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Article-Summary:

The emergence of a more democratic polity in Nigeria demands a redefinition of the relationship between citizens and the state. While the essence of military or indeed any other dictatorship is the denial of fundamental rights in one guise or another, the essence of democratic governance rests on the respect for, defence and advancement of human, civil, political, economic and cultural rights of all without distinction. At least, this is the way it ought to be.

However efforts to promote civil and democratic rights and institutions in Nigeria are facing significant challenges and generating social and political conflict. Amongst the numerous social, political and economic crises undermining Nigeria's nascent democracy, a key issue has been the recent implementation of the Sharia Criminal Penal Code in northern Nigeria.

Sharia law is as old as Nigeria itself. Historically the 19th century holy war, which was led by Shehu Usman Dan Fodio in the Hausa kingdom, had as one of its major aims the need to improve the standards of living of Muslim women. However, after his death, and with time, the kingdom returned to its patriarchal structures.

In present-day Nigeria, the concern of human rights campaigners and millions of Nigerians, both Muslim and Christian, is the extension of sharia law to criminal matters as against personal and civil matters, which it had been regulating before 1999. This has led to the introduction of flagellation (whipping), lapidation (stoning) and amputation into the penal code. These punishments have stimulated national and international debate on the law as it relates to gender. Between 1999 and today, ten northern states have ratified the implementation of the Sharia Penal Code. These state authorities have argued that by virtue of section 6(5) (K), the 1999 constitution gives power to Nigeria's component states to establish courts, and may be authorized by law to exercise jurisdiction at first instance or on appeal matters with respect to which a state House of Assembly may make laws. Rights campaigners on the other hand, have argued that the constitution of Nigeria defines it as a secular state.

The implementation of Sharia Penal Codes in northern Nigeria is flawed in several respects. Firstly, it does not adequately protect the rights of women. Therefore abuse, violence and discrimination against women go unpunished as they are wrongly considered to be socially acceptable. In addition, the testimony of women is devalued and treated as that of a minor or person without necessary legal capacity. Often, these biases and attitudes also affect judges and therefore the judgment of the Sharia Courts.

As a result the implementation of sharia in Nigeria has placed some restrictions on the rights of women in northern Nigeria. In the last two years three major cases that have violated women's rights have attracted international and public condemnation.

In Safiya Tungartudu Hussein's case for instance, the question of gender bias has been raised on the following grounds:

1. Her pregnancy constituted the main evidence against her, but no scientific efforts were made to establish or disprove the paternity of the child.
2. The onus of pivot of adultery was just pregnancy.
3. The man named in the case was allowed to go free after denying responsibility for the pregnancy.

These points alone suggest that the thinking of the court and supporters of sharia is that only women can be guilty of the 'offences' of adultery or fornication. What happens then, in the case of seduction of minors, or rape? This suggests that men living under shaira have been given a license to rape women and seduce or assault minors, or even impregnate them in the course of a relationship and then deny responsibility and watch them face a death sentence.

Democratically minded Muslim activists have also adjudged the pronouncement as a misapplication of sharia law, as a result of ignorance on the part of the women, the judge and those that supported the sentence.

Some Islamic scholars go further and believe that under the sharia law every person irrespective of country of origin, religion, race, sex, status, age or colour has basic human rights that should be respected. These rights include: the rights to life, right to justice, right to equality, right to be free from discrimination, right to freedom from slavery, respect for the chastity of women, right to freedom from want, right to security of life and property, right to personal liberty, right to freedom of expression, and equality before the law.

Dr. M. T. Ladan has argued for example, that there are some specific rights to women because of their "special responsibilities and status in the eye of Islam". These rights are the right to equality in status, worth and value, right to education, right to own and dispose of property, right to inheritance and dower i.e. a dead mans estate or part of his estate inherited by his widow, right to maintenance, right to custody of children and right to obtain divorce.

Nevertheless, rights campaigners, Islamic modernists and feminists believe that there are two important principles in the Quran which clearly establish gender differences:

1. Notion of quwama (the authority or guardianship that men can exercise individually or collectively over women).
2. Notion relegating women to private spheres of life.

The notion of quwama is reflected in several verses of Surah 4.34 (Al Wisa). It is also worthy of note that this surah deals with several issue's regarding family law, especially marriage, repudiation and inheritance.

For instance it is argued that polygamy is forbidden for women (Al wisa verse 33) while it is allowed for men. Even though this has taken a new dimension in some countries, the verse endorsing polygamy (Quran 4.3) has been read by modern scholars as being applicable only to the man who believes that he will be able to love and relate to more than one wife equitably, including financial maintenance if applicable. This is however subject to the conscience of the man. As we know, ethics, morality and the law in all countries and all religions have established that many men and women have no conscience. In certain countries, modern legal reforms have positively insisted that a man must prove to the court his ability to maintain several wives equitably before entering into a second marriage.

Be that as it may, the critics of this notion still feel that women are not given the same opportunities i.e. to have as many husbands as two, three or four even if they claim they can love, relate to and maintain them equitably. This suggests that men are believed to be superior to women, or in some

way more powerful beings. On the second notion of exclusion of women from political participation, Abu Bakra's has read a hadith to mean or to have an effect that "a nation which places its affairs in the hands of a woman shall never prosper", Al-Bukhari, Hadith No. 4425. Some scholars have argued however that some of these criticisms are a product of custom and have no relationship to the law. Several Muslim countries such as Pakistan, Bangladesh and Indonesia have elected women leaders.

One of the issues regarding gender bias is that of women as witnesses. Quran 2: 282 appears to allow the testimony of women in only civil matters and even then, two women are considered the equivalent of a single male witness. However in criminal procedure, certain interpretations believe that women are not acceptable as credible witnesses.

Discrimination against women has also manifested in policy and law making. For instance women in Zamfara State in northern Nigeria were, for a period, prevented from travelling in public transport. The stated reason was that women are not to be seen in public spheres of life and certainly not in the company of unrelated men. Some women's organisations protested, and the law was amended, but in practice women are mostly provided with "women only" public transport.

In another instance in Tarata Mafara local government, single women were given a three month ultimatum to get married or face being sacked from jobs in the civil service. Some financial inducements were provided to encourage women to become married. These examples constitute rights violations under Nigerian law. These and other similar policies also mask a greater problem of growing unemployment, lack of amenities and recreational facilities etc. The criminalization of women and their rights diverts attention from the real causes of crime, lack of adequate transport and housing and so forth. Such discriminatory policies are applicable to mostly ordinary everyday people as the rich and powerful find ways around them.

The Nigeria constitution is supreme by virtue of the provision of Section 1 (1). Section 3 states that any other law which is inconsistent with the provisions of the constitution, shall be null and void. Chapter 4 of the 1999 constitution dwells on fundamental human rights, which include rights to freedom of thought, conscience and religion (Section 38, 1999). However, federal legislation does not specifically uphold the rights of women in areas where custom or religion violate their constitutional rights. Police officers for example routinely deny women the right to post bail in both Christian and Muslim parts of the country even though posters in many police stations state, "men and women have the right to post bail". Like other laws, specific punishments need to be stipulated for the violations of women's rights.

Existing inconsistencies and ambiguities create the space for the violation of women's rights. In conclusion, rights campaigners, women's organisations in Nigeria and internationally need to work towards law reform, and the domestic enforcement of international norms and standard for the observance of women's human rights such as the Convention for the Elimination of Discrimination Against Women (CEDAW). Elections are not equal to democracy. The real test of democracy is a nation's capacity to uphold the constitutional, democratic and human rights of all its citizens regardless of ethnicity, race, age, economic and social status, and of course gender.

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