

## EXAMINING THE LEGAL BASIS FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF THE CHILD IN NIGERIA\*

### Abstract

*The importance of the rights of the child in any civilized society can never be over emphasized as they are the future and foundation pillars of any given society. Due to their vulnerability their lives is always subject to abuse. It is with this little background in mind that this paper goes beyond the border of Nigeria with a view to finding a wider approach in the promotion and protection of the Rights of the Nigerian Child. In the process, the paper using doctrinal method of research traced the concept of the child from both Common law perspective, Islamic law tradition, and statutory definition as well as from African tradition. The paper further examined various human rights instruments involving the rights of the child at both international, regional and domestic level as well as the rights of the child under Islamic Law. At the end of the study, the paper found that the concept of the rights of the child as it currently exists is a product of various struggles from ancient down to our present level. It was further found that definition of child under Islamic law which is dependant of physical development of the child is by far more appropriate to Nigerian child situation then common law which is age based approach. The paper suggests that for a Nigerian child to be better protected, each state should be allowed to enact their respective child rights law which is in tandem with their local customs and peculiarities. That there should be wide range campaign by stakeholders in the matters of children in Nigeria with a view to educating parents on the obligations their children have over them so as to guard against abuse.*

**Keywords:** Child Rights, Analysis, Legal Regime/Foundation, Promotion and Protections, Nigeria

### 1. Introduction

Children are one of the important pillars not only in a family setting but the entire society. This is because in their hands lies the future of every society. Based on these therefore, rights of child in Nigeria are adequately protected in so many instruments both international, regional and at national level. This research therefore makes a general survey of all the child rights related instruments and their history from common law, Islamic law and Nigerian tradition, analyzed same and finally closed with few finding, recommendations and brief conclusion.

### 2. Conceptual Analysis

#### Concept of a Child

By the combine effect of the relevant provisions of the United Nations Convention on the rights of the child, African charter and the Child Right Act, a child is any person who has not attain the age of 18.<sup>1</sup> There have also been various endeavours to define a child by different people, books and statutes.<sup>2</sup> A child has been defined as progeny, offspring of parentage, unborn or recently born human being.<sup>3</sup> It has also being defined as anyone who is not yet an adult.<sup>4</sup> A child has further been defined to mean a natural phenomenon as an offspring of another (either by birth or adoption) and may also represent any human being from the moment of his birth (in a living state) until attainment of the age of maturity.<sup>5</sup> In common law realms, a child is anybody who is below the age of 14 years<sup>6</sup> statutorily, meaning of a child differs. According to the English Children Act 1958, a child means person under the age of 18 years. Whereas under the Education Act, 1944, a child means human being who has not attain compulsory school age of 16 years.<sup>7</sup> In Nigeria, the age of a child varies according to different statutes. According to the Labour Act, a child is anybody below the age of 16 years.<sup>8</sup> Conversely, Children and Young Persons Law put the age of a child to mean below 14, while

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<sup>1</sup> Article 1 UNCRC, Article 3 African Charter on the Right and Welfare of the Child and Section 277 of the Child Right Act.

<sup>2</sup> Badamasuiy J., *Protection of the Right of the Child in Northern Nigeria*, Ahmadu Bello University Press Limited, Zaria, Kaduna State, Nigeria 2015 P.14

<sup>3</sup> Black, H.C., *Black's Law Dictionary*, USA 1976 in Ibid P.14

<sup>4</sup> The World Book Encyclopedia, London 1992.

<sup>5</sup> Ayo Anajobe, M.S, 'Better Protection for Women and Children' in Badamasuiy J., *Protection of the Rights of the Child in Northern Nigeria*, Ahmadu Bello University Press Limited Zari'a, Kaduna State, Nigeria 2015 P.14-15

<sup>6</sup> Ibid P. 15.

<sup>7</sup> *Morzeley and Whitely's Law Dictionary*, Butterworth, London, Sydney and Toronto, 1998 P. 78 in Ibid P.15.

<sup>8</sup> Sec. 59 Labour Act.

