

DOI: <https://doi.org/10.67203/abuli.2002.4ghivi6x>
**AN APPRAISAL OF HUMAN RIGHTS IN ISLAMIC LAW AND THE
CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999.***

1.1 INTRODUCTION

Human rights in Islam are those rights which have been bestowed and guaranteed by the Almighty Allah. They cannot be amended, changed, abrogated or withdrawn by any executive, legislative or judicial body or anybody at all. The rights are not mere theoretical concepts. They are backed up by sanctions in case of violation. Therefore, in an Islamic state, these (human) rights must be accepted, recognised and above all, enforced. Any Islamic state that fails to enforce them, by denying the rights as guaranteed by Allah or makes amends and changes in them, or practically violates them, the verdict of the Holy Qur'an for such Islamic state is clear and unequivocal:

It is not for a believer, man or woman, when Allah and His messenger have decreed a matter that they should have any option in their decision. And whoever disobeys Allah and His messenger, has indeed strayed into a plain error.¹

In Nigeria, the institution of human rights predated the promulgation of any constitution or law introduced by the colonialists. The two sources of Nigerian law: Islamic and customary laws institutionalised these God-given rights from inception. They conferred on every citizen dignity of his person and property.

It is to be noted however that constitutional guarantees on human rights were first adopted in Nigeria in 1959 as a result of the recommendation of the Willink Commission on Minorities. The Commission recommended inter alia, the inclusion of fundamental human rights in the constitution because their presence defined beliefs widespread among democratic countries.² Since then, fundamental human rights³ provisions have featured in every successive Nigerian constitution since independence on October 1, 1960.

In modern times, the sustenance of some well known fundamental human rights has become associated with the Rule of Law which has now become the mirror of a true democratic government. It has become established that no country can claim to be ruled under the law if it fails to observe a minimum standard of behaviour to its citizens and even non-citizens within its borders such minimum standard being enforceable through a state machinery, mainly an independent judiciary. That minimum standard has somehow become associated at least in practical terms, with the constitutional entrenchment of these fundamental human rights.⁴ It is in this light that the present constitution of the federation, 1999, contains the fundamental rights provisions in chapter IV-sections 33-46. For the purpose of this paper, the writer proposes to take one after the other, the human rights recognised and protected by most Nations of the World, as entrenched in

the constitution of the federation, 1999, in order to ascertain the extent to which Islamic law recognises and protects those acclaimed rights.

2.2 FUNDAMENTAL HUMAN RIGHTS UNDER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999.

(a) RIGHT TO LIFE.

Every person has a right to life, and no one shall be deprived intentionally of his life, save in the execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary:-

- (a) for the defence of any person from unlawful violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) for the purpose of suppressing a riot, insurrection or mutiny.⁵

Taking the life of any person outside the provision of the constitution is illegal. This was re-iterated by the Supreme Court of Nigeria in the case of Aliu Bello V. A-G, Oyo State.⁶

The appellant was convicted of armed robbery at the High Court of the then Oyo state, but while his appeal was pending in the court of Appeal, he was executed. Aniagolu, J.S.C, gave vent to his deep annoyance at such flagrant breach of the constitutional provision when he said:

This is the first case in this country of which I am aware in which a legitimate Government of this country-past or present, colonial or indigenous-hastily and illegally snuffed out the life of an appellant whose appeal had vested and was in being, which no order of court upon the appeal, and with a reckless disregard for the life and liberty of the subject and the principles of the rule of law.⁷

(b) RIGHT TO DIGNITY OF HUMAN PERSON.

This is safeguard against subjecting a person to torture or to inhuman or degrading treatment, or held in slavery or servitude, or required to perform forced or compulsory labour.⁸

In some societies in Nigeria, there is flagrant disregard to this provision. Females are being circumcised, caste system like the Osu system in Ibo land is being practised and above all, forced labour and slavery is the order of the day.

(c) RIGHT TO PERSONAL LIBERTY

There are elaborate provisions in the constitution in respect of the right to personal liberty such as not to be kept in detention for a period longer than necessary, right to remain silent while in detention and to be informed in writing within twenty-four hours and in a language he understands of the facts and grounds for his arrest or detention etc. ⁹

The case of Dickson Ikonne V. C.O.P & Hon. Justice Nnana Nwa-Nwachukwu.¹⁰ amply demonstrates the high regard which the courts have for the provisions of the constitution which entrench the liberty of the citizen.

