

**THE APPLICATION OF ISLAMIC LEGAL MAXIM *AD-DARŪRĀT TUBĪHUL MAHZŪRĀT* (NECESSITIES MAKE PROHIBITION PERMISSIBLE) ON THE MUSLIM PARTICIPATION IN POLITICS IN NIGERIA**

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**Abstract**

It is a common knowledge among Muslims that Islam has dos and don'ts. A *Hadīth* confirms this when it mentioned that prohibited things are clear and permissible things are also well enunciated by the Law Giver. It is also on record that Islam as a religion intends ease for its adherents not difficulties. This is the main reason why Allah leaves room for necessity, particularly when humans are being driven by it. Muslims in Nigeria, scholars and non-scholars differ on whether a Muslim can partake in the country's election. To some, a Muslim cannot participate in the election of the country because it is characterised by different acts of *Kufr* (disbelief), while other group of Muslims uphold the need for the Muslims to be fully part of the exercise noting that if Muslims fail to do so, their affairs will be controlled by the unbelievers which will in turn create difficult problem for the whole Muslim community. In order to advocate unity among Muslims and sensitise them on this issue, this research work examined the application of the Maxim "*Ad-Darūrātu Tubīhul Mahzhūrāt*" (necessities make prohibited acts permissible) to justify the need for the Muslims to take part in the country's elections. The research adopted both theoretical and analytical method of research to drive home its points. It found that directly or indirectly both the Qur'ān and Hadīth are fully in support of the claim. It is concluded that there is no harm if the Nigerian Muslims participate in the country's elections.

**Keywords:** Necessity, Permissible, Forbidden, Election, Disbelieve

**Introduction**

The maxim of *Fiqh* refers to a body of abstract rules which are derived from the detailed study of *Fiqh* itself. It consists of theoretical guidelines in different areas of *Fiqh* such as Evidence, Transaction, Matrimonial laws etc. As such, they are integral part of *Fiqh* and cannot be totally separated from '*Usūl-Fiqh*' (the fundamental principles of Islamic jurisprudence). The name "*Al-Qawā'idul-Fiqhiyyah*" (Islamic legal maxim) may appear to have the same meaning as the '*Usūl-Fiqh*' but in the real sense

the former is not part of the later and the two are different from each other.<sup>1</sup>

A comparison between *'Usūl-Fiqh* (principle of Islamic jurisprudence) and *'Usūl-Qānūn* (principle of Islamic law) will indicate that these two disciplines have more in common with another although they are different in other respects. They however concerned with the methodology of law and rules of deduction and interpretation. They are not concerned with the detailed rules of law itself. It has to be mentioned that the principle of *Ad-Darūrātu Tubīhul Mahzhūrāt* can be regarded as an Islamic legal maxim which will be studied and applied to the Nigerian election.<sup>2</sup> It is no more a news that Nigerian Muslims are at loggerhead against one another on whether a Muslim can participate in the country's election or not. This, no doubt has generated unnecessary disunity among them. To rescue the entire Muslims from unnecessary disintegration, this study aims at examining the application of the maxim *Ad-Darūrātu Tubīhul Mahzhūrāh* to support the need for the Muslims to participate in Nigerian elections

#### **Definition of Maxim**

*Ad-Darūrah* is derived from the words *Darra, Yadurru, Darūratān, Darran, Dararan, Darūrāh and Daraurah*.<sup>3</sup> It means linguistically: to harm, to damage, to hurt, to injure and others.<sup>4</sup> Technically, it means an excuse that makes the prohibited thing permissible.<sup>5</sup> According to *Mu'jamulwasīṭ*, "it is a situation which one cannot abstain from".<sup>6</sup>

The word *Tubīhuis* derived from the words *Abāha, Yubīhu, Ibāhatan* which means to permit, to legalise, to legitimise and to make necessity lawful which can be simply called *Rukhṣah* (concession).<sup>7</sup> The word *Mahzhūrah* is derived from the word *Al-Mahzhūr*, which means *Al-Muharramāt* (the forbidden).

