

RELIGION, GOVERNANCE AND DEVELOPMENT IN THE 21ST CENTURY



Illustrated by Dr. Bisi Onasanya

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Professor Ade. P. Dopamu KSC, FAR
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PRINCIPLE OF IMPEACHMENT IN THE PUBLIC OFFICE: AN ISLAMIC PERSPECTIVE

KAZEEM ADEKUNLE ADEGOKE

Introduction

Principle of impeachments in the public office in the democratic government could be traced to the constitutional theory of the United States of America in 1789.¹ Since then, it has become one of the most significant characteristics of the constitutional and political development of the modern democratic government across the globe. Despite the fact that public holders are appointed for a fixed term of the basis of the constitutional provision of the country, they could be removed prematurely if they fail to perform their functions within the legal framework of the constitution of that country or guilty of gross misconduct. A member of the house legislature usually forwards the principle of impeachment in an ideal democratic system; a committee is appointed to investigate the allegation levied against such a public office holder. If the committee, after their thorough investigation, recommends impeachment, such a person is impeached before the legislature, usually with two third majority of its total strength.² Prior to the 1789 when this principle of impeachment was embodied in the constitution of the United States of American, this principle of impeachment from public office has been in existence in the Islamic political system in the far away Arabian peninsular. This is the main reason why this paper tries to discuss the principle of impeachment in the public office in the seventh century of Christian era in a perspective of Islam

Definition of Keywords

For the clarification of this topic, some of the keywords used in the paper would be given working definition in the context of the paper. Principle could be defined as a basic truth of general law of cause and effects.³ The term "impeachment" is taken out from its root verb 'impeach' which means to allege a person of being dishonest,⁴ but in the context of this paper, impeachment is a process of removing or disposing a person from public office. Public could be defined as a thing that concerns people in general,⁵ while office simply means building of a governmental department including the staff, their work and duties. In the context of this paper, public office could be defined as a position of authority in the department of any tier of government in the society.

Public Office in Islam

Public office in Islam is a trust (Amanah) entrusted on the public officer by the community who appoints him. This, it represents a psychological contract between a public office and the general people whom he would try to guide, protect and treat in a justly manner. In Islamic political system, public office is a crucial matter that need to be handled by matured and pious fellow who posses solid charisma to lead the community.⁷ This, it is communal duty (Fard Kifayah) of a community to appoint a reliable and charismatic fellow as their leader in all circumstances. The community must appoint a leader during a journey, select an Imam to lead the prayer and choose a leader for other group activities. For instance, the role of leader of the house.⁸ This is reason why the Prophet (S.A.W) says:

when three are on a journey, they should appoint one of them as their commander.⁹

"each of you is a guardian, and each of you will be asked about his subjects".¹⁰

As a result of this, Muhibbu-din analyses the duties of a person who holds public office in an Islamic community and it summarily goes as follows:"¹¹

- i. Public Office holder should enforce *Shariah* and Islamic norms in the area he is charge with
- ii. He is required to take counsel from the *Majlis_ash-Shura* or the consultative council or committee in the community.
- iii. He must ensure justice, equity and general welfare of the people which are the aim of Islamic Community.
- iv. He should supervise the affairs of the people in the same way irrespective of their status and tribal affiliation.
- v. He should regard the public properties as a trust (*Amanah*) and the public which he is going to bear the responsibility for its expending

Procedure of Impeachment in Islam

More than a millennium before the embodiment of the principle of impeachment in the constitution of United States of America, this principle has been excited in Islamic political theory, when a public officer is about to undergo impeachment due to his inability to cope with the office or guilty of religio-political misconduct and this is brought to the notice of head of government who may be *Khalifah*, amir or sultan. The head of government tenders the allegation to his advisory and consultative council called *Majis ash-Shura*. The concerned public officers is invited to defend himself after thorough investigation¹². If the accused were guilty, the advisory and consultative committee would pass their recommendation to the head of government to impeach such a person. If the members of advisory and consultative council do not maintain unanimous agreement on the recommendation for the impeachment of such an accused public office, the matter is left to the discretion of the head of government to impeach or retain him without putting the majority or minority view on the matter into consideration¹³. But if the accused public office is head of government himself such as a president or governor, the community may persuade him to leave the office in order to avoid chaos and bloodshed.

Impeachment from the Public Office in Islam

Impeachment of the public office from the office in an Islamic community is inevitable if he fails to confirm himself within these duties earlier mentioned or offences that fall within the following actions.

i. Failure of public Officer to Comply with Shariah: The Public Office holder could be impeached if he fails to confine himself within the fold of Shariah law, which is the law of the land. He should follow the injections of Allah and His Prophet (SAW) in all his undertaking in the discharging of his duty and he should not carry out a policy repugnant to the ethical principle of shari ah as his authority and obedience from the community is justifiable as long as he also obeys the injunctions of Allah and the Prophet (SAW) because obedience to the public officer is not unconditional¹⁴ Qur'an says:

...and obey not him whose heart we have made heedless of our remembrance, and who follows his own lusts and whose affair has been lost. (Qur'an 18 vs 28)¹⁵