Young Person is between the ages of 14-17 years.<sup>9</sup> According to the Law of Contract child is anybody before 20 years.<sup>10</sup> The Wills Act 1837 applicable to most Nigerian States placed the age of minority to mean before attaining 21 years while the Wills Law of Lagos State fixed it at 18 years.<sup>11</sup>

Based on the above definitions, the law seems to favour definition founded on age which appears to be rigid and disregard the role of other factors such as intelligence in determining childhood.<sup>12</sup> Despite the above definitions based on age, people have different understanding of who a child is<sup>13</sup> for example in an informal sense; a mother will view her sons and daughters as her 'children' no matter their age.<sup>14</sup> In a certain study 48.2 percent of parents asked held the belief that any person below 20 years is a child. While 14.3 percent felt that any one below 30 years is a child and 63 percent felt that anybody who is dependent on parent or cannot care for himself/herself remains a child no matter his or her age.<sup>15</sup> While under Islamic Law the word child is akin to an Arabic word called 'Walad' which refers to a son or daughter and in ordinary usage it is used to mean an infant, a kid or young person in a wider sense.<sup>16</sup> The word is used in Qur'an 17:111 to mean a child when it says: '...It never becomes of God (Allah) to hold a child....'<sup>17</sup> Other words include *Banun* – children, *Tiflu*--infant and *Sabiy*--Child. *Banun* is the plural of *Ibn* meaning a son<sup>18</sup> *Walad* and *Banun* are used for child and children respectively before and after attainment of maturity.<sup>19</sup> The word 'Walad' applicable to Islamic law is therefore employed in this research as it is often been used to refer to a minor. To understand the concept of a child as well as his liability and entitlement under Islamic Law, it is apt to consider stages of man with regards to his capacity.

The stage of human development (*Ahliyya*) can be stated thus: The first stage is refers to a period when a child was in his mother's womb (Fetus) and is technically known as *Ahaliyyatul Wujub Al-naqis* incomplete receptive capacity which entitles him to claim any legal entitlements such as inheritance, will etc subject to his given birth to.<sup>20</sup> The second stage is when the child is given birth to alive till the age of understanding and at this stage he acquires *Ahliyyatu Wujub Al-kamila* i.e complete receptive capacity that entitled him to acquire all obligations such as gift, inheritance e.t.c.<sup>21</sup> The third stage is that of acquiring *Ahliyyatu Ada Annaqisa* i.e incomplete active legal capacity which is acquired at the age of understanding (*Tamyiz*) to just before attaining puberty and allows him to perform some actions that attract legal implication but need ratification of an adult (e.g his guardian) for it to become valid.<sup>22</sup> The fourth and last stage is from adulthood till death which is known as (*Ahliyatul Ada Al-kamila*) that is a complete legal capacity to do any legal act and they are validly considered and counted for him/her.<sup>23</sup>

From the definitions, one can see that unlike statutory and common law definitions which attribute attainment of puberty to age Islamic Law is without any fixed criteria rather it is individualistic and can be determined by the physical development of body (*Murahi*).<sup>24</sup> This is attained by appearance of certain signs in particular person e.g menstruation, pregnancy, onset wet dream and grows of public hair for female.<sup>25</sup> There are onset of wet dream, change or hoarseness of voice and growth of public hairs for male child.<sup>26</sup> Jurists are however, not unanimous where these signs never appear. Imam Abu Hanifa opined that puberty for boys is 18 years and 17 years for girls. However, two of his disciples (Imam Abu Yusuf and Muhammad), Shafie and Hambali consider the age of 15 for both Boys and Girls as the age of puberty. While put 15 years for boy and 9 for girls of menstruation female and the age of nine years which is a sign of maturity.<sup>27</sup>

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<sup>9</sup> S. 2 Children and Young Persons Act Cap 32 Laws of Nigeria and Lagos 1958.

<sup>10</sup> At Common Law but altered by Family Law Reforms Act (1969) and Minors Contract Act (1987) to be 18 years.

<sup>11</sup> Badamasiuy J. (Supra) P.15.

<sup>12</sup> Ibid

<sup>13</sup> Badamasiuy J. (Supra) P.15-16

<sup>14</sup> Maimuna M., in Weekly Trust of November, 13-19 2004 P.2 in Ibid P.16

<sup>15</sup> Ayau I.A & Okabue I.E., 'The Right of the Child in Nigeria' Lagos 1996 P.31, In Badamasiuy J. *Protection of the Rights of the Child in Northern Nigeria*, Ahmadu Bello University Press, Zari'a, Kaduna State, Nigeria 2015 P.16.