Hence, the combination of the above-explained words forms the maxim *Ad-Darūrātu Tubīhul Mahzhūrāt*, which means "The necessities make prohibited acts permissible". This golden rule permits whoever feels a severe hunger that can lead to death to eat the forbidden things such as blood of animal, *Lahmul khinzīr* (pork) and others. This principle is also applicable to political life of Nigerian Muslims especially the electioneering process which

is the main focus of this study. It should be noted that before the maxim can be applicable in any situation the following conditions must be present:

- There must be a clear, actual and apparent necessity; and
- There must not be an imaginable ordinarily lawful solution.<sup>8</sup>

Scholars explain the points above further that such necessity must be inevitable otherwise it will cause harm which will eventually affect the major purposes of the *Sharī'ah* which are protection of Religion, Life, Intellect, Property and Progeny.<sup>9</sup>

### **The Deduction of the Maxim from the Qur'ān and the Sunnah**

There are many passages of the Qur'ān and *Ahadīth* where this maxim can be derived from. For example, in Qur'ān 2 verse 73, Allah permits the eating of prohibited animals due to genuine necessity, He says:

But he who is driven by necessity neither desiring nor exceeding the need, then there is no sin on him, no doubt, Allah is Forgiving and Merciful (Q 2: 173).

In another chapter of the Qur'ān, *Suratul Mā'idah* to be precise, Allah says "... But whosoever is forced by extreme hunger, thirst without inclining towards sin, then undoubtedly, Allah is Forgiving, Merciful." (Q5:3). Allah says further in another passage:

Whosoever denies Allah after believing in Him save him who is compelled and his heart is firm in belief, yes whoso becomes infidel with open heart, upon them is the wrath of Allah and for them is the great torment. (Q16: 106)

In the Hadīth, Abu 'Ubaydah reported that the polytheists took 'Ammār bn Yāsir and punished him until 'Ammār agrees to their thought. 'Ammār thereafter complained the experience before the Prophet. The Prophet then asked ('Ammār): "how did you find your heart?". 'Ammār then replied: "(My heart) found tranquility in faith". The Prophet said: "If they come back to demand for such then profess it."<sup>10</sup> Looking at this injunction, one will agree that it is crystal clear that a Muslim who is being driven by necessity can go to any extent to save himself from the evil resulting from the neglect of such necessity. The Hadīth of Yāsir is very relevant in this regard as it is about faith which is the most pertinent aspect of Islam.

### Position of Islam on Politics

According to the Oxford Advanced Learner's Dictionary, Politics are the activities involved in getting and using power in public life and being able to influence decisions that affect a country or a society.<sup>11</sup> In other word, it is a matter connected with getting and using power within a particular group or organization.<sup>12</sup> It is popularly believed that politics have been derived from the word '*politika*' which simply means affairs of the cities.<sup>13</sup> It also refers to the set of activities that are associated with making decision in groups, or other forms of power relations between individuals such as distribution of resources or status.<sup>14</sup> It may be used in the context of a political solution which is compromising, non-violent or the art or science of government.<sup>15</sup>

It can be understood from the above meanings of politics that in its broadest sense, it is the activity through which people make, preserve and amend the general rules under which they live.<sup>16</sup> Although, this is slightly different in the realm of academic subject. It is thus inextricably linked to the phenomenon of conflict and cooperation.<sup>17</sup> To other source, it is affirmed that politics is derived from *polis*, meaning literally "city-state". Ancient Greek Society was divided into a collection of independent city-states, each of which possessed its system of government.<sup>18</sup>

According to the Arabic Dictionary, *As-Siyāsah* linguistically means politics but Ibn Athir defined it as performing the appropriate or suitable thing.<sup>19</sup> Most of the linguist scholars followed the definitions. The linguistic meaning of *siyāsah* does not separate from definition given by Ibn Athir. In the context of Islamic law, the word *siyāsah* has not been reported from the legal term neither the Qur'ān nor the Sunnah except from one hadīth that was reported by Abu Hurairah:

Messenger of Allah said: "The Banu Isra'il were ruled by the Prophets. When one Prophet died, another succeeded him. There won't be any prophet after me. Caliphs will come after me and they will be many." The Companions said: O Messenger of Allah, what do you command us to do?" He said: Fulfill the pledge of allegiance to whoever is sworn first (then swear allegiance to the others). Concede to them their

due rights and ask Allah for that which is due to you. Allah will call them to account in respect of the subjects whom He had entrusted to them.<sup>20</sup>

According to the Ibn Hajar's (d.1449) explanation on the Hadīth, when corruption has become an order of the day, God will send a prophet to them who will control their affairs and remove whatever they have changed from the legal rules of Taorah. Indeed, it is an indication that it is natural for the led to have a leader that will be taking care of them in a good way and help the oppressed from the oppressor. As a result of this, an-Nawāwi (d.1277) explained the *tasūsum Anbiyā'u* as a prophet that will take care of their affairs just like the Emirs and Governors take care of the led. He finally emphasized on the definition given by Ibn Athir.<sup>21</sup>