The facts of the case was that Hon. Justice Nwa-Nwachukwu as a High Court Judge in Imo State was appointed chairman of a commission of inquiry to look into certain contracts awarded by the government between 1979 and 1983. In the course of the proceedings of the commission, the justice received a letter which he took objection. Without making an investigation whatsoever he ordered the arrest of one Dickson Ikonne. There had been a long history of mutual animosity between the two men, which had nothing to do with the proceedings or the subject of the commission. Ikonne applied to a High court Judge to quash the warrant of arrest which the Judge did. Subsequently, the Justice Nwa-Nwachukwu made an application for leave to appeal against the order of the judge but leave was refused. The court having subsequently granted leave, Ikonne then appealed to the supreme court. The supreme court quashed the warrant.

Aniagolu, JSC said:

The conduct of the Judge in issuing the warrant of arrest upon what was obviously a fictitious reason, had the undesirable effect of denigrating the Judiciary in the eyes of the public and of eroding the confidence of the people in Judicial process and the rule of law. ¹¹

(d) RIGHT TO FAIR HEARING.

There are also elaborate provisions designed to guarantee fair hearing. This section consists of 12 subsections, three out of the 12 subsections refer to civil proceedings, while the remaining 9 subsections deal with the rights of a person charged with a criminal offence. ¹²

In the case of Kotoye V. Central Bank of Nigeria.¹³ Nnaemeka-Agu, JSC gave a summary of what he considers to be the basic criteria and attributes of fair hearing thus:-

- (i) that the court shall hear both sides on all material issues in the case before it before reaching a decision which may be prejudicial to any party in the case.
- (ii) that the court shall accord equal treatment to all parties;
- (iii) that the proceedings are held in public and that all parties shall have equal access to and be informed of such place of hearing, and
- (iv) that justice must not only be done but manifestly and undoubtedly be seen to have been done.

(e) RIGHT TO PRIVATE AND FAMILY LIFE

This section guarantees and protects the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications.¹⁴

This right is entrenched so that the society does not suffer from a state of general distrust and suspicion. There should be no undue interference or encroachment on the privacy of a citizen and that of his family in the form of peering into ones house, reading his letters, using bugging devices to hear and tape people's conversations. This prompted the court of Appeal, in the case of *Ezeadukwa V. Maduka*,¹⁵ to re-iterate the constitutional provision of the right to privacy on ones family.

(f) RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION.

Freedom of thought, freedom of conscience and freedom of religion are all inter-related. This freedom is not extended to taking part in the activity or belonging to a member of a secret society.¹⁶

The application of Shariah legal system in some states in the North is constitutional and very supportive by virtue of this section. The received English law has been in operation since 1900 and is made superior to the Shariah. This is an infringement on the rights of the Muslims and denying them the right entrenched by this section. A good example is the case of *Bowman V. Secular Society Ltd*,¹⁷ Lord Summer when referring to England and English law said:

Ours is, and always has been, a Christian state. The English family is built on Christian ideas, and if the natural religion is not Christianity, there is none. English law may well be called a Christian law.¹⁸

(g) RIGHT TO FREEDOM OF EXPRESSION AND THE PRESS.

This section provides that every person shall be entitled to hold opinions and to receive and impart ideas and information without interference.¹⁹

The Judiciary and the press (including electronic media) are the institutions which can act as a watchdog monitoring the excesses of the politicians in a civilian government.

(h) RIGHT TO PEACEFUL ASSEMBLY AND ASSOCIATION.

This section provides that every person is entitled to assemble freely and to form associations with other persons, and in particular may form or belong to any political party or to a trade union or any other association for the protection of his interest. The fact that must be noted is that the right to join freely an association predicates an equal right of the person freely to resign from such an association, and in like manner the right of the association to exercise on him discipline within the internal rules of the association.²⁰ This right is not absolute as is evidenced in the case of Sea Trucks (Nig) Ltd V. Ayo Pyne.²¹ The Respondent, until his termination, was employed as a service engineer in the employment of the Appellant. Controversy over the right of Respondent to join a particular trade union arose, resulting in termination of his appointment. He thereupon brought an action under the Fundamental Rights (Enforcement Procedure) Rules, 1979, claiming that his constitutional right to join a trade union of his choice had been infringed. The trial court, in a reserved judgment, granted the declarations sought by the Respondent by setting aside the termination. Appellants were ordered to pay all his arrears and allowances. Furthermore, Appellants were restrained from preventing the Respondent to join any trade union of his choice as guaranteed by the constitution. Being dissatisfied, the Appellants appealed to the Court of Appeal. Held, allowing the appeal S40 of the 1999 constitution in which the phrase 'for the protection of his interest' does not give the citizen an unrestrained freedom to join any association. It is not a freedom at large but rather, it is one that is certainly restrictive. If it were the intention of the makers of the constitution to make the right of association unfettered or unrestrained, it would have used the words 'of his own choice' as was done on right of a citizen to be represented by a counsel of his own choice.