Prophet also says:

there is no obedience to any creature (Makhluk) in the act of disobedience to the creator (Khaliq)¹⁶

The community needs to pursue her normal social activities in an atmosphere of mutual trust and confidence by remain loyal to the government of the time provided it acts in accordance with the injunctions of Shariah. Similarly, community are obliged to impeach public officials from the office it they contravene the explicit provisions of the Shariah¹⁷.

ii. Failure of Public Officer to Maintain Justice in Decision: Public officer could be impeached is he fails or too weak to maintain justice in the decision of the government that affects the public. Public officer in the Islamic community is expected to act justly in the administration and management of his office. He should not allow his personal feeling, hatred, tribal affiliation and selfish interest harmper him from maintaining justice even if strife would follow.

Qur'an says:

oh you who believe! Stand out firmly for Allah as just witnesses, and let not the enmity and hatred of others make you avoid justice. Allah is well-acquainted with what you do. (Qur'an 5 vs 8)

Prophet also says:

An Amir is a shield for the followers. They fight behind him and they are protected by him. If he enjoins fear of Allah and dispenses justice. There will be a reward for him and if he enjoins otherwise, it bounces back on him¹⁸

iii. Incompetence of Public Officer: Public officer could be impeached in an Islamic community if he is not competent to carry the public along in his administration. Public are obliged to recognize and obey the audacity and charisma of the public officer if they believe that the officer is more capable of his duty. But if they doubt his capabilities, they will be less enthusiastic in accepting his authority over them, and chaos and disorderliness will creep into the community¹⁹. Public officer must see beyond assumed boundaries and come up with solutions or visions that public can visualize and then project these visions for every to see and pursue.²⁰ AbuDharr was reported to have requested from the Prophet (SAW) to appoint him into a public office. Prophet (SAW) replied him.

AbuDharr, you are weak and authority is trust on the Day of Judgment, it is a cause of humiliation and repentance except for one who fulfils its obligations and probably discharges the duties attendant there on.²¹

iv. Guilty of Gross Misconduct: Public Officer could be impeached if he falls victim of engaging himself in gross misconduct in his office such as misappropriation of public fund, embezzlement of public fund, assassination and all sorts of social indiscipline. Public office is not an ordinary assignment or access to immunity (from trial for any misconduct during the tenure) but a trust in the spiritual and physical sense, which must be fulfilled.

Prophet (SAW says:

“whose from you is appointed by us to a position of authority and he conceals from us a needle or something smaller than that, it would be misappropriation of Public funds and he will have to produce it on the day of judgement”.²²

v. **Change in Physical Person of Public Officer:** A Public Officer could be impeached if there occurs a change in his physical person due to old age or accident. This change in physical person could be loss of physical sense or loss of bodily organs such as eyesight, loss of hearing organs, loss of two hands and feet.²³

Limitations to Impeachment Procedure in Islam

It is an undisputable fact that Islam does not go against the impeachment of a public officer if it was discovered that he could not physiologically and psychologically cope with the administration of the public office. Despite this, there is limitation in the application of the principle of impeachment in an Islamic community as Islam discourages the impeachment of a public officer if this would bring greater evil such as chaos, disorderliness, insecurity, civil war, political instability and disunity.²⁴ This does not mean that Islam wants to close her eyes to the fact that the public officer should be impeached if the administration of his office could bring an evil to the community, but this must be done in mature way in order to avert greater evil from that community.²⁵ Al-Jawziyyah categorized the eradication of evil in a community into four techniques which goes.²⁶

- i. Total eradication of evil in which case the opposite of evil (goodness) comes into being
- ii. Minimization of evil even if it cannot be totally eradicated
- iii. Substitution of evil with a similar evil
- iv. Substitution of evil with a greater or worse evil

The impeachment of public officer is a welcome idea if the eradication of evil caused by such a public officer is possible through the application of the first and second techniques, while the scholars of Islam do

not maintain unanimous agreement on the application of third technique impeachment. The application of the fourth technique is totally forbidden, as it would not bring anything better to the community. This is the reason why the Prophet (SAW) says:

Your authorities are the one you love and who love you they pray for you and you pray for them. Your evil authorities are the ones you hate and who hate you. You curse them and they curse you. It was asked: oh: Messenger of Allah, should we rise against them? He replied: No, as long as they establish the Salah. If you see those in authority doing that you disapprove, then disapprove the act, but do not resort to rebellion against them.²⁷

Conclusion

The paper has attempted to discuss the principle of impeachment in the public office from Islamic perspectives. In the process of realizing this objective, the paper gave a working contextual definition to some keywords featuring in the topic. Public office, procedure of impeachment, impeachment and its limitation were thoroughly examined from the glance of Islam. It should be known that public office is a great religious obligation in a community which, needs good hands. The good management cannot be effectively carried out except with the co-operation of the consultative council through their sincere checks and balance roles. Lastly Islam allows impeachment of public officer when the evil is pending on the whole community due to the shortcoming of public office administration, but if this step will bring in another greater evil, the community should desist from it.

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