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SHURA INSTITUTION WITHIN THE FRAMEWORK OF SHARI'AH AND ITS RELEVANCE TO ISLAMIC POLITY

BY

Kazeem Adekunle, ADEGOKE

Abstract

This paper investigates an Islamic cultural heritage of political representation in the Islamic political setting popularly known as *Shura*. It looks into the historical development of *Shura* as a method of representation in the pre-Islamic days in the Arabian peninsula and prophet's period up to the time of the last Caliph of the rightly guided caliphs (*Khulafa'ur-Rashidin*) in person of Ali Ibn[®] Abi Talib in 661 C.E. Qur'anic and sunnatic concept of *Shura* also explored in the paper. It also examines the institution of *Shura* within the framework of *Shari'ah* legal principle and its essence in an ideal Islamic political setting. The paper concludes with the findings and suggestions for the utilization of the *Shura* in solving Muslim private and public affairs.

Introduction

The question of Islamic response to socio-political system and social change in the modern contemporary age has been ignorantly attacked by non-Muslims in every sphere of life. Islam as a distinct religion offers solution to several secular problems arisen in the modern world as well as spiritual problems. Nothing is left untouched by this religion, which is not only dealing with theological and creedal life of the people, but in all aspects of their private and public affair. *Qur'an* Says:

"We left nothing untouched in the Book" (Qur'an 6:38)

Islam is not a mere religion that focuses on only the spiritual affairs just like any other worldly religion, but a perfect, complete and comprehensive code of human life. A brief glance at pages of world historical fact is enough to provide a sufficient proof of the claim that there has been no religion that has ever influenced the human societies as the religion of Islam. It has its own weight of ideological standard on which it is operated without copying from any other; rather one can say it is a pacesetter and source of living spring from which all other philosophy

and ideology derived some of their ethics and methodology. One of these ideological standards of Islam in Islamic political setting is the institution of *Shura* as a people's representation on the political platform in a society.

People's representation could be defined as a socio-political representative of the people sharing, to a significant degree, in the making of political decision of a particular community. There is a socio-political system representative when power is concentrated in the hand of one man or a set of categorical people who are claiming to represent the people. By this, the institution of *Shura* came up as socio-political representation of the Islamic political setting, and this has been in existence before the Greeks came out with their own principle of political representation under the name of democracy, which is spear-heading in the present time by the United States of America.

Our intention in this study is to examine the *Shura* institution within the framework of *Shari'ah* and its relevance to ideal Islamic Polity.

Conceptual Definition of some Key words

The term "*Shura*" is taken out of the Arabic root verb "*Shawara*" which means 'he advised', 'he consulted', he took counsel, 'he deliberated'. Thus, the term "*Shura*" literally means consultation, deliberation or discussion. However, it has the same meaning with the term "*Tashawur*".¹ *Shura* technologically means a consultative and advisory council of established figure who would make decision on behalf of the community.²

Shari'ah, in the context of this paper, means an act of rules, which regulates the conduct of affairs of people for settling all differences and avoiding all disputes.³ Framework means a set of beliefs, ideas or rules that is used as the basis for making judgement and decision.⁴

Institution of *Shura* During Pre-Islamic Period

Shura method of representation could be traced to the pre-Islamic period of the Arab in the Arabian peninsular. Though there was no established political authority or head among the Arab, but there are several clans which formed a tribe. Each tribe was headed by a *Shaykh* or *Sayyid* who was democratically appointed through a process of consultation and deliberation among the elders called *Ahl al-Ikhtiyar*.⁵ *Ahl al-Ikhtiyar* were the people old enough to have the proper choice of decision. The *Shaykh* was not a dictator nor a totalitarian but a first among the equals as his authority rested on the consent of the people he represents. He could not take a decision on his own whims and caprices until he consulted his advisory or consultative council called *majlis* which consists of the heads or representatives of each Arab family.⁶

At the highest level, the pre-Islamic Arab also have another higher method of representation which was master-minded by the notables, noble, prominent personalities and those who were of sound opinion known as *Mala'* among them. They used to assemble at a certain meeting place called *Dar an-Nadwa*. This method of representation was the practice of the heads of the Arab tribes in which they would take a decision that is going to affect the generality of people in the peninsula.⁷ No binding decision could be effective without the agreement and consensus of the *Mala'* council in which the members had freedom and right to express their opinions and agree or disagree with the opinion of the others. Whenever there was any disagreement of opinion, the members would negotiate among themselves amicably in order to reach a position of unanimity, thus avoiding a division that might endanger the security of the Arabia peninsular. The national issues often discussed in this council were the issues of peace, war, security and the future of the peninsular as a whole. This method of representation only had legislative and juridical power, while the execution and implementation of the decision of the advisory and consultative council was left to the clans, tribes and families under the leadership of *Shaykh* or *Sayyid*.⁸

