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CONTEXTUALISING NIGERIA'S CHILD'S RIGHTS ACTS 2003 WITHIN THE ISLAMIC CHILD'S RIGHTS PROVISIONS FRAME

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ABSTRACT

The Child being a precious gift from Allah and comfort of the eye (*qurrataayyunin*) is granted some basic inalienable rights by Islam well entrenched in the *Shari'ah*. Conscious of various ways by which the rights are being trampled upon in the country, the Nigerian National Assembly responding to the United Nation's (UN) convention on the rights of the child and the African Union's (AU) Charter passed the Child's rights Acts in 2003 intended to be domesticated by the 36 states of the Federation for the protection of the rights.

The rights granted by Islam being divine, and those enacted through legislative instrumentality being human, manifest diametrically opposed principles thus creating dilemma for the Muslims, a dilemma resulting in resentments for the Child's Rights Acts in the Muslims dominant states of the country. The aim of this paper therefore is to examine the Islamic factor for the non-implementation of the law in some states of the federation with a view to finding solution to the problem.

Keywords: Act, Child, Islam, Nigeria, Rights.

INTRODUCTION

In discussing the Child Rights Act 2003 in Nigeria, there is the need, right from the outset, to examine what the concept of human right is all about and also to correct the misconception that the idea is western, when the concept in actual fact is as old as Islam. Human rights can be defined as rights of humans. They are the basic rights that every human has to be treated fairly and not in a cruel manner by any government. They emanate from the inherent dignity of the human person.

Discussing the concept in terms of its origin, reference is made to two schools of thought as postulated by Baderin (2003). The first being the view that human rights' idea is as old as humans, which explains why they are discussed in the revealed scriptures including the Judeo- Christian and Muslim scriptures. They are, therefore, rights granted by God and as such they are immutable as they cannot be withdrawn or abrogated. Consequently, they are binding on the believers, Muslims and Christians alike. The second school of thought perceives the idea as a new business and a creation of the West. This latter view links the concept with the emergence of international human rights regime occasioned by the first and second world wars. The war atrocities and the cruel treatments of individuals and groups during the period, and the misuse of state apparatus to abuse human beings elicited international concern for the general protection of human rights. The Universal Declaration of Human Rights (UDHR) was the first UN document adopted containing a list of internationally recognised human rights. It was adopted as a simple resolution of the General Assembly of the UN in 1948. Zarabozo (2016) contends that in view of the reality of cultural relativism, the concept of universalism of human rights is a fallacy. Some of the rights covered by the UN and UDHR have their Islamic equivalents, as if they are inspired by Islam as can be seen from few Qur'anic provisions on such basic human rights and freedom as the right to life (Q. 5: 32/ Q. 6: 151); right to dignity of human person (Q. 17:70); right to free movement (Q. 4: 97); freedom of religion (Q. 2: 256/ Q. 109: 1-6); freedom of opinion (Q. 4: 147); right to property ownership (Q. 4: 32) etc

ISLAMIC FOUNDATION FOR THE CONCEPT OF CHILD'S RIGHTS ACT

Islam as a belief system and a way of life puts in place measures for special protection of the children due to their vulnerability. The Qur'ān in *Surah 25:74* describes children as the "comfort of our eyes" (*Qurat 'a'yun*), hence many verses of the scripture as well as the apostolic traditions remind parents and the society about their responsibility to them. Discussing the child's rights in Islam, the Qur'ān and the *hadiths* specifically recognise their rights to life (Q. 17: 31), right to legitimacy, (Q.17:32), right to breastfeeding (Q.2: 233), right to maintenance/ *Nafaqah* (Q. 2: 233), right to guardianship/custody (Q 65: 7), right to education (Tirmidhi, Hadith 218) and right to equitable treatment regardless of gender (Q.4: 11/ Q.4: 7).

In the light of the foregoing, it will not be wrong to conclude that child's rights and indeed the whole idea of human rights under international convention on civil and political rights (ICPR) has Islamic antecedent being rights originated by Allah (Nyazee: 2000). However at the close of the last

century, civil organisations concerned with welfare of children started agitations for a broad based legislation that will protect the rights of children. Their efforts coupled with the domestic implementation of the UN's convention on the rights of the child and the AU charter resulted in the promulgation of the Child's Rights Act.

The Act was intended to be a comprehensive collection of the major rules relating to children. The Act has 278 sections and 11 schedules aimed at providing a uniform standard throughout the country. It has broadened the law relating to children's rights in Nigeria by dealing with several other new areas including the rights and responsibilities of children, protection of children's rights, fostering, adoption, guardianship, institutional treatment, custody, supervision and care, survival and protection of children. The Act is meant for domestication in each state of the federation.

CHILD'S RIGHTS ACTS 2003 WITHIN THE CONTEXT OF THE SHARI'AH PROVISIONS

I would attempt at this juncture to examine the contentious aspects of the provisions of the Child Rights Act 2003 within the context of the Islamic provisions with a view to highlighting how they sometimes conflict with the Islamic value system and therefore offend Muslims' sensibility. Some of the provisions are as discussed hereunder:

a) Legitimacy

Sections 10(2) and 68 deal with the issue of legitimacy or illegitimacy. Section 10(2) reads: "No child shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth". Section 68 on the other hand reads:

Where the father and mother of the child were not married to each other at the time of the birth of the child, the family court, on the application of the father or mother shall order that both the father and the mother have parental responsibility for the child.