The classical definitions of the role of Islam and the state have undergone substantial reversion in the modern time. In the nineteenth century, Muslims generally thought that politics should be corresponded to the *Muslim Ummah* (Muslim Nation) either through a universal caliphate which will emphasize the religious character or diverse sultanate that will emphasise on political character. Politics was really attached to the dynasties and rulers rather than participation.<sup>22</sup> One of the contemporary questions that has generated a heated argument within religious scholars is whether the character of the ruler is a determinant factor for the state to be truly Islamic. In other word, if the ruler is tyrant, oppressive and immoral, does this necessarily render the state un-Islamic, so that its citizens will be free to secede and overthrow the ruler? The majority of Islamic scholars both the old and the contemporary ones are of the view that the social order should be maintained, anarchy should be avoided and killing of innocent souls should be considered. All these are more important than the character of the ruler. They finally considered that the only decisive factor rendering a state or society Islamic is its governance by Islamic law.<sup>23</sup>

However, a minority of '*ulamā'*' notably the thirteen-century scholar, Taqi al-Din Ibn Taymiyyah, emphasised that the character of the ruler is a decisive and determinant factor for a state to be truly Islamic. He explained further that if a ruler is tyrant and unjust, Muslims are bound to overthrow him. Ibn Taymiyyah emphasised on the synthesis between religion and state

which is termed as Islam is *dīn wa dawlah* (religion and state). He insisted that one who claims to be a Muslim but does not act accordingly cannot be considered as a true Muslim; a bipolar view of the World in which only two choices or sides existed, Muslim and Non-Muslim, belief and unbelief.<sup>24</sup>

The postulation of theory that Islam is both religion and state (*dīn wa dawlah*) dates back to the early twentieth century, when Muslims were instructed to abolish the Ottoman (Turkish) Caliphate and Territorial Division Muslim communities under the impact of European Colonialism. Although the Caliphate had a forcible end with the fall of Abbasid dynasty to the Mongols in 1258. It remained a powerful religious symbol of political legitimacy. The Ottoman Sultans had adopted the title of caliph in order to lend religious legitimacy to their rules; their claim to the caliphate was abolished in 1924.<sup>25</sup>

It should be emphasised that Muslims have both an individual and a corporate religious identity and responsibility. Thus, to be a Muslim, entails both an individual and a communal responsibility as a member of a worldwide community to obey and implement God's will on earth in both private and public spheres. The Qur'ān and the Sunnah teach Muslims to have a universal mission to spread religion of Islam and establish a just society on earth based on the recognition of God as the source of all authority, law and order. Historically, politics has been a central vehicle by which Islam was implemented in state and society.<sup>26</sup>

Historically, When Prophet Muhammad together with his followers migrated from Makkah to Madinah, a political community was formed and Islamic governments ruled states that ranged from fortified towns to transcontinental empires. These states, separated in time, space and size were so Islamic that, they did not need adjectives to describe themselves. A general constitutional theory was developed and changed over the course of centuries. A Muslim ruler governed according to God's law, expressed through the principles and rules of *Sharī'ah* that were expounded by the scholars. The main duty of the ruler is to command what the law required and ban what it prohibited which makes his authority lawful and legitimate.<sup>27</sup>

It has to be emphasized that Nigeria has a large number of Muslims and Islam has played a vital role in its politics. Although, Nigeria is not an Islamic but a multi religious state, it is under a democratic government and a secular constitution with the rule of law. With that, Islam contributes to the political and social life of Nigerians. It has contributed in many ways to the Nigeria's development, notably in providing the source to organise politics and society, fostering community cohesion and creating an ideology of change.<sup>28</sup>

Muslims and non-Muslims do not necessarily need to agree on a number of major issues due to their religious differences and political vendetta: the secular or otherwise, nature of the Nigerian foundation; the distribution of federal positions to the members of political class, the retention of Nigeria as a federal structure, the distribution of power between the federal and states, the place of women in politics and society, the distribution of allocation and number of states and local government.<sup>29</sup>