(i) RIGHT TO FREEDOM OF MOVEMENT.

This right to freedom of movement is guaranteed and this has been upheld on many occasions by the court. Even during a period of emergency this can only be evaded for the sake of public interest.²² In the famous case of Shugaba Abdurrahman Darman V. The Federal Minister of Internal Affairs & ors.²³ It was decided that a Nigerian cannot be deported from the country, even if he is declared to be a security risk. His right to freedom of movement cannot be curtailed except within recognised procedures laid down under the constitution and statutes made thereunder.

(j) RIGHT TO FREEDOM FROM DISCRIMINATION.

The section guarantees that no citizen of Nigeria shall be discriminated upon by virtue of his birth, tribe, origin, sex, religion or political opinions.²⁴ This constitutional provision is exemplified in the case of Muojekwu V. Ejikeme.²⁵ The

Appellants sued the Respondents at the High court Nnewi, claiming as heirs and successors - in - title to Reuben Muojekwu who died intestate on October 1, 1996 entitled by Nnewi custom exclusively to the estate of the deceased. that the deceased acknowledged them as his children entitled to inherit him. The Respondents claimed as distant cousins to late Reuben were entitled to inherit him as he has no male child surviving him i.e his lineage became extinct. The trial court found that Reuben's lineage became extinct and that the Appellants were not entitled to succeed him or his estate. The court, therefore, dismissed the suit. Appellants aggrieved, then appealed to Court of Appeal. In determining the appeal, provisions of S42 (1) 99 constitution among others was considered. Held, by S42 (1) 99 constitution, a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion, shall not, by reason only that he is such a person, be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject. In the instant case, the fact that the Appellants were born out of wedlock is immaterial. That cannot be used against them in inheriting the estate of the deceased. as blood relations, the property of the deceased should devolve on the Appellants. Also, the Nnewi custom relied upon by the Respondents which permitted them to inherit the estate of the deceased merely because he has no male child surviving him is repugnant to natural justice, equity and good conscience. Such a custom clearly discriminated against Virginia, the daughter of the deceased and is therefore unconstitutional in the light of the provisions of S42.

This constitutional provision offends the Islamic position that a child begotten out of wedlock is not legitimate and therefore cannot inherit.

(k) RIGHT TO ACQUIRE AND OWN IMMOVABLE PROPERTY

This section guarantees the right to acquire and own immovable property anywhere in Nigeria. ²⁶

But a movable property or any interest in an immovable property shall be taken possession of compulsorily, but compensation is payable. The circumstances leading to the compulsory acquisition of such property ranges from using a property dangerously or injurious to the health of human beings, plants or animals, enemy property to carrying out of work on the land for the purpose of soil conservation etc. ²⁷

The above rights are not absolute. Generally, they are subject to the same equal rights of others. Therefore, one cannot claim to exercise any of these rights in a way to prevent others from exercising the same or similar rights. ²⁸

3.3 HUMAN RIGHTS IN ISLAMIC LAW

There are some basic human rights which have been laid down by Islam for man or woman as a human being, whether he is a Muslim or not, whether he is a citizen of a country or not, whether he lives in the city or village etc whatever be the case, he has such rights, which should be recognised by every Muslim. In fact, it is the duty of every Muslim to fulfil these rights.

(a) RIGHT TO LIFE.

The first and the foremost basic right is the right to life. Islamic law is more emphatic than any other law or system in safeguarding this right.

The Holy Qur'an lays down this right thus:-

Take not life, which Allah Hath made sacred, except by way of Justice and law.²⁹

This, is reiterated by the Farewell Address of the Holy Prophet (S.A.W.) in which He declared that lives, properties and honours are declared sacred and should not be violated.³⁰

But, the taking of ones life is justified under the Shariah. Abdullah Ibn Mas'ud reported that the Holy Prophet Muhammad (S.A.W.) said:

It is not lawful to take the life of a Muslim except for one of the reasons; life for life, a married adulterer and a retrograde from his religion -one who leaves Islam.³¹

(b) THE RIGHT TO DIGNITY OF HUMAN PERSON.