The absurdity in this provision is that any man and woman without marital relationship can come together and claim paternity and maternity of a child. These provisions of the Act conflict with the Islamic tenet which recognises marriage as the only basis for the determination of legitimacy of the child (Muslim 2008). Islam views bastardy or illegitimacy with seriousness and comes up with the solution that gives the product of illicit intercourse (*zina*) back to the owner of the bed (*al-walad li firash*) to protect the

interest of the innocent child[Buhari 7182]. Anything contrary to this Islamic rule is capable of turning the society into an animal kingdom.

b) Child Marriage

Sections 21, 22 and 23 deal with prohibition of child marriage. According to section 21:

No person under the age of eighteen is capable of contracting a valid marriage, and accordingly, a marriage so contracted is null and void, and of no effect whatsoever.

Section 22 forbids any parent, guardian or any other person to betroth a child to any person. While according to section 23, any person who marries a child, or to whom a child is betrothed, or who promotes the marriage of a child, or who bathrobes a child, commits an offence, and is liable on conviction to a fine of 50,000 naira or imprisonment for a term of five years, or to both such fine and imprisonment. In addition, sexual relationship with a child is deemed by the Act as rape, punishable on conviction to life imprisonment.

These provisions conflict with the Islamic principle which allows the father as a waliyy to betroth his minor daughter to a man without necessarily obtaining her consent (Sabiq1365) Marriage of the minor (*inkahghairulbalighwaijbarulbint ala ziwaj*) though permitted is not mandatory. However, the Islamic law of marriage insists on the consent of a woman that has attained the age of puberty (Nyzee, 2010)

c) Adoption

Sections 125 -148 deal in detail, with the issue of adoption. Treated under these are; persons who may adopt, persons who may be adopted, religious upbringing of the adopted child, etc. Section 141 in particular deserves special attention as it reads:

On adoption, all rights, duties, obligations and liabilities, including any other order under the personal law applicable to the parents of the child or any other person in relation to the future custody, maintenance, supervision and education of the child, including all religious rights... shall be extinguished, and shall vest in, and be exercisable by, and enforceable by the adopter.

What the law is saying is that on adoption, the real father of the child forfeits all the rights and obligations on the child except if the child on his own decides to accord recognition to the father. As far as Islam is concerned,

the issue of adoption (*at- tabanniyy*) has no basis in *sharī'ah*. The practice is outlawed by virtue of *Surah*33:4- 5 which reads:

Allah has not made for any man two hearts inside his body. Neither has He made your wives whom you declare to be like your mothers your real mothers, nor has He made your adopted sons your real sons. That is your saying with your mouth, but Allah says the truth...Call them (adopted sons) by (the names of) their fathers, that is more just with Allah. But if you know not their fathers' (names call them) your brothers in faith.

In the pre-Islamic period, it was permitted to name adopted sons after the father who adopted them. However, the above verse puts an end to the practice as Allah commanded that they should be given the names of their real fathers, as that was more fair and just (Al- Qurtubi, 1949). According to a narration of Abdulah bn Umar, reported by Buhari, Zaid bn Harithah, the freed servant of the Prophet was always called Zayd bn Muhammed until this verse of the Qur'ān was revealed (Puri, 2003). Instead of adoption, Islamic law provides for guardianship system to provide alternative family care for children deprived of natural parental care.

d) Guardianship/Custody

Sections 69, 82-92 deal with the issue of guardianship which touches on parental responsibility of a guardian, persons who may serve as guardians, order for guardianship of a child, revocation of guardianship and appointment of a guardian. According to Section 69 of the Act, however, the court may on the application of the father or mother of the child, make such order as it may deem fit, with respect to the custody of the child and the right of access to the child of either parent, having regard to: (a) the welfare of the child and the conduct of the parents and (b) The wishes of the mother and father of the child.

This provision derives from the imposed legacy of the common law which stipulates that:

In any matter relating to the guardianship of children, the interest and welfare of the child shall be the first and paramount consideration. Whenever it shall appear to a court that an order made by such court should, in the interest of the child be reviewed, the court may of its own motion, or upon the application of any interested person, vary, or discharge such order.

According to this provision, right of guardianship of a child can be given to anyone as long as the child's welfare is guaranteed. This is contrary to Islamic principles. In Islam, the law entrusts custody of a child (*hadanah*) at his tender age to the hands of his mother (Ambali 2003). The reason for giving priority to the mother is that she has proper right to guardianship and breastfeeding of the child. This is because she is more skillful and capable of discharging the duty better than man. She is endowed with patience and time to attend to the problems of the child.

e) Corporal Punishment:

Section 22(1)(b) deals with the issue of corporal punishment. The section legislates against the use of corporal punishment for an erring child. This provision is un-Islamic as it is un-African. An adage says "spare the rod and spoil the child." There is no gainsaying the fact that Islam allows corporal punishment as a measure of ideal and proper upbringing of children. For instance, if a parent notices that his child neglects daily prayers at the age of ten, the *shari'ah* prescribes beating as a corrective measure (Sabiq 1407 H). One of the factors responsible for the general moral decay and general indiscipline of the children in the West is prohibition of corporal punishment which is being imported to other nations.