Many people across the predominantly Muslim countries have confirmed that Islam has played a major influence in politics. For instance, Pakistan, Jordan and Egypt believe their law should strictly follow the Qur'an while majorities in Tunisia and Turkey say their laws should at least adhere to the principles of Islam. In Nigeria as a country too, Islam currently plays a large role in their nation's political life and mostly in a positive way.<sup>30</sup> For instance, it is on record that the current Governor of Oyo State, Seyi Makinde has challenged his All Progressive Congress (APC) counterpart, Adebayo Adelabu to name one thing he has done for the Muslim community before he showed interest in the governorship race. He asked that:

Where was Adelabu when I started organising my popular Omituntun Annual Ramadan Lecture six years ago to promote Islam and peaceful co-existence? Where was he when, for several years now, I have been sponsoring Muslims to Mecca? Makinde said: While Adelabu did not make up his mind which religion he actually wanted to be identified with, I have been adding value to the propagation of both religions without any fuss in addition that I am running for governorship post while I have a devoted and renowned Muslim deputy, Rauf Aderemi

Olaniyan who has contributed to the growth of Muslims and Islam.<sup>31</sup>

In addition to the above, Makinde stated that he had also attended several Islamic oriented meetings at the instance of Aare Musulumi of Yoruba Land, Alhaji Daud Akinola, League of Imams and Alfa, Muslim Association where he presented to them his blue print for governing Oyo State which was well received.<sup>32</sup> The submission here therefore is that, Makinde did all these to gain a massive support from the Muslims, to sharpen his political carrier and not to accept Islam.

#### **Juristic Views on Election and Voting in Islamic Law**

Election is the formal process of selecting a person for public office or of accepting or rejecting a political proposition by voting. It is important to distinguish between the form and substance of elections. In some cases, electoral forms are present but the substance of an election is missing as when voters do not have a free choice between the two alternatives.<sup>33</sup> In other word, this term 'substance', in its usual acceptance signifies the choice which several persons collectively make of a person to fill an office or place. In another sense, it also means the choice which is made by a person having the right of selecting one of two alternative contracts or rights. Elections then, are of men or things.<sup>34</sup>

Conventionally, elections were used in ancient Athens in Rome for the selection of Popes and Holy Roman Emperors but contemporarily, the origin of elections lied in the gradual emergence of representative government in Europe and North America in the beginning of seventieth century. At that time, the holistic notion of representation characteristic of the middle ages was transformed into a more individualistic conception. For instance, the Parliament was not seen as representing estates but rather perceived as standing for actual human beings.<sup>35</sup>

In Islamic law, elections are of the contemporary topics that have been discussed by the Muslim scholars locally and internationally. Many conferences and symposia have been held on this issue. Islamic organizations and foundations have been established due to their sensitivity. Many countries have accepted the conduction of elections and casting of votes as a means of getting power and choosing the best candidates. In



Arabic language, elections are simply translated *asal-Intikhābāt* which is derived from *nakhaba* meaning, “to elect” or “to select” or a word that indicates a glorification.<sup>36</sup> According to Ibn Manzur, *al-Muntakhibūn* refers to a certain group of people that have been choosing from men.<sup>37</sup> Ibn Athir also agreed to this but later added two more linguistic meanings to it which are: *al-Ikhtiyār* and *al-Intiqā'* (choice and selection).<sup>38</sup>

Technically, *al-Hanafiyah* defines *intikhāb* (election) as to intend a doubtful affair between the existence and non-existence that has to do with the person's capacity and gives preponderance to one side from others.<sup>39</sup> Ibn Abideen ad-Damashiq (d.1836), observes an election as to intend a thing.<sup>40</sup> The consensus of Muslim scholars explained elections as a thing while giving a preponderance to others.<sup>41</sup> It has to be mentioned that the contemporary Muslim researchers have fantastically defined the *intikhāb* as a process in which the citizens or group of people vote to choose a person to hold an official position.<sup>42</sup> This definition really suits the contemporary election in the Nigerian democracy. According to Mustapha as-Sibaa', election is the choice of the citizen to vote for a delegate that will hold an official position.<sup>43</sup> It can be concluded that selection is the result of election.