This is the second most important right which recognises dignified behaviour and deportment, and respect for the dignity of others. It is in view of this, that the Holy Prophet Muhammad (S.A.W) constantly admonished Muslims to behave with calmness and dignity in all situations, and emphasized the need of exercising courtesy and dignity towards all. The Holy Prophet Muhammad (S.A.W.) is reported to have told his wife Aisha (R.A) that:-

Whatever is done with grace enhances its value, and that which lacks grace loses all value.³²

Maltreatment, cruelty and torture and any form of inhuman or degrading treatment is prohibited in Islamic law. That is why when Holy Prophet Muhammad (S.A.W.) noticed a donkey which had been branded on its face, condemned and prohibited against the practice. He said, if branding becomes necessary it should be carried out on a less sensitive part of the body.³³

If this is prohibited to an animal, what more of a human being?. Certainly, it is prohibited. As to the issue of slavery, Islam tried to solve the problem of the slaves by encouraging the Muslims in different ways to set their slaves free, like as a result of expiation of some of their sins or by one's own free will etc. For example, the Holy Prophet Muhammad freed and liberated 63 slaves, Aisha (R.A) freed 67 slaves, Abbas liberated 70 slaves, Abd Allah Ibn Umar liberated 1,000 slaves and Abd al-Rahman purchased 30,000 slaves and set them free. Similarly, other companions of the Holy prophet Muhammad (S.A.W.) liberated a large number of slaves etc. ³⁴

Thus, the problem of slavery in Islam was solved in a short period of 30 to 40 years. After this the only form of slavery which was left in Islamic society was the prisoners of war, who were captured on the battle field of Jihad. Even then, the prisoners were either exchanged for Muslim soldiers captured by the other side or payment of ransom on behalf of the prisoners or distributed among the Muslim soldiers that captured the prisoners and ordered to treat them in a humane manner. ³⁵ In short, one can say that throughout the muslim world, the institution of slavery is progressively fizzling out.

(c) RIGHT TO PERSONAL LIBERTY.

Islam has laid down the principle that no citizen can be detained or imprisoned unless his guilt has been proved in an open court. It is not permissible to arrest a person on the basis of suspicion and detain him in prison without proper court proceedings and without providing him a reasonable opportunity to prepare for his defence. The idea is to allow the public hear the charges brought against an accused as well the defence he will make and see that the due process of law is followed and applied, so that the accused is not being victimised.

It was related in the Hadith that once the Holy Prophet (S.A.W) was delivering a sermon in the mosque, when a man rose and inquired the crime for which his neighbours were arrested?. The inquiry was made three times through the course of the sermon. Thereafter, the Holy Prophet (S.A.W) ordered that the arrested persons be released. The reason why the Holy Prophet (S.A.W) gave the orders was that the police officer who effected the arrest was present in the mosque and kept quiet. ³⁶

But, there are circumstances where Islam allows for the deprivation of personal liberty of a citizen. Some of the circumstances are

- (i) when one is punished with 100 lashes for fornication. The one year in exile is now substituted with one year imprisonment.
- ii) when one is punished under Ta'azir with imprisonment. ³⁷

(d) RIGHT TO FAIR HEARING.

This right is also what one can term 'right to justice'. It is a very important and

valuable right given to an individual as a human being. It is a condition of faith that recourse must be had to the judicial processes for the settlement of disputes etc. In other words, the processes of administration of justice (civil and criminal) must be strengthened with a strong moral exhortation of accountability to Allah. The justice required is universal regardless of tribe, nation or race etc. It is thus expected that every human being is to be treated with justice and fairness.

A more emphatic and comprehensive injunction regarding fair hearing is stated thus:-

O ye who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: For Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do.

38

Umar Ibn Khattab, the second caliph of Islam, was cited as a defendant in a civil suit, when he came into the court room to answer the claim against him, the judge stood up as a mark of respect. Umar observed that he had come into the court in his capacity as ordinary citizen and not as caliph, and condemned the acts of the judge as being biased and partial to the plaintiff. The judge was thus removed.³⁹

Also, when Ali Ibn Talib, as the Fourth caliph had occasion to appear in court as a plaintiff against a Jew, invited his eldest son Hasan as a witness in whose presence the obligation had been incurred by the defendant, Jew. The judge refused to admit the evidence of the witness and dismissed the claim. The defendant, Jew, was so impressed that immediately upon leaving the court room, acknowledged the claim and discharged it.⁴⁰

(e) RIGHT TO PRIVATE AND FAMILY LIFE.

Islam recognises and safeguards this right so that the society does not suffer from a state of general distrust and suspicion. In other words, the right of every citizen of an Islamic state, that there should be no undue interference or encroachment on the privacy of his life and that of his family is recognised.

The Holy Qur'an has laid down this right thus:-

- (i) O ye who believe! Enter not houses other than your own, until ye have asked permission and saluted those in them: that is best for you, in order that ye may heed (what is

seemingly). If ye find no one in the house, enter not until permission is given to you; if ye are asked to go back, go back: that makes for greater purity for yourselves and Allah knows well all that ye do. ⁴¹

- (ii) O ye who believe! Avoid suspicion as much (as possible): for suspicion in some cases is a sin: and spy not on each other ⁴²

The Holy Prophet (S.A.W.) even instructed Muslims not to enter their own houses suddenly or surreptitiously. He prohibited peering into the houses of others, reading other people's letters, using bugging devices to hear and tape people's conversations etc.