THE MUSLIMS' REACTION TO THE CHILD'S RIGHTS ACT

It is crystal clear from the foregoing that the perception of the child's rights as conceived by the Act and that of Islam are diametrically opposed as far as the five issues examined are concerned. Adoption of the Child's Rights Act 2003 as envisaged by the lawmakers has the implication of throwing into the winds the cherished Islamic values in favour of western value system which any conscious Muslim society would frown at. Its introduction meant an attempt to deprive the Muslim child the desired Muslim upbringing needed to form his Islamic identity. As would be expected, the enactment of the law generated heated debate within the Muslim *Ummah* of Nigeria in the recent past. The debate generated, as reported by *Daily Trust* 28th November, 2005 revolved around the congruence or lack of congruence of the act with Islamic teachings on child upbringing and parental control as well as the fears and suspicion which many parents have that the act is a western inspired effort designed to make children conform more to western values and become less obedient to their parents.

According to the Muslims' belief, Islam as a religion has a comprehensive code on the rights and privileges of the child, and Muslims do not need any western inspired Child Right Act. Islam attaches serious

importance to discipline and parental control in child upbringing. Unfortunately, it has been observed that the Child's Rights Act as passed by the National Assembly has limited the powers of parents to train their children in accordance with the cherished religious and cultural values. The controversy generated by the Act prompted *Jamaa'at Nasril Islam* (JNI) to sensitise the appropriate Islamic authorities about the areas in which the provisions of the Act conflict with Islamic principles in order to make amends. The stance of the JNI has gone a long way in influencing the decision of many northern states on whether or not to go for the domestication of the Child Rights Act. In a similar study recently completed titled 'Impediments to the Domestication of Nigeria's Child Rights Act by the State,' Nzarga (2016: 126) posited that eleven years after the Child's Rights Act was introduced and passed by virtually all the 17 states of the Southern Nigeria, only three out of the 19 northern states have passed the Act. By this observation, he is suggesting that 20 out of the 36 federating states have domesticated the Act which contradicts his claim in the same paper (p.125) that 26 out of the 36 states have gone for domestication. This mix-up is clarified in the *National News* of April, 2016 published by the *People's Daily* where 12 states of the Federation are listed as yet to domesticate the Act as follows: Kaduna, Enugu, Adamawa, Bauchi, Borno, Gombe, Kano, Katsina, Kebbi, Sokoto, Yobe and Zamfara. In effect therefore, the number of states that have domesticated the Act stands at 24 states. The table below illustrates the pattern of domestication of the Act by the states according to their zones.

Zones	No of States	Domestication compliance.	Domestication non-compliance
Northwest	7	1	6
Northeast	6	1	5
North Central	6	6	-
Southwest	6	6	-
Southeast	5	4	1
South	6	6	-

In terms of religious configuration of the nation's population, the six zones of the country can be classified into three. First is the zone that is dominantly Muslim which is the Northwest and Northeast. In these two zones, as it is clearly evident in the above table, there is no compliance with the domestication policy. The impediment to my mind is strict adherence to the Islamic value system. It is noteworthy that 12 out of the 13 states that make up the two zones adopted the full *shari'ah* implementation when in 1999

the country returned to the democratic rule. The second group is made up of North Central and Southwest characterised by balanced Muslim-Christian population. The two zones as can be observed from the table show evidence of commitment to domestication despite the substantial Muslim population in them. To my mind, Islam in the two zones lacks the capacity to impede domestication policy in them because of the low level of Islamic awareness and dominant Christian influence in the zones. Southwest in particular is a highly westernised zone in view of its advancement in the western education. The southeast and south-south fall in the third category because the two states in the zone are dominantly Christian. Consequently, the zone could experience any Islamic impediment to implement domestication policy. One conclusion that can be drawn from this analysis is that Islamic resistance to anything western is a major factor for the Muslims' aversion to the domestication of Child's Rights Act 2003 as propagated by the National Assembly in Nigeria.

CONCLUSION

From the foregoing discussion, there is no gainsaying the fact that there exists a wide gulf between the Sha'riah provisions on child rights and the provisions embedded in the Nigeria Child Rights Act 2003. The gulf can be narrowed if the lawmaking authorities would recognize the religious and cultural diversity of the people and therefore tailor their enactments to suit the distinct diversity and sensibilities of the people. It is not difficult to achieve this in view of the diversity of the Islamic schools of thought and the Islamic law sources which make Islam highly dynamic. There is nothing preventing the lawmakers from availing themselves of the varieties in the legal opinions inherent in the diversity and choose the ones considered to be in the best interest of the society. There is also nothing wrong in allowing variations that reflect peculiarities of different localities in the domestication policy if Nigeria is to be a true federation it claims to be.

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