<sup>16</sup> Badamasiuy J. (Supra) P. 16

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> Badamasiuy J. (Supra) P. 16

<sup>21</sup> Ibid P. 17

<sup>22</sup> Ibid P. 17

<sup>23</sup> Ibid P. 17

<sup>24</sup> Badamasiuy J. (Supra) P. 18

<sup>25</sup> Ibid

<sup>26</sup> Kharofa A. *Islamic Family Law, A comparative study with other Religious*, Kuala Lumpur, 2004 P. 56-57.

<sup>27</sup> Ibid

Therefore, for the purpose of this research, a child is anybody who has not attain puberty and include those in the first to third stages of human development under Islamic law especially second and the third stage. The various definitions put above were further classified into four broad classification<sup>28</sup> namely; Age based, child parental relation based, physical development based (i.e. attainment of maturity at the occurrence of a particular physical development and dependency based;

### **3. Nature and Scope of Rights of the Child**

The nature and scope of the Rights of the Child is a very multifarious and therefore dynamic in nature with the coming of every generation. Because of this there has always been a debate over the content and legitimate scope of human rights and priorities of claimed among them as prospered by different scholars, jurists and theorists.<sup>29</sup> Similarly under Islamic law nature and scope of the Rights of the child is well extended such that the law places some obligations upon parents with regards to their children which are regarded as the rights of children from their parents.<sup>30</sup> These rights include rights to life, legitimacy, paternity, equal treatment among co children, identity, custody, proper training and upbringing, maintenance, guardianship and inheritance. These rights are similar to the three generation of rights under the conventional system of law. Let us now examines the two:

#### **First Generation Human Rights**

These generations of rights derive their origins from the seventieth and eighteenth century reformist theories attributed to English, French and American Revolution. In this connection, Eugene Kamenka observed: 'That eighteenth century in Europe and America drew to its close as the century that had clearly and unequivocally proclaimed the inalienable and imprescriptible rights of man. The proclamations were not to begin with the creatures of Gallic enthusiasm of revolutionary category of reason run riot in human affairs but were the product of sober English philosophers, English Buritanism and non-conformism, respectable English resistance to absolutism and concern for freedom and toleration'<sup>31</sup> From the above quotation, it can be discerned that human rights are inalienable by its nature. The mention of English resistance of absolutism and concern from freedom also, denotes existence of civil and political rights of individual and against the state, children inclusive which are the foundation of democracy and civilize society. Civil and political rights are therefore first generation of rights which include the right to life, freedom from torture and in human treatments; right to liberty' freedom from slavery or forced labour, freedom of movement, right of fair trial, freedom of thought conscience and religion; right to franchise and other rights which are central to the traditional synthesis.<sup>32</sup> These set of rights are by nature argued to be 'negative rights' for the fact that they impose action for their enjoyment, so that, they are usually conceived more in negative (freedom from) than in positive (right to) terms.<sup>33</sup> They are more of imposing restriction of government from the affairs of the individual or association of individuals rather than intervention of government. However it is not possible to assert that all of them are completely negative.<sup>34</sup> For this reason certain people are of the view that though it be may be correct that rights entertain primarily positive or primarily negative correlative duties, negative positive rights distinction is not entirely correct.<sup>35</sup> For example Henry Shue argues that the distinction between negative and positive is better appreciated not in term of rights but duties.<sup>36</sup> He further proposes a typology of duties for each right: duties to avoid depriving; duties to be protected from deprivation; and duties to aid the deprived. Thus according to Shue almost all, if not all rights reflect both negative and positive correlative duties.<sup>37</sup> The first generation rights form the bulk of rights, which are protected and made

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<sup>28</sup> Badamisiuy J. (Supra) P. 18-19

<sup>29</sup>Ahmad A.B, *The Law and Child Rights in Nigeria*, Malthaouse Press Limited, 43 Onitana Street, off Stadium Hotel Road, off Western Avenue Lagos Main land, 2015, P.13

<sup>30</sup> Badamasuiy J. Supra P. 84

<sup>31</sup> Kamenda Ebs. 'The Anatomy of an idea' in Ahmad AB, *The law and child rights in Nigeria*, Malt house press limited, 43 Onitana street, off stadium Hotel Road western Avenue, Lagos main land, 2015, P. 15