Institution of *Shura* in the Prophetic period

The concept of *Shura* was still in continuation during the period of Prophet Muhammad (S.A.W.) in Makkah city, but it was after the *Hijrah* to Madinah that it became a fully implemented tool. Prophet (S.A.W.) used to consult his companions not only on religious matter but as well as secular and mundane affairs. Prophet (S.A.W.) laid more emphasis on the *Shura's* method of representation that all transactions of all governmental activities of executive and the people in the authority (*Ulul-'Amr*) as well as judiciary and legislative council must be an outcome of consultation among the accredited representatives of the community. However, it should be noted that all Muslims used to participate in the governmental affairs in Madinah. Hence, pages of Islamic history are detailed enough for the materials and samples of several incidents during the lifetime of Prophet Muhammad (S.A.W.) in which several incidents were recorded where important decisions were taken on the advice of even a comparatively less eminent companion. For instance, Prophet Muhammad (S.A.W.) changed his earlier decision regarding the site of the Muslim encampment during the Battle of Badr on the mere advice of a companion called Hubab Ibn al-Mundhir.⁹ In the same way, the strange war strategy adopted by the Muslims in the Battle of Khandaq was instigated at the suggestion of Salman al-Farsi, a Persian freed slave who would not even enjoy the ordinary right citizenship in the pre-Islamic Arab.¹⁰ It is also

recorded that the Prophet (S.A.W.) used to consult the Jewish Priest in Madinah regarding the judicial matter concerning the Jews before the passing of his own judgement on them. For instance, it was reported that the two Jews were brought to the Prophet for the crime of adultery. Prophet (S.A.W.) invited some of Jewish *Rabbi* (Priests) to inform him of what their divine scripture (*Torah*) position on this crime, and he was told that the punishment for the crime is stoning to death. Unhesitatingly, Prophet (S.A.W.) ordered that both of the criminals should be stoned to death.¹¹

The Prophet (S.A.W.) also used to consult his companions even on his most private affairs. Concerning his planning to divorce his favourite wife, 'A'ishah Bint Abu-Bakr, when the latter was accused of having an affair with a companion named Mu'attal Ibn Safwan on their way back from a battle in which she was unknowingly left behind. He consulted Abu-Bakr, 'Umar Ibn al-Khattab, 'Uthman Ibn 'Affan and Ali Talib. The first three companions advised the Prophet (S.A.W.) not to divorce 'A'ishah as they believed that she could never commit such an offence, while Ali advised Prophet (S.A.W.) to consult people of sound opinion and sound knowledge of the incident and then take to their advice.¹²

The Institution of *Shura* in the Rightly Guided Caliphate Period

An immediate step was taken by companions who were natives of Madinah to elect a new caliph after the death of Prophet (S.A.W.). They assembled in the house of the Madinah chief named Sa'd Ibn Ubaydah for mutual consultation (*Shura*). Being informed of their proceedings of *Shura*, Abu Bakr, 'Umar Ibn al-Khattab and Abu Ubaydah hastened to join them. After the contribution of each of them to this *Shura's* proceedings, Abu Bakr was finally elected to be the first Caliph of Islam. The election of Abu-Bakr settled the question of hereditary succession and crisis in Islam as this serves as an inauguration and establishment of the democratic principle of election in the caliphate system of Islam.¹³

In his inaugural address, Abu-Bakr said:¹⁴

You have elected me as your *Khalifah*,
although I am not better than you. I
need all your advice and all your help.
(in *Shura*)

Abu-Bakr took to his word as he never embarked on any governmental duty without consulting the consultative and advisory council on it. On his death bed, he nominated 'Umar Ibn al-Khattab as his successor, and this choice was subsequently ratified by the community of Muslim through the process of *Shura* left behind by his predecessor during his

caliphate period. When he (Umar) was dying, he too nominated an electoral council composed of six notable and prominent companions and entrusted them with the duty of choosing his successor among themselves.¹⁵ Those six companions were Uthman Ibn Affan, Ali Ibn Abi Talib, Talhah Ibn Ubaydullah, Abdur-Rahman Ibn Awf, Sa'd Ibn Abi Waqqas and Zubayr Ibn Awwam. Their choice fell on Uthman Ibn Affan after their *Shura* proceedings and was therefore recognized by the Muslim community as the orthodox successor to Umar. After the assassination of Uthman Ibn Affan, Ali Ibn Abi Talib was proclaimed the next caliph by a congregation in the Prophet mosque in Madinah and the majority of the Muslim community there upon pledged their loyalty to him¹⁶ (Shah, 1987:41).