It was related that the Holy Prophet Muhammad (S.A.W.) said thus:- If anyone peeps into your house without permission and you were to throw a pebble at him and put out his eye you would be guilty of no offence. ⁴³

(f) RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION.

Some religions have set territorial or racial limits to participation in their communion. But Islam as a universal message, brooks no such limitation and proclaims freedom of thought, conscience and religion unequivocally and emphatically. Since Islam is based on truth, it naturally warns, constantly and repeatedly, of the dire consequences, morally, spiritually and legally etc. that would follow from the rejection or neglect of the values that it proclaims, but it leaves everyone free to make his or her choice.

Let there be no compulsion in religion. Truth stands out clear from error: whoever rejects evil and believes in Allah hath grasped the most trustworthy Hand-hold that never breaks. And Allah Heareth and knoweth all things. ⁴⁴

See also the following Quranic verses :-

- (i) "We showed him the way: whether he be grateful or ungrateful (rests on his will)."⁴⁵
(ii) And shown him the two highways?. ⁴⁶

Thus, Islam enjoins on Muslims to reflect and exercise reason, understanding and judgement at every step. Failure to do so counts as a serious default for which a Muslim is accountable. It thus seeks to foster the development of these faculties and actively promotes freedom of thought, conscience and religion.

It is a well known principle, that Islam recognises that no one can be forced to accept Islam against his will. But, the moment one accepts Islam willingly and freely i.e. voluntarily, then the Shariah makes it binding upon such a person to observe the rules and regulations of the religion properly. It is even obligatory that the faith of Islam should be protected from the hostile and destructive elements within the ranks of the Muslims. It means that it is not intended to convert people to Islam by force, but to protect the integrity of the muslim community and the religion itself. Thus, no one after joining the religion of Islam voluntarily, will be allowed to leave the sacred fold, but will be compelled to recant if he commits apostasy. If he refuses to recant, he is put to death.⁴⁷

(g) RIGHT TO FREEDOM OF EXPRESSION.

The right to freedom of expression to all citizens of the Islamic state is guaranteed. That is, the right should be used for the propagation of virtue and truth and not for spreading evil and wickedness. This conforms with the Islamic stand for complete sincerity in all relationships and insists on conformity of conduct to profession. It is even an obligation and just a right as stated by the Holy Prophet (S.A.W.) thus:-

If anyone of you comes across an evil, he
should try to stop it with his hand (using force),
if he is not in a position to stop it with his hand
then he should try to stop it by means of his tongue
(ie speak against it). If he is not even able to use
his tongue then he should at least condemn it in
his heart. This is the weakest degree of faith.⁴⁸

This obligation of inviting people to righteousness and forbidding them to adopt the paths of evil is incumbent on all true muslims. If any government deprives its citizens of this right, and prevents them from performing this duty, then it is in direct conflict with the injunction of Allah. In this way it is at war with Allah and is trying to usurp that right of its people which Allah Has conferred not only as a right but as an obligation.

(h) RIGHT TO PEACEFUL ASSEMBLY AND ASSOCIATION

Since Islam stands firmly and uncompromisingly on freedom of thought, conscience and religion, it allows free association for the achievement of beneficent and lawful purposes through peaceful means. In other words, it encourages and even enjoins such association and co-operation, but forbids co-operation in sin and transgression, which obviously cannot be described as peaceful.

Three types of associations and assemblies are encouraged as desirable and beneficial, namely.

- (1) Association for charitable purposes
- (2) Association for promotion of welfare, and
- (3) Association for strengthening of peace in the society. ⁴⁹

(i) RIGHT TO FREEDOM OF MOVEMENT

Islam does not contemplate any restriction on freedom of movement within a state or country or beyond its borders. Indeed, it encourages free movement and regards pilgrimage to makkah as an obligation. ⁵⁰ This implies the right of free movement across continents and oceans. There are benefits, spiritual as well as material that flow from travels. It sharpens understanding, promotes appreciation of moral and spiritual values through observation and acquisition of knowledge and information, widens horizons, simulates intellect and deepens appreciation of divine purposes etc.

(i) RIGHT TO FREEDOM FROM DISCRIMINATION

Islamic law recognises the absolute equality between men and women irrespective of any distinction of colour, tribe, race or nationality etc. This equality of mankind is a derivation from the unity of its common creator. Thus, Islam concedes no privilege on account of birth, nationality or any other factor. True nobility proceeds from righteousness alone.