<sup>32</sup> Ahmad A.B, *The Law and Child Rights in Nigeria*, Malthaouse Press Limited, 43 Onitana Street, off Stadium Hotel Road, off Western Avenue Lagos Main land, 2015, P. 15-16

<sup>33</sup> Ahmad A.B, *The Law and Child Rights in Nigeria*, Malthaouse Press Limited, 43 Onitana Street, off Stadium Hotel Road, off Western Avenue Lagos Main land, 2015, P.13

<sup>34</sup> Ibid

<sup>35</sup> Ibid

<sup>36</sup> Shue H, *Basic Rights: Subsistence and Affluence in U.S. Foreign Policy*, Princeton: Princeton University Press 1980 P.35-64 in A.B, Ahmed Supra

<sup>37</sup> Ibid

justifiable by many, if not all national constitutions. In Nigeria these are contained in chapter four of our constitution.

### **Second Generation Human Rights**

These set of rights are claims to social equity, equality comprising of economic, social and cultural rights.<sup>38</sup> Unlike the First Generation Human Rights, the Second Generation Human Rights are positive in nature for the fact that they require government to do something for its subject by way of intervention and not mere abstention of the state for the purpose of acquiring or assuring equitable participation in the production and distribution of values involved.<sup>39</sup> The second generation of right exhibits a high social orientation for they exist to do away with the equally lightly individualistic orientation of the first generation rights.<sup>40</sup> It was further argued that the emergence of these rights is a response to the abuses and misuse of the capitalists' development and its underlying uncritical conception of individual liberty that tolerated and even legitimated the exploitation of the working class.<sup>41</sup> These rights include the right to social security, the right to work and to protection against unemployment, the right to form and join trade unions, the right to freely participate in cultural rights, the right to rest, leisure, including periodic holidays with pay, the right to standard of living adequate for the health and well-being of self and family, the right to education and the right to the protection of one's scientific literary and artistic production, the right to free choice of employment, etc.<sup>42</sup> The second generation rights are usually situate in National Constitutions, however in such a way that they are non justiciable<sup>43</sup> However, various continental legal regime contained these rights in different degrees.<sup>44</sup> At the international level although the Universal Declaration of Human Rights, is pre-occupied with first generation rights, the International Covenant on Economic, Social and Cultural Rights, 1966, represent the prism from which international perspective on second generation rights could be viewed.<sup>45</sup>

### **Third Generation Rights**

This is otherwise known as solidarity rights and deal with the organic and corporate existence and working of the society. These rights were originated from article of 28 of the universal Declaration of Human Rights where it says that everyone is entitled to a social and international order in which the rights set forth in the declaration can be fully realized.<sup>46</sup> It contains six claimed rights referred to as solidarity rights which are right to political, economic, social and cultural, self-determination, the right to economic and social development and the right to participate in and benefit from the common heritage of mankind, such as shared earth space, resources scientific, technical, cultural traditional sites and monuments.<sup>47</sup> There are also right to peace, right to healthy and balanced environment and the right to humanitarian disaster relief.<sup>48</sup> They are collective rights considering concerted effort of all social forces to a substantial degree on a plenary scale and implying a quest for the protection of a community interest. Although there are attacks on these set of rights particularly from the west, they are still being progressively developed some are of the view that third generation rights are mere aspirational goals rather than enforced by rights while other viewed it as superfluous since the problems which they seek to address are dealt with by existing human rights instruments<sup>49</sup> for instance right to development was attacked as been conceptually and practically misguided and it is as best described as legally and morally confused notion that is likely to be positively detrimental to the realization of human rights.<sup>50</sup>

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<sup>38</sup> Supra A.B, Ahmad P. 17

<sup>39</sup> Ahmad A.B, *The Law and Child Rights in Nigeria*, Malthaouse Press Limited, 43 Onitana Street, off Stadium Hotel Road, off Western Avenue Lagos Main land, 2015, P.17

<sup>40</sup> Ibid

<sup>41</sup> Ibid

<sup>42</sup> Ibid

<sup>43</sup> E.g see section 6 (6) of the 1999 constitution of the federal republic of Nigeria which renders the whole chapter of the constitution non-justiciable