From the above, it is vividly clear that some of the classical scholars such as Abu Ishāq Shaatibi (1388 C.E) and others have a unique stand on election in Islamic law. For instance, Shaatibi says:

يقول الشاطبي: علمنا من مقصد الشارع التفرقة بين العبادات والعبادات وأنه غلب في باب العبادات جهة التعبد وفي باب العبادات جهة الالتفات إلى المعاني(15)، وعليه لا بد من التوقف في العبادات على الدليل كمسائل الصوم والصلاة... أما العبادات وبما أن ميناها على المعاني أي المصالح التي قصدتها الشارع، والأحكام المفصلة فيها قليلة فدل كل ذلك على أن الأصل فيها يقوم على الإباحة والمانع يطالب بالدليل يقول الله تعالى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} وما عدا المحرم يبقى حلالاً، والسياسة الشرعية من هذا الباب، وعليه برع أصحاب الفقه الدقيق ونبهوا للتفريق بين باب العبادات وباب المعاملات، وإليه أشار ابن عقيل في مناظرته مع بعض الفقهاء فقال: العمل بالسياسة هو الحزم، ولا يخلو منه إمام، وقال الآخر: لا سياسة إلا ما وافق الشرع، فقال ابن عقيل: السياسة ما كان من الأفعال بحيث

يكون الناس معه أقرب إلى الصلاح وأبعد عن الفساد، وإن لم يشرعه الرسول صلى الله عليه وسلم ولا نزل به وحى؛ فإن أردت بقولك "لا سياسة إلا ما وافق الشرع" أي لم يخالف ما نطق به الشرع فصحيح، وإن أردت ما نطق به الشرع فغلط وتغليط للصحابه(17). ويقول الإمام الجويني: "معظم مسائل الإمامة عرية عن مسالك القطع خلية عن مدارك اليقين"(19)، فلا يقال في هذا الباب أنه بدعة ما لم يخالف ما نطق به الشرع الصحيح كما قال ابن عقيل، ولم أجد في الانتخاب كوسيلة ما يخالف ذلك، بل وجدت أن فيه تحقيقاً لمصالح الدين والخلق، يقول ابن تيمية: "الشريعة جاءت بتحصيل المصالح وتكميلها وتعطيل المفاسد وتقليلها بحسب الإمكان ومطلوب ترجيح خير الخيرين إذا لم يمكن أن يجتمعا جميعاً ودفع شر الشرين إذا لم يندفعا جميعاً".

#### Translation

We know from the aims of the Legislator the difference between mode of worship and customs. Certainly, the way of worship prevails in the mode of worship but as for customs, attention should be given to the concept. It is on that the canonical worship is based, such as the issues of *salāt* (prayer) and *sawm* (fasting). As for the custom, it is strictly based on concept or public interest that was designed by the Legislator. Therein, a joint rule that indicates that a permissibility is based on the rule which the objection demands for evidence. Allah says: "He has explained to you in detail what is forbidden to you." Things apart from this, remain lawful. The Islamic politics in this context was brilliantly discussed by the classical scholars of *fiqh* and they observed the difference between the canonical worships and Islamic Law of Transactions. To this, Ibn 'Aqīl, in his theory together with some jurists pointed to, political work as being rigorous that cannot make a leader free. Another said, there is no politics except the one that corresponds to the legislation. Ibn 'Aqīl also said: "Politics is whatever deed that emanates from the people and makes them close to goodness. It also drives them away from acting wrongly. Neither the Prophet legislates nor

receives a revelation; if you mean this, there is no politics except the one that corresponds to the Islamic Law or that does not violate any of the principles of *Shari'ah* and by this, it means, whatever the Islamic law speaks out and wrong by the companions. Imam Juwaini says: "The greatest issue of Imamate is free from a cut off approach to the intellectual capacity. I will not say it is an innovation simply because it violates the principle of Islamic Law as Ibn 'Aqil said. He did not find the election as a means to violate but an achievement to the religious and ethical peacemaking. Ibn Taymiyya said: "The Islamic Law came with an achievement of public interest and blocks the evils according to the possibility. It also weighs the best if not possible, it combines and prevents the lesser evil if all cannot be eliminated.<sup>44</sup>

The predominant views among Islamic scholars is that Islam has not categorically prescribed any definite political system, but has given only general principles of government and that a system based on elections is acceptable in Islam. For instance, Taha Jabir al-Alwani (d.2016) opines:

