humiliate him/herself.' The companions asked: 'how does one humiliate him/herself O Messenger of Allah?' And the Prophet said: 'when someone sees an occasion on which he should speak out for God's sake but does not; God Most High will say (to such a person) on the Day of Judgment: "What stopped you from speaking on that issue?" and when the person answer "fear of people", then God will say: "It was better that you should have feared Me"³².

He was also reported to have said:

"When you see my community afraid of calling a tyrant "tyrant", then take leave of it."³³

It will be noticed that these traditions emphasised the need to speak even in critical situations. It thus follow naturally that more freedom is envisaged in a congenial environment without necessarily being permissive of abuse.

Precedents from Muslim Leaders and Administrators

In strict adherence to the legislations and teachings from Quran and Sunnah, the early Muslim leaders exhibited a high level of tolerance for free speech among the citizens and in the administration of states. We take a few instances for example. Abu Bakr (ra) affirmed an open door to criticism in his inaugural speech when he admitted he was not better than his subjects and invited them to correct or criticise him whenever he was wrong³⁴. Kamali observed that the above attitude of Abu Bakr (ra) indicated that self-criticism is a necessary attitude of responsible government and is beneficial for healthy growth³⁵.

Not only did 'Umar (ra) followed this precedent in his inaugural speech, but he also showed tolerance to critical views in practical terms. One of the occasions of such

³⁰ See Ibn xishÉm ÑAbd al-MÉlik, *al-SÊrah al-Nabawiyah*, (Cairo: MuñlafÉ al-BÉbi al- AlabÊ, 1936), vol.3, p. 331.

³¹ Muhammad Ibn JarÊr alÛabarÊ, *Tarikhi al-'Ummam wa'l-MulÊk*, (Beirut: Dar al-Fikr, 1987), vol. 3, pp.1463-1476

³² Ibn MÉjah, *Sunan Ibn MÉjah*, KitÊb al-Fitan.

³³ See al-ØuyËËÊ JalÉl al-DÊn, *al-JÊmiÑ al-ØaghÊr*, (Cairo: MuñlafÉ al-BÉbi al-HalabÊ, 1954), vol. 1, p. 41.

³⁴ Ibn HishÉm, *al-SÊrah*, vol. 4, p. 262.

³⁵ See Kamali, *Freedom*, p. 51 quoting AbÊ xabÊb SaÑdÊ, *DirÊsah fÊ MinhÊj al-IslaÊm al-ØiyÊsÊ*, Beirut: Mua'ssat al-RisÉlah, 1406H), p. 272.

tolerance was when his reason for attempting to regulate exaggerated amount of dowry was publicly challenged by Fatimah Bint Qays. The latter referred to the Quran surah al-Nisa'(4): 20 in support of her position. 'Umar (ra) merely responded: "A woman was right and 'Umar is mistaken"³⁶.

The political crises witnessed during the Caliphate of 'Ali Ibn Abi Tālib (ra) and the charismatic way he managed the situation shed a brighter light on the tolerance of Islamic state to criticism and opposition. The secession of the Khawārij/kharijites, the followers turned opponents of 'Ali (ra) was as a result of the contrary view they held on the arbitration mooted between 'Ali (ra) and Mu'āwiyah Ibn Abi Sufyan (ra). The kharijites perceived Mu'āwiyah (ra) as an aggressor who must be fought until aggression is curtailed. They also considered contradicting their views as tantamount to disbelief³⁷. The Khalifah (Ali) engaged them in dialogue through Ibn Abbas who convinced a half of their number back to the main stream. He wrote to the remaining half of about four thousand people, that they can remain as they wish under the state provided they did not cause bloodshed, corruption or injustice. It was only when they declared many leading companions infidels and perpetrated aggression against the lives and properties of the Muslims who oppose their views they were fought against³⁸.

It is also not a coincidence that the four Imāms of the Sunni School, Abu Hanifah, Mālik, Shāfi'i and Ahmad Ibn Hanbal were champions of the exercise of freedom of speech. Most of them were frequently punished and jailed for expressing opinions against the Muslim rulers and religious establishment of their time. Abu Hanifah for instance died in prison for reasons not unconnected with his expression of dissatisfaction with the policies of Umayyad Khalifah, Ibn Hubayrah and later Abu Ja'far during 'Abbāsīd dynasty³⁹. Imām Mālik was tenacious and uncompromising in his convictions. The opinion attributed to him that bay'ah (allegiance to the ruler) is illegal when obtained by duress earned him punishment of whipping by the order of the then governor of Madinah Ja'far Ibn Sulayman. Imām Ahmad was also imprisoned for holding opinion different from that of the authority⁴⁰.

The respect of the Imāms for scholarship and vindication of freedom of speech through *ijtihad* is established by their act of discouraging others from blindly following their opinions. They emphasised that others should examine and agree with the grounds upon which their opinions were based before following them. Mahmassani quoted Imām Abu Hanifah as saying: "This knowledge of ours is opinion; it is the best we have been able to achieve. He who is able to arrive at different conclusions is entitled to his opinion as we are entitled to our own."⁴¹

³⁶ See al-KhudarĒ Muhammad, *MuĒdarĒt fĒ TarĒkh al-Umam al-IslĒmiyyah*, (Cairo: Maktabah al-TijĒriyyah, 1370H), vol. 2, p. 17-18.