O Mankind! We created you from a single (pair)
of a male and a female, and made you into
Nations and Tribes, that ye may know each other
(not that ye may despise each other). Verily,
the most honoured of you in the sight of Allah is
(he who is) the most righteous of you. And Allah
has full knowledge and is well acquainted
(with all things). ⁵¹

From the above Quranic verse, it is clear that the division of human beings into nations, races, groups, tribes etc is for the purpose of easy identification and is not meant for one tribe, nation or group etc to take pride in its superiority over others or to treat others with contempt or disgrace, or usurp their rights etc. Superiority of one over the other is based on Allah's consciousness and piety even the righteous or pious ones have no privilege rights over others, because it will go contrary to the concept of human equality.

In short, this right of equality is the birth right of a human being. Therefore, no man or woman should be discriminated against on the ground of colour, birth, race or nation etc.

This has been further stressed and exemplified by Holy Prophet (S.A.W) in one of his sayings during the farewell pilgrimage.

No Arab had any superiority over a non-Arab, nor does a non-Arab have any superiority over an Arab. Nor does a white man have any superiority over a black man, or the black man any superiority over the white man except on the basis of Taqwa (piety). You are all the children of Adam, and Adam was created from clay. ⁵²

But it must be noted that Islam does not confer legitimate status to a child begotten outside wedlock.

(k) RIGHT TO ACQUIRE AND OWN PROPERTY.

The right of the individual to own property, movable or immovable is recognised and guaranteed in Islamic law. The sanctity attached to property is such that interference with it, not in the legal manner is forbidden.

And do not eat up your property among yourselves for vanities, nor use it as bait for the judges, with intent that ye may eat up wrongfully and knowingly a little of (other) people's property. ⁵³

Also, where a property belonging to an individual is compulsorily acquired by the state or a public authority for public interest, such individual is entitled to adequate compensation. The only thing that is not allowed is where property is compulsorily acquired from an individual for no just cause. ⁵⁴

There are two ways of acquiring and owning property under Islamic law. There is the lawful way which is legal and includes human effort (work), transfer of ownership from one person to another (Naql) as in the case of sale and gift, or when someone is made the successor of another (Khalf or waratha). ⁵⁵

All the unlawful ways of acquiring and owning property such as theft, robbery, gambling, misappropriation, lottery, hoarding, monopoly, exploitation, usury etc are denounced in a very high tone and should be suppressed in the interest of the Muslim community. ⁵⁶

Also, properties that have been prohibited by Islam cannot be acquired and owned such as alcohol, pork, stolen property, usurped property etc.

4.4 DISTINCTION BETWEEN PROVISIONS ON HUMAN RIGHTS IN ISLAMIC LAW AND IN THE CONSTITUTION OF THE FEDERATION, 1999

It is evident from the discussions above that Human Rights under Islamic law are more elaborate and detailed compared to the 1999 constitution. Rights such as to marry, equal rights of the parties to a marriage, consent to marriage and protection of the family, basic standard of life, participation in affairs of government, protection against tyranny, avoidance of sin, etc, are not available as fundamental human rights in the Constitution of the Federation, 1999.

The human rights in Islamic law are rights granted by Allah, unlike the rights under the 1999 constitution which have been granted by the human authority. The constitution in its preamble specifically states that it is the people of Nigeria that give unto themselves the constitution and that it is supreme and its provisions have the binding force on all authorities and persons throughout Nigeria.⁵⁷ From the same constitution it is clear that, such rights can be withdrawn, abrogated or curtailed in a democratic society when it is in the interest of defence, public safety, order, morality, or health etc.⁵⁸ But, since human rights in Shariah have been conferred and granted by Allah, no legislative or executive body in the world have the right to make any amendment, change, abrogate or withdraw them according to its whims and caprices. These rights are not mere theoretical or philosophical concepts, they are meant to be implemented and in case of violations, there are sanctions behind them.

The rights under the 1999 Nigerian Constitution are geographically limited in application, as they apply to Nigerian state only whilst the rights in Islamic law are of universal application on every believer, wherever he may be. These rights are part and parcel of the Islamic faith, which must be accepted, recognised and enforced.

The human rights both under the 1999 Nigerian Constitution and Islamic law, are concerned with human welfare, prosperity and happiness. But the 1999 Constitution in particular, seems to secure them at the material level, through physical means and during this life time only. Islamic law on the other hand, is concerned with securing them at all levels, through every available lawful means, both here and the hereafter, with no limitation to geographical, territorial or tribal frontiers.

The 1999 Nigerian constitution employs language which is too general, while Islamic law spells out the necessary safeguards. These can be seen from certain specific details as provided hereunder.