It is incumbent upon Muslims to actively participate in politics for the following reasons: 1) In order to protect our rights as American Muslims, we must involve in politics.2) Our involvement can facilitate our supports of our fellow Muslims around the world.3) our interaction with non-Muslims and our involvement will help to spread Islam's message. 4) It helps to convey the universality of Islam. Our participation is an obligation in Islam and not merely a right that we can choose to forfeit at will. It affords us the opportunity to protect our human rights, guarantee the fulfillment of our needs and work for the improvement of livelihood of Muslims and non-Muslims in America and Abroad. Whatever helps us to achieve these noble goals becomes Islamically obligatory. This includes supporting (both politically and physically) non-Muslim candidates whose beliefs and values are most compatible with ours, and who most address and support our issues and causes, registering to vote

and then voting. Although, separate acts, they are both an essential part of the election process.<sup>45</sup>

The above opinion of al-Alwani notwithstanding, it is to be noted that under normal circumstances, the Islamic injunctions generally discourage Muslims from participating in an un-Islamic governance. This can be deduced from the following verses:

And let those who oppose the Messenger's (Muhammad) commandment beware, lest some *Fitnah* (disbelief, trials, afflictions, earthquakes, killings, overpowered by a tyrant) should befall them or a painful torment be inflicted on them (Q24:63).

And incline not toward those who do wrong, lest the Fire should touch you, and you have no protectors other than Allah nor you would then be helped (Q11:113).

However, there are certain instances that are excluded from these injunctions based on the special considerations which the Islamic jurisprudence takes cognizance of. This may be the reason why some other scholars like Muhammad Saliu al-Munajjid, a student of Shaykh Ibn Baz (1999 C.E) and Ibn Uthaymeen (2001C.E) support the need for Muslims to participate in an election:

There is nothing wrong in Muslims casting their votes in favour of the less evil candidate. In any case, this is a matter of *Ijtihād* (juristic reasoning) based on the principle of weighing up the pros and cons, what is the interest of Islam and what is detrimental. No one should imagine that anyone who says it's okay to vote is thereby expressing approval or supporting *kufir*. It is done in the interest of the Muslims, not out of love for *kufir*.<sup>46</sup>

Another scholar from Islamic Institute of Toronto and Islamic Centre of Canada, Ahmad Kutty also said:

As Muslims, we have the duty to command good and forbid evil. When we translate this into political actions, we are to support those candidates who uphold the values or principles we cherish; then we are to support him if, however, we do not find such a

candidate but we are left with two and each of them has positive and negative side then should support the one whose positive side outweighs his negative side.<sup>47</sup>

Salman Al-Awdah, a Saudi cleric and member of International Union for Muslim Scholars and its board of Trustees also said on the participation of Muslims in elections:

I hold the opinion that it is lawful to participate in elections, as this may reduce suffering, and it is a way to choose the best among the available candidates. I believe participating in elections will, in any event, contribute to the reduction of evil and be a forum for countering bad policies and exposing their deficiencies, as well as being an opportunity to present proposals of a different kind that may help people. As for the participation in politics itself, we should consider that if the parliament and congress of these countries do not have any Muslim members, then that will pave the way for the opposition to come forth with their harmful views and policies which will consequently be incorporated into the laws of their countries and bring harm to the Muslims. I hold this opinion to participate in elections to vote for those who seem to be good or at least less harmful than other.<sup>48</sup>

In considering whether or not election or any practice is un-Islamic the following is a benchmark:

1. If the practice violates some laws or principles taught in the Qur'ān and Hadīth, we reject it as un-Islamic. A particularly clear example would be the smoking of tobacco; this is not explicitly mentioned in the sources of Islam. It does more harm than good (if any good at all) and the Qur'ān prohibits alcohol on the same grounds.<sup>49</sup>
2. If the practice does not violate anything taught in basic Islamic texts but is in fact positively helpful in fulfilling the aims and objectives of Islamic teachings, then we consider it not only permissible but also desirable. A particularly clear example would be the use of schools, examinations, awarding of degrees, certificates, etc. for religious and other education, because though schools, examinations, etc. did not exist in the days of the Prophet, they are helpful in imparting

knowledge, acquisition of which is a duty of every Muslim man and woman.<sup>50</sup>

3. If the practice is neither in conflict with Islamic teachings nor is helpful to fulfill their objective, then we simply tolerate it as permissible, neither condemning it nor commending it. For example, playing a sport like lawn tennis as a form of recreation and physical exercise once other Islamic principles are not violated.<sup>51</sup>

If we now apply the above procedure to the system of regular elections, we see that this system does not in itself violate any laws and principles of the Qur'ān and Hadīth. Rather it is helpful in the fulfillment of many of those laws and principles. For example, the Glorious Qur'ān says that the believers' affairs "are run by *shūra* (consultation) among themselves." Elections provide a way of conducting *shūra* in the important matter of choosing *'ūlul-l-'Amr* and then determining whether they have continued support of the people.<sup>52</sup>