All these *Khulafa' ar-Rashidin* used to consult the companions who were specially endowed with practical wisdom on any questions of major import. However, when they noticed that the opinion tendered by the majority of the *Shura* council would result in a capital mistake of policy, they enforced their own opinion even if it was supported by none of the *Shura* members, and they always went on trying to convince the majority on the soundness of their stand.¹⁷ It is quite unfortunate that this community representation through *Shura* was quickly phased out of Islamic empire through the introduction of the autocratic rule and hereditary succession method of caliphate system by both Umayyad and Abbasid caliphate in the Islamic empire.

Institution of *Shura* in the Qur'an

Qur'an, as a divine speech of Allah was revealed bit by bit to the Prophet (S.A.W.) through the arch-Angel Jubril in both cities of Makkah and Madinah between the period of 610 C.E. and 632 C.E. Unlike any other divine scriptures of worldly religions. Qur'an is a divine scripture of instruction and guidance for the race of mankind and Jinn. Thus, it becomes a manual of their life as it leaves nothing untouched in their spiritual and worldly affairs in order to effect a social change.

The term "*Shura*" occurs in three verses in different *Surahs* (chapters) of the Qur'an. Those verses are the following:

If the (couples) both decide on weaning by mutual consent and after consultation, there is no blame on them. (Qur'an 2:233)

It was by the mercy of Allah that you were lenient with them, for if you had been too strict and of fierce of heart, they would have dispersed away from you. So, pardon them and consult them in the affairs. Then, when you have taken a decision, put

your trust in Allah. Verily, Allah loves those who put their in Him. (Qur'an 3:159).
 And those who answer the call of their lord and establish prayer, and conduct their affairs by mutual consultation and spending of what we provided them. (Qur'an 42:38).

The above references from the Qur'an concern the institution of *Shura* ranging from the human private affairs to the human public affairs. On this, some erudite scholars of Qur'an Exegesis (*Tafsir*) discussed them extensively. Ibn Jarir at-Tabari expatiates on the term "*Tashawur*" as it was used in *Surah al-Baqarah* verse 233. He says that it means a consultation between couples and the flexibility of their decision concerning the period of weaning their own child since Allah has permitted both of them to deliberate on whatever might lead to the welfare and interest of their child as this is one of their responsibilities.¹⁸

Al-Qurtubi elaborates the imperative verb "*Shawir*" as it is used in the *Surah Ali - Imran* verse 159 as an indication for the permissibility in the interpretation of affairs and the consideration of human assumption in addition to revelation. He adds that the mutual consultation among the Muslims before reaching a final decision is a divine blessing of Allah on them as they shall be guided to reach the right decision on any of their affairs.¹⁹ Ibn Kathir and Baydawi²⁰, in his explanation of the term "*Shura*" in the *Surah ash-shura* verse 38, declares that it refers to the time of the earlier Muslims in Madinah when they did not settle or confirm any matter until the mutual consultation took place among them in which everyone of them contributed his own opinion or view concerning the matter, arising and jointly agreed upon it.²¹ Ibn Taymiyyah expresses his own view on the term "*Shura*" or "*Tashawur*" as a divine recommendation to the Prophet (S.A.W.) or a ruler in the Muslim community (*Amir*) to consult with the people of authority (*ulul-'Amr*) which comprise his subjects (*Wazir*) and the Islamic Scholars (Ulama'). He further explains that whenever there is a conflict between the opinion of the ruler's subjects and the Islamic Scholars, the opinion nearer to the Qur'an and the *Sunnah* of the Prophet (S.A.W.) should be carried out.²²

Shura within the Framework of *Shari'ah*

Shura institution is the backbone of wielding power and authority in the Islamic political setting. In fact, it is a co-operative and complimentary nature of the political functionaries within the framework of *Shari'ah* principle so as to ensure good governance and preservation of the Islamic socio-political order. This is the reason behind the successful achievement of the Islamic political setting in the various multi-cultural

environments in different walks of life in Asian and African continents. *Shura* institution has been responsible for the efficiency, firmness and political strength of some Islamic states in the eighteenth and nineteenth centuries of Christian era, such as Delhi Sultanate in the Asian continent and Sokoto Caliphate in African continent.²³ However, *Shura* as a means of mutual consultation can be employed for both personal and private affairs of mankind as features in Qur'an 2:233 on the agreement of the couple on breastfeeding. The Power of consultation of the *Shura* rested in three inter-related authorities which are as follows:

(i) Consultative and Advisory Council

Consultative and Advisory Council is the group of intellectuals and professionals from various fields of learning. This council is the formal constitutional body in *Shari'ah* that wields enormous power and authority in Islamic polity. It comprises scholars, artisans, military personnels, community leaders, government advisers and leaders of thought. They must be morally upright Muslims in the society, and they are to represent the will of the people in their areas of specialization.²⁴ On this, Qur'an 39:9 says:

Are they equal those who know and those who do not know. Verily, it is the people of understanding that usually understand.