<sup>44</sup> Ahmad A.B, *The Law and Child Rights in Nigeria*, Malthaouse Press Limited, 43 Onitana Street, off Stadium Hotel Road, off Western Avenue Lagos Main land, 2015, P.17

<sup>45</sup> Ibid P. 17-18

<sup>46</sup> Ibid P. 18

<sup>47</sup> Ahmad A.B, *The Law and Child Rights in Nigeria*, Malthaouse Press Limited, 43 Onitana Street, off Stadium Hotel Road, off Western Avenue Lagos Main land, 2015, P.18

<sup>48</sup> Ibid

<sup>49</sup> Ahmad A.B, *The Law and Child Rights in Nigeria*, Malthaouse Press Limited, 43 Onitana Street, off Stadium Hotel Road, off Western Avenue Lagos Main land, 2015, P.17

<sup>50</sup> Donnelly. J. *The Right to Development, how not to link Human Rights and Development in Africa*, Albany Suny press 1984 P. 261 in ibid P. 19

Generally speaking, in trying to reconcile all the generation rights, it was argued that they merely reflect various stages in modern history and therefore each of the generation rights support the other and there seems to be lack of agreement in superiority of one over another<sup>51</sup> on this note it was argued that freedom of expression will be meaningless to people without voice living in extreme poverty and the right to family life means nothing to impoverished divided family whose children are separated from them solely for economic reasons.<sup>52</sup> In the same token; it was asserted that Agencies of the United Nations have done a lot to emphasis on the indivisibility of other rights<sup>53</sup> for e.g. the international conference on human rights held in Teheran between April 22 and May 13, 1968 which adopted Proclamation of Teheran, United Nations General Assembly in 1977 World conference on Human Right which adopted Vienna Declaration and Programme of Action all declared and supported the symbiotic relationship of one rights over the others.<sup>54</sup> However, while conceptually the rights are regarded as equal in term of priority, practically matter of implementation requires that different societal conditions may demand the setting of different priorities with regard to these rights and may influence allocation of resources and the speed of their implementation particularly in a society with imperfect allocation of resources. With regard to economic, social and cultural rights<sup>55</sup> for instance article 2 of the covenant on economic, social and cultural rights provides that a party to the covenant undertakes to take steps to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognized in the covenant.<sup>56</sup> Therefore enjoyment of the right that has to do with second generation of rights largely depend on the extent of availability of resources and the country's will to provide same.

#### **4. Nature and Scope of the Child Right under Islamic Law**

In Islamic law, Allah (SWT) the law giver stipulates rules relating to the rights of children from their parents purposely to guard the children and protect their lives.<sup>57</sup> The nature and scope of child rights under Islamic law can be appreciated from the nature of the obligation imposed upon the parents with regard to their children which could be regarded as the rights of children from their parents.<sup>58</sup> These rights include rights to life, legitimacy, paternity equal treatment among co-children, identity, custody, proper training and upbringing, maintenance, guardianship and inheritance. We shall now look at those rights one after the other.

##### **Right to Legitimacy and Paternity**

A child under Islamic law can only be regarded as legitimate only when he was a product of valid marriage conducted in a manner agreed by Islamic law and can legally claim paternity of the parents.<sup>59</sup> However, one can only distinguished a child born outside wedlock only when minimum and maximum period of gestation is discussed and appreciated.<sup>60</sup>

##### **Right to Maintenance**

The right to maintenance of a child goes along way with the right to maintenance of the parents and other relatives.<sup>61</sup> Muslim jurists are unanimous on the rights to maintenance of descendant and ascendants but disagree as to the degree down ward.<sup>62</sup> Maliki School opined that a father is liable to maintain his direct children only.<sup>63</sup> Others extend it to the grand and the great children.<sup>64</sup> From the above exposition one, can see that maintenance under Islamic Law, covers feeding, clothing and shelter and covers right to education of a child no matter his age.