### **Application of the Maxim for Democracy and Participation in Politics in Nigeria**

The term democracy is derived from a Greek word '*demokratia*' coined from *demos* (people) and *kratus*(rule).<sup>53</sup> It is a form of government in which the people have the authority to choose their governing legislators. The decisions on who is considered part of the people and how authority is shared among the delegates at various levels in the countries are regarded as democracy. The notion of democracy has evolved over time considerably and, generally the two current types of democracy are direct and representative. In a direct democracy, the people directly deliberate and decide on legislation. In a representative democracy, the people elect representatives to deliberate and decide on legislation, such as parliamentary or presidential democracy.<sup>54</sup>

The term appeared in the fifth century BC to denote the political systems existing then in Greek City States, notably Athens to mean rule of the people, in contrast to aristocracy which simply means a ruling by elite. Theoretically, the definitions are antonyms of each other. The political system of Classical Athens, for example, granted democratic citizenship to free man and excluded slaves and women from participating in politics. In

virtually all democratic governments throughout ancient and modern history, they consisted of an elite class until full franchise was won for all adult citizens in most modern democracies through the suffrage movements of the 19<sup>th</sup> and 20<sup>th</sup> century.<sup>55</sup>

Democracy is a system that is contrary to Islam because the power of legislation belongs to the people or those who represent them. Due to this the legislative authority is given to someone other than God. What matters is not their consensus but majority carry the vote. What the majority agrees upon becomes laws that are binding on the nation even if it is contrary to common sense and religious teaching or reasoning. In this system, legislation has promulgated abortion, fornication, gays, lesbianism, homosexuality, usurious interest that have been abolished by the rules of Islamic law.<sup>56</sup> It should be noted that in many countries, such as the United State of America, this system has failed totally. It is a mere slogan that deceived people. In fact, the real ruler is the head of state and his helpers while other people are suppressed and downgraded.

In considering the compatibility of Islam and democracy, Muqtedir Khan, a professor of political science and International relations said that:

It is false to claim that there is no democracy in the Arab world. At least 750 million Muslims live in democratic societies of one kind or another, including Indonesia, Bangladesh, Indian, Europe, North America, Iran and Palestine. Moreover, there is little historical precedent for mullahs controlling political power. One exception is Iran since the revolution in 1979 and the one is Taliban in Afghanistan. For the preceding 1500 years since the advent of Islam, secular political elites have controlled the power.<sup>57</sup>

Election on the other hand, is a fundamental feature of democracy. It is the means of appointing leaders through voting in a democratic setting. Concerning democracy, majority of the Islamic scholars are of the opinion that it is not Islamic and alien to *Shari'ah*. The Standing Committee for Issuing *Fatwa* in the Kingdom of Saudi Arabia has this to say when asked question about democracy in Islam:

Democracy is a man-made system, meaning rule by the people and for the people. Thus, it is contrary to Islam, because rule is for Allah, the Most-High, the Almighty, and it is not permissible to give legislative rights to any human being, no matter who he is.<sup>58</sup>

Undoubtedly, the democratic system is one of the modern forms of *shirk* (polytheism), in terms of obedience and following, or legislation, as it denies the sovereignty of the Creator and His absolute right to issue laws, and ascribes that right to human beings. Allah says:

You do not worship besides Him but only names which you have named — you and your fathers — for which Allah has sent down no authority. The command is for none but Allah. He has commanded that you worship none but Him that is the straight religion, but most men know not (Q 12:40).

However, in a country like Nigeria where Muslims are present and yet democracy is being practised, the question that will come to mind is that should the Muslims fold their arms, abstain from politics or election and allow the non-Muslims dictate the affairs of the state and affairs of the Muslims? The answer will be NO. This is premised on the Islamic legal maxims of “when there are two evils, one is to go for the lesser evil” and the maxim “necessity makes a prohibited act a lawful one”.