(a) THE RIGHT TO LIFE.

The right to life has been given to man only by Islam. Where human rights, especially right to life, have been talked about or mentioned in various constitutions or declarations, it is applicable only to their respective citizens. Human beings have been

hunted with little or no respect to human life, and where the respect is there, it is on the basis of nationality, colour or race. Instances abound showing abuses on human life. This can be clearly gleaned by the facts that human beings are being hunted down like animals in almost all countries of the world without any reproach. It is not the situation under Islamic law as has already been shown above.

(b) THE RIGHT TO FREEDOM FROM DISCRIMINATION.

This right is not only recognised in Islam, but its reality is manifested to the level of absolute equality between men and women is ensured irrespective of any distinction of colour tribe, race or nationality etc. Allah the High has made this clear in the Qur'an.⁵⁹

Malcolm X, the famous leader of African Negroes in America, launched bitter struggles against the white people of America in order to win civil rights for his black compatriots. He accepted Islam and when he went on pilgrimage to Makkah, he saw how the Muslims of the world from Asia, Africa, Europe, America etc were wearing one type of dress and performing the same rituals without any distinction between them, then he realised that this was the solution to the problem of discrimination, and not what he had been trying to seek or achieve in America so far. Today, a number of non-Muslim thinkers, who are free from blind prejudice, openly admit that no other religion or way of life has solved the problem of discrimination with the same degree of success with which Islam has done.⁶⁰

(c) THE RIGHT TO FREEDOM OF EXPRESSION.

The right to freedom of expression in Islamic law is much superior to the concept under the 1999 Nigerian Constitution. Under no circumstance would Islam allow evil and wickedness to be propagated. It also does not give anybody the right to use abusive or offensive language in the name of criticism. The right to freedom of expression for the sake of propagating virtue and righteousness is not only a right but an obligation. But, in Nigeria today, evil and wickedness are being propagated in the guise of freedom of expression and this latitude is as a result of the so-called freedom of expression in the constitution.

(d) THE RIGHT TO DIGNITY OF HUMAN PERSONS.

The right to dignity of human persons is recognised to such an extent that maltreatment, cruelty and torture etc are condemned and prohibited in Islam. A trespass to woman's honour and dignity should not be sufficiently atoned for by monetary compensation to the husband or father. It then means her honour is so cheap and signifying inferiority of the woman, which should not be the case in an Islamic society.

Therefore, severe chastisement ie stoning to death or flogging by 100 lashes for the offence of adultery and fornication respectively, cannot be regarded as cruel, inhuman or degrading.

(e) THE FREEDOM OF MOVEMENT.

The freedom of movement in Islamic law is not restricted to Nigerian border only as enshrined in the 1999 Constitution. In Islamic law facilities should be provided for easy movement which is most wider and less restricted. This can best be appreciated by the pilgrimage to Makkah. The irony today is that the means of movement ie travel, is improved and become faster, but man's freedom to avail himself of these facilities is subjected to arbitrary, vexatious and irritating restrictions. This brings about visible retrogression, which serves as a permanent and normal restraint upon free human interactions. It makes international travel outside Nigeria a privilege rather than a freedom.

5.5 CONCLUSION

The foregoing, is a humble attempt to show the human rights in its proper perspective and to avoid some of the confusions which normally befog such a discussion, showing that human rights are only available in the 1999 Nigeria Constitution, and as propagated and upheld by the west and their cohorts ie the human rights organisations within and without Nigeria. Also, to dispel the idea that Islamic law does not uphold the human rights, and to show that the concept of human rights existed in Islam before it was mooted out by the Westerners around the Seventeenth century. Even after the 17th century, the philosophers and thinkers on jurisprudence though presented these ideas, the practical proof and demonstration of these concepts can only be found at the end of the 18th century in the proclamations and constitutions of America and France. Later some countries made reference to the rights in their different constitutions. It was on December, 10, 1948 that the United Nations made a Pious hope by the Universal Declaration of Human Rights and passed a resolution embodying the broadest consensus of contemporary civilisation on Human Rights. It also framed regulations to check it, but have no sanctions behind them. Despite all these, human rights have been violated and trampled upon at different countries, and the United Nations has been a helpless spectator, as it cannot exercise an effective check on the violation of human rights.

It was some of these Human Rights passed by the United Nations resolutions of December 10, 1948 that were incorporated into the Nigerian Constitution as the Fundamental Human Rights.

To conclude, the following is to be noted thus:-

- (a) Human rights in Islamic law are rights granted by Allah, while human rights under the 1999 Nigerian constitution are human creation.

Human Rights under the constitution are concerned with human welfare, prosperity and happiness at material level in this life, while Human Rights in Islamic law are concerned with securing them at all levels, through every available means, both in this world and the hereafter.