##### **Right of Suckling (Rada'a)**

It is well known that a child is born weak and cannot manage his affairs and therefore needs someone to cater for him. This is indeed the first deserving responsibility of the parents. Part of this is the right of the

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<sup>51</sup> Ahmad A.B Supra

<sup>52</sup> Lalumiers C., *Human Rights at the Dawn of 21<sup>st</sup> Century*, Council of Europe 1993 P. 13

<sup>53</sup> Ahmad A.B, *The Law and Child Rights in Nigeria*, Malthouse Press Limited, 43 Onitana Street, off Stadium Hotel Road, off Western Avenue Lagos Main land, 2015, P.20

<sup>54</sup> Lalumiers C., *Human Rights at the Dawn of 21<sup>st</sup> Century*, Council of Europe 1993 P. 20-21

<sup>55</sup> Ibid P. 21

<sup>56</sup> Ibid

<sup>57</sup> Badamasuiy J. Supra P. 82

<sup>58</sup> Ibid

<sup>59</sup> Ibid

<sup>60</sup> Badamasuiy J. ibid P.84-85

<sup>61</sup> Badamasuiy J., Supra P. 94

<sup>62</sup> Ibid

<sup>63</sup> Sharih Alkabir' *Ala hshiyat ul Dasuqii* Vol.2, P.524 Supra

<sup>64</sup> Ibid

child to be suckled by the mother. This refers to act of the baby taking milk from his or her mother for a specific period of time.<sup>65</sup> Here Qur'an 2 (Baqara) verse 233 says: 'The mother shall give suck to their offspring for two years, if the father desires to complete the terms but he shall bear the cost of their food and clothing on equitable terms...' All jurists agreed that right to suckling is on the mother. Maliki School opined that this duty is an obligation (legal obligation) on mother and can only be waived when there is lawful excuse such as illness. Other schools view it as a moral obligation.<sup>66</sup> Where the mother cannot suckle the child, the parents decide on a wet nurse to suckle the child as provided by Qur'an 65 verse 6: in this situation the father is liable to pay the wages to the woman who suckles his child.

### **Right of Custody (Hadana)**

In Islamic law, a child is entitled to custody of his parents such that parent are legally obliged to perform certain obligations on their child at tender age when cannot take care of himself such obligations include, suckling, maintenance, and proper upbringing. This is only possible when the child is under their custody.<sup>67</sup> Custody is defined as taking care of the child who is not independent at a certain age by his relatives who have legal right to do that.<sup>68</sup> In normal circumstances, a child remains under the custody of the parents. The father is responsible for all the necessary items for the child rearing and making decisions with regards to the child. The mother is responsible for taking care and nursing the child giving him/her natural kindness, affection, love and care.<sup>69</sup> This can only be smoothly done when the child lives with the parents under the same roof. In case of divorce Islamic law considers the best interest and places the custody in the hand of the mother due to her closeness with the child and the father continues the maintenance.<sup>70</sup>

### **Right to Identity**

This rights starts at birth in the sense that Islam enjoys parent to give their children a name at birth<sup>71</sup> not only to give them name but good name as this will remain his identity in this life and hereafter and the child is expected to live by the spirit of his/her name. The provision of Islamic law on this note is a step beyond what is provided by the international law and the Child Rights Act which just enjoin the naming of the child.<sup>72</sup> Abu al-Darda reported that prophet (SAW) said you will be called on judgment day by your name and your father's name, so choose a nice name.<sup>73</sup> From the above prophetic hadith, it can simply be discerned that right to name or rather good name is a fundamental right of child against his parent, such that where a child is given a bad name by his parent, it must be changed at any time irrespective of the age of the child.

### **Aqiqah**

This refers to the act of slaughtering of an animal on the seventh day of a child birth. It is reported on the authority of samurah that he said: the messenger of Allah may Allah Blessings and Peace be upon him said every kid is in pledge (i.e forbidden to intercede for his parent) for his Aqiqah (the sacrifice) that should be offered on behalf of him on seventh day (of his birth) his head should be shaved, and he should be given a name. However, Muslim jurist, are not unanimous on the position of Aqiqah<sup>74</sup> While Maliki, Shafi'I, Hambali, jurists and Abu Thawri opined that Aqiqah is recommended (Sunnah) and cited the above Hadith in support thereof, the other jurists comprising Imam Hassan Al-Basri, Al-lythi, bn Sa'ad and others are of the view that Aqiqah is obligatory and people will be reckoned for Aqiqah as they will be reckoned for the five prayers.<sup>75</sup> Hanafi jurists do not however, consider it as any requirement.<sup>76</sup>

### **Right to Inheritance**

Under Islamic law children are entitled to inherit their parents and no one not even the parents can deny them such rights Allah (SWT) said in Suratul-Nisa'i verse 9: 'From what is left by parents and those nearest relation, there is a share for men and a share for women, whether the property be small or large a determinable share.' From the above Qur'anic, verse, Islam guarantees right to inheritance of children over their parents.