Based on the above maxims especially the second one, scholars are of the opinion that it is permissible to partake in elections in a democratic setting. Some scholars have even gone to the extent of saying it is obligatory to get involved in election especially in a democratic system of government. Although, the compatibility of Islam and democracy has been fully discussed above. Ibn ‘Uthaymeen was asked about the ruling on elections, and he replied:

I think that elections are obligatory; we should appoint the one who we think is good, because if the good people abstain, who will take their place? Evil people will take their place, or neutral people in whom there is neither good nor evil, but they follow everyone who makes noise. So, we have no choice but to choose those whom we think are fit. If someone were to say: We chose



someone but most of the parliament is not like that, we say: It does not matter. If Allah blesses this one person and enables him to speak the truth in this parliament, he will undoubtedly have an effect. But what we need is to be sincere towards Allah and the problem is that we rely too much on physical means and we do not listen to what Allah says. So, nominate the one whom you think is good, and put your trust in Allah.<sup>59</sup>

In consonant with the above submission, Ajaia revealed the need for the Nigerian Muslims to participate in the country's election. He noted that when there are two evils to cross, the fairest one will be considered. Thus, it is evil that a Muslim participates in Nigerian election, and it is an evil if Muslims refrain from election, as their affairs will be governed by the unbelievers if such happens. The latter evil however overpowers the former; hence, the need to avoid the latter arises.<sup>60</sup>

In applying the maxim of *Ad-Darūrātu Tubīhul Mahzhurāt* directly to election in Nigeria, one has to look at the conditions of applicability of this maxim whether or not they have been met:

- i. Whether or not there exists a clear, actual and apparent necessity for participating in election in Nigeria: elections are won by highest number of votes acquired by an aspirant. Nigeria being a multi religious country is almost evenly populated with Muslims and non-Muslims. If Muslims desert elections, it means they have given room to the non-Muslims to rule them and tragically for them to control the affairs of the Muslims. This will greatly affect the free practice of the religion and also affect the number one purpose of Islamic law which is protection of religion i.e. faith. For instance, there has been the cry for the ban of Hijāb in public places in Nigeria because of the menace of terrorist groups in Nigeria, if not for the presence of Muslims in Government, most likely this would have been achieved.
- ii. Whether there exists an imaginable ordinarily lawful solution: from foregoing and the understanding of the fact that Nigeria is a multi-religious country with almost evenly populated Muslims and non-Muslims, it becomes impracticable to have *Sharī'ah* system of law which is the only lawful solution; as this will lead to an unending crisis in the country. A not farfetched example is when the Central Bank of Nigeria proposed to have an Islamic system of banking, many non-Muslims were strongly against it not because of anything but just by the appearance of the adjective 'Islamic'. This resulted from the fact that Nigeria is not an Islamic country which makes it difficult to

establish some Islamic principles and this in turn necessitates that Muslims in the country must not shy away from the obligation of participating in elections since this is seen as the only option left due to the nature and the condition of the country.

### **Conclusion and Recommendation**

From the foregoing, it will be correct to say that the maxim - *Ad-Darūrātu Tubīhul Mahzhurāt* makes participation in democratic election in Nigeria a permissible exercise for Muslims in the country. This study discusses different concepts connected with the subject. Such concepts include democracy, election and the position of Islam and its scholars on elections including that of Nigeria. The fact that the study of this nature makes ambiguous issue like the subject under review unequivocal, it requires that one recommends for the future researchers to keep the ball of the legacy rolling by furthering discussion on the subject and other related topics. Furthermore, this study discusses the difference between democracy and voting which are two different but overlapping concepts that may exist in one single body. This study also examines the juristic views on voting and confirmed that sovereignty over the entire universe belongs to Allah, the Almighty which is delegated to the Prophet and therefore to the people through the caliphs as a sacred trust. As a result of this, the study recommends as follows:

- i. Muslims in Nigeria should not fold their arms for participation in politics on the grounds that the democracy being practised in the country is un-Islamic; hence, should be rejected.
- ii. The maxim of *Ad-Darūrātu Tubīhul Mahzhurāt* should be employed by Nigerian Muslims for participating in politics having in mind that it is the environment in which they have found themselves that necessitates the democracy they are involved in.
- iii. The Muslim politicians in Nigeria should apply the maxim with a caution. This is with a view to making sure that their actions are guided by the principles of Islam. Therefore, their participation should be impactful, trying to sanitise or reform the Nigerian political system for better.
- iv. There is no doubt that the democratic system of Nigeria needs reformation. Nigerian Muslim politicians should embrace the description of the Qur’ān about Muslims as being “the best of people evolved for mankind, enjoining what is right and forbidden what is wrong” (Q.3:110) and act as such in bringing sanity into the country’s democratic system in all ramifications.

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