(ii) Ulama' or Islamic Scholars

These are the renowned scholars of Islam who are specialists of *Shari'ah* (Islamic Law), *Fiqh* (Islamic Jurisprudence), *Usul al-Fiqh* (Principle of Islamic Jurisprudence), *Tafsir* (Qur'an Exegesis) and *Hadith* (Prophetic tradition). The people in the position of authority have to consult the Islamic scholars on the religious-related matters in the society. The role of Islamic scholars is to guide the people on religious matter and moral upright of the people in the society. As a result of this role, they are to guard the conscience and protect the vital interest of the people by urging the people in the position of authority to render their duties effectively, uphold the trust imposed on them, remind them of their rights and limitation of their power and arouse the people to action if the people in authority resort to oppression.²⁵ By this, Islamic scholars represent the opinions and sentiments of the people since they interact with them on daily basis. On the suitability of the Islamic scholars for this role, the Qur'an says:

"Verily, the most fearer of Allah among this servants are the Islamic scholars"
(Qur'an 35:28)

(iii) People of High Integrity and Wisdom

These are the people highly grounded in integrity, moral standard and wisdom who have deep insight and accumulated experience in the affairs of what is happening in the society. They are those people that the Qur'an refers to as *Ulul al-Bab* (People of Understanding) in the Qur'an 2:269 which says:

He (Allah) endows wisdom to those the wishes. And whoever the wisdom is endowed has been given abundance of goodness. And none understands except the people of understanding.

The voice of the people counts under the Islamic polity as their oath of allegiance to the people in the authority (*Ulu'l-Amr*) legalized the authority of the people in the position of authority. *Shari'ah* invests the people with the power to speak and raise their voice against any tendency to abuse the trust of leadership imposed on the people in the position of authority. The people in the position of authority are also under obligation to listen to the voice of the people in the Islamic polity and to allow free flow of criticism and opinions of the people in the running administration of the society.²⁶ On this, Umar Ibn al-Khattab says:

If the people fail to voice their opinion, then there is not much good in them. If the people in the authority refuse to listen to the voice of the people, then there is not much good in them either.

Essence of *Shura* in the Islamic Political Setting

Shura institution in Islamic legal principle (*Shari'ah*) highlighted in this study represents the mutual consultation on various levels of human social and political dispensation.

In Islamic political setting, there are two measures of checking and balancing the excess of the people in the position of authority (*Ulu'l-Amr*). The first means of check and balance is the primary and secondary source of *Shari'ah* legal system. Primary sources of *Shari'ah* are the Qur'an and the *Sunnah* of Prophet Muhammad (S.A.W.) (Hadith) while the secondary sources of *Shari'ah* are *Qiyas* (analogical deduction), *Ijma'* (Consensus of Islamic Scholars), *Ijtihad* (Legal exercise of Islamic scholars), *Neo-Ijtihad* (legal re-interpretation of Islamic scholars), *Urf wa Adat* (Customary and cultural backing legal interpretation).²⁷ The second

measures of checking and balancing the excess of the people in the position of authority (*Ulu'l-Amr*) is the institution of *Shura* consultative and advisory body which would be consulted in the running administration of the government.²⁸ This body serves as a direct link and intermediary between the rulers (*Ulu'l-Amr*) and the ruled.

Shura institution encourages the participation of the citizens in the administration of the society as it allows and accommodates the position of opposing groups and supporting groups in the society. It also brings in mutual peace and agreement in Islamic political setting as it allows the pooling together of the people's understanding of the issue from different perspectives and finally arrive at the logical decision for the betterment of the society. Through the *Shura* institution, rancour, enmity, chaos and disorderliness cannot emerge in the society running on the basis of Islamic political setting because of its efficacy in the citizens' popular empowerment and participation in the conduct and management of their society's social and political affairs.²⁹

Conclusion

In this study, we have examined the institution of *Shura* during the pre-Islamic period, prophetic period and orthodox caliphate period in order to establish how the *Shura* has been successfully utilized by the people in their personal and private lives as well as their political lives within the framework of *Shari'ah*. It was found out in the study that the employment of *Shura* in human affairs is not limited to their political life alone but to their private and personal life too. *Shura* promotes the accommodation of other people's view in the management of institutions, such as home, committee, board, company, ministry, parastatal, department, academic institution or geo-political society. At this juncture, the study suggests that:

- (i) The ruler or head of any institutional body should give room to the application of the *Shura* method of consultation in their domain.
- (ii) Islamic scholars should enlighten the people on the efficacy of the *Shura* method of consultation in their private and public affairs.
- (iii) Muslims should bear in mind that the *Shura* method of consultation is a pre-Islamic tradition of Arab, which was retained and reformed by Islam, and thereby becomes Islamic tradition.

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