³⁷ Al-JundĒ MuĒammad, *MaĒĒlim al-NiĒĒm al-ĒiyĒsĒ fĒ al-IslĒm* (Cairo: DĒr al-Fikr, 1986), p. 203, cited by Kamali, Freedom, p. 197.

³⁸ They were only fought when they declared many leading companions infidels and perpetrated aggression against the lives and properties of the Muslims who oppose their views, Ibid, p. 190.

³⁹ SubĒi Mahmassani, *Falsafah al-TashrĒ' fĒ al-Islām*, (DĒr al-Ēilm lil-MalĒyĒn, 1968), p. 43.

⁴⁰ Ibid., pp. 65 and 54 respectively.

⁴¹ Ibid., pp. 43, citing al-ShahrastānĒ Muhammad, *Al-Milal wa al-Nifal*, vol. 2, p. 39.

It is against these backgrounds that it was observed that the freedom of speech, opinion and expression experienced by the Muslims during the early stages of their history represent an inspiring example. The experience has hardly been surpassed in the subsequent periods of Islamic governments⁴² (Khalil, 1404AH). The opinion of a non-Muslim author, Bulliet cited by Cooke, Mariam and Lawrence, Bruce B. (n.d.) that Islamic worldview is predicated on the individual intrinsically enjoying the freedom to choose his or her authoritative definition of Islam reinforces this observation. The definition might be grounded in law, or in practice of pious or political leader, or in the traditional usage of his or her community.

Freedom of speech and the contemporary Muslim State

It is an undeniable fact that for a long time in the history of Muslim States, no concerted efforts were made to codify the different heads of Human Rights in positive laws. Although in the classical works, detailed discussions were made on various issues touching either directly or indirectly on what is being presently discussed as Human Rights, particularly, freedom of speech, it was not discussed as a right of the citizens couched in positive laws to be safeguarded and promoted by the rulers. The reason for this, according to Kamali is that many of the countries have not attempted to forge a link with their Islamic heritage (SharĒĤah), which has abundant of authorities in support of the rights⁴³.

However, such gap in linkage does not justify the claim by Mayer that the concept of human rights, as much as its free speech component, is just one part of a cluster of institutions transplanted from the west into the Muslim world⁴⁴. In the same manner, it will be unsustainable to argue that human right abuses perpetrated by the US and its allies in Iraq and Afghanistan since 2002 to date is evidence of dearth of human right culture in the latter countries. Neither would it conform to good reasoning to insist that the unwritten nature the British Constitution makes the nation one without constitution or constitutional culture.

Meanwhile, some Muslim governments and non-governmental organisations have also made declarations similar to western regional based and UN's instrument on human rights including freedom of speech. The most prominent of such declarations are the Universal Islamic Declaration of Human Rights (UIDHR), 1981⁴⁵ and The Cairo Declaration on Human Rights in Islam (Cairo Declaration), 1990⁴⁶. In forging this relatively new link with the Islamic heritage, some of the western legacies on the subject have been retained while others are formulated in the light of SharĒĤah. This development has shifted the premises of the debate from the existence or otherwise of freedom of speech in Islam to the extent which the Islamic law can be used to limit it.

⁴² Khalil 'Imad al-Din, *Fi'l-Naqd al-Islami al-MuĤĤir*, (Beirut: Mu'assasat al-Risalah (3rd edn.) 1404AH/1984). p. 35.

⁴³ Kamali, *Freedom of Expression in Islam*, p. 61

⁴⁴ Mayer, A. Z., *Islam and Human Rights: Tradition and Politics*, London: Pinter Publishers, 1991), p. 12

⁴⁵ Compiled by eminent Muslim scholars, jurists and representatives of Islamic movements and thought based on the Qur'an and the Sunnah, see the foreword and references of the document.

⁴⁶ Adopted and Issued at the Nineteenth Islamic Conference of Foreign Ministers of the Member States of the Organization of the Islamic Conference on 5 August 1990.

Conclusion

In the foregoing presentation, it has been established that Islam and Islamic law validate a number of principles which safeguard freedom of speech. These include upholding the dignity of human being, the ultimate status of truth and its pursuit in all affairs and the principle of *amr bi'l ma'rġf wa al-nahy an al-munkar* vis-à-vis the concept of *ġisbah*. Others are the concept of consultation in communal affairs, freedom to criticise, freedom to exercise personal opinion and the concept of *ijtihād* vis-à-vis the immunity from error in its exercise. Clear evidences from the Quran, Sunnah and precedents laid by the early Muslim leaders and administrator were drawn to justify the existence of the right in Islam. The fact that it took the Muslim nations a long time to codify human rights generally and freedom of speech in particular in a positive law gave room for impression to be created, albeit wrongly, that those rights were transported into Islam from the west. However, the recent happenings around the world have shown that the issue of human rights and freedom of speech transcends the argument of which part of the world was earlier in its codification to which has the political will to uphold it.