Human rights in Islamic law is of universal application, while human rights under the constitution is geographically limited to the Nigerian borders only. Lastly, the human rights under the 1999 Nigerian constitution are restricted as far as their applications are concerned when they are in the interest of defence, public safety, order, morality or health etc. This is so, disregarding the fact that in a Democratic society like the present dispensation in Nigeria, the ovation for human rights should be in its utmost top.

END NOTES AND REFERENCES

- Y. Y. Bambale (Ph.D), Dept. of Islamic Law, A.B.U, Zaria.
Holy Qur'an, Chapter 33 verse 36.
- Osinbajo, Y. (1990) Towards A Better Administration of Justice System in Nigeria. Federal Ministry of Justice Law Review series, P. 53.
- Human Rights are Created with the Birth of a Man and that is why they are Fundamental.
- Aguda, T.A. (1983); The Judiciary in the Government of Nigeria, New Hor Press, Ibadan; P.118
- Section 33 of the Constitution of the Federal Republic of Nigeria, 1999.
(1986) 5 NWLR (Part 45) 828.
Ibid, P860.
- Section 34 of the 1999 Nigerian Constitution.
- Section 35 of the 1999 Nigerian Constitution.
(1986) 4 NWLR (Pt. 36) 473.
Ibid, P496
- Section 36 of the 1999 Nigerian Constitution.
(1989) 2 SCNJ 13 at 47.
- Section 37 of the 1999 Nigerian Constitution.
(1997) 8 NWLR (Part 518) 635
- Section 38 of the 1999 Nigerian Constitution.
(1917) AC 406
Ibid.
- Section 39 of the 1999 Nigerian Constitution.
- Section 40 of the 1999 Nigerian Constitution.
(1999) 6 NWLR (part 607) 514.
- Section 41 of the 1999 Nigerian Constitution.
(1981) 1 NCLR 25.
- Section 42 of the 1999 Nigerian Constitution.
(2000) 5 NWLR (part 657) 402
- Section 43 of the 1999 Nigerian Constitution.
- Section 44 of the 1999 Nigerian Constitution.
- Section 45 of the 1999 Nigerian Constitution.
Chapter 6 V. 151
- Chaudhry, M.S (1988), A code of the Teachings of al-Qur'an Lahore. P.367
- Ibid, P231. Transmitted by Bukhari and Muslim.
- Transmitted by Muslim as quoted in Khan, M.Z. (1989). Islam and Human Rights

Islamic International Publications Ltd, U.K, P 72.

Transmitted by Muslim as quoted in Khan, M.Z , Ibid, P. 75.

Mawdudi, A. (1976), Human Rights in Islam, The Islamic Foundation, London, P.21.

Ibid.

Ibid, P. 28.

Ibn Qudamah (n.d) al-Mughni, Vol.X. Cairo, PP 347-348.

Al-Qur'an Chapter 4. V. 135.

Khan, M.Z , Ibid, P. 78.

Ibid.

Al-Qur'an Chapter 24 V. 27-28.

Al-Qur'an Chapter 49 V. 12.

Transmitted by Bukhari and Muslim, as quoted in al-Qardawi, Y (1984); The lawful and the Prohibited in Islam, I.I.F.S.O. Kuwait, P. 315

Al-Qur'an Chapter 2 V. 256.

Al-Qur'an Chapter 76 V.3

Al-Qur'an Chapter 90 V. 10

Rahman, S.A, (1978), Punishment of Apostasy in Islam, Institute of Islamic Culture, Lahore, P.25

Transmitted by Muslim as quoted in Mawdudi, A. (1976) Ibid, P. 31.

See generally Chapter 4 V. 114. of the Qur'an

See generally, Chapter 22 V. 26-27. of the Qur'an

Al-Qur'an Chapter 49 V. 13.

Transmitted by Bayhaqi and Bazzaz as quoted in Chaudhry, Muhammad Sharif, (1988), Ibid, P. 367.

Al-Qur'an Chapter 2 V. 188.

Khan, M.Z., Ibid, PP. 112-113.

AbdurRahim, M.A. (1978) The Principles of Muhammadan Jurisprudence, All Pakistani Legal Decisions, Lahore, P280.

Higab, M. (1983) Islam Is The All Divine Messages In One, Vol. I, I.P.B., Lagos, PP 228-232

Section 1 of the 1999 Constitution on Supremacy of the Constitution.

See Generally Section 45 of the 1999 Nigerian Constitution,

See Chapters 49 V 11, 49 V. 13, 16 V. 97 and 40 V.40.

Mawdudi, A , Ibid, P. 23.