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<sup>65</sup> Ibid P. 97

<sup>66</sup> Ibn Rushd, *Bidayat al-Mujtahid* Vol.2 P.56

<sup>67</sup> Badamasuiy J., *Supra* P. 99

<sup>68</sup> Abdul-hamid M.A., *Al-ahwal-Al-shaksiyya* P.404 *supra*

<sup>69</sup> Badamasuiy J. *Supra* P. 100

<sup>70</sup> Ibid

<sup>71</sup> Badamasuiy J. *Supra* P. 100

<sup>72</sup> Ibid

<sup>73</sup> As-sajastany, S.A Sunna Abu Dawud, *Hadith* No. 4948, 1998, P.403

<sup>74</sup> Ibn Majah, No. 3165

<sup>75</sup> Badamasuiy J. *Supra* P. 108

<sup>76</sup> Ibid

This right cannot be denied by either the parents or any other person. The Islamic law further specified specific shares to children on different situation.<sup>77</sup>

### **Right to Equitable and Benevolent Treatment among the Children**

Another right of children under Islamic law is that of equitable and benevolent treatment among the children. In this vein, children should be loved, cared for and treated equally regardless of their sexes.<sup>78</sup> Parents are not expected to show any preference of one over the other.<sup>79</sup> They cannot bestow on one child any reasonable gift without giving it the other children.<sup>80</sup>

The prophet (SAW) says do equity between your children whenever you are giving them anything, if I am to favour any side, I will favour the female.<sup>81</sup>

### **Right to Education**

This is another fundamental right of a child under Islam. There is a duty on parents to educate their children no matter their gender. Thus it was reported by Anas (RA) that Allah's apostle says search for knowledge is compulsory upon every Muslim.<sup>82</sup> It was also reported that the prophet says according to Umar bn Al-khatab, that among the rights of the child upon the father is that the father teaches the son knowledge of the book (reading and writing) fighting and shooting and not to feed them from illegitimate source.<sup>83</sup>

### **Right to Training and Upbringing**

Islam enjoys both parents to give their children sound moral training and proper up-bringing in accordance with the teaching of Islam to become responsible adult thereby become useful to the family, society and Muslim Umma entirely. It is a very essential duty of the parent as it will make the child what he will become in the future<sup>84</sup> Abu Huraira narrated that the prophet said; there is no child but is born upon nature (Muslim). It is his parents who make him either a Jew or Christian or a Pagan.<sup>85</sup> This brings to an end our discussion on the nature and scope of the child rights. We shall now proceed to briefly discuss sources of child rights in Nigeria.

## **5. Sources of Child Rights Law**

The sources of child right law can be said to be a child of different background; such that child rights law is traceable to international, national level, common law and regional level. We shall now examine them one after the other.

### **International Level**

At common law, children's rights were given birth to in the 17<sup>th</sup> century during the reigning period of Elizabeth I who championed the promulgation of the second poor law of 1601.<sup>86</sup> By the provisions of that law, care of children squarely lies in the hand of their parents and close relations and confers on the children right to seek in legal redress in a court of law on occasion of breach: it subjects the children under obligation to cater for their parents and close relatives.<sup>87</sup> In 1660, another measure was also begotten in line with this direction when the jurisdiction which was initially given to the king was extended to the English court of chancery by given it protective jurisdiction. The jurisdiction was unlimited to cover all the subject matter bordering on children in the interest of his well-being.<sup>88</sup> Whereas in America, the idea started in 1779 at the time of Hannah more, who in her work emphasized on the need for enlightening the universe with thoughts about the rights of the children as the next step.<sup>89</sup> In British there is also the effort of the likes of Eglantyre Jebb (1879-1928) a British woman who initiated the save the children fund and who played a major role in drafting the Geneva Declaration by the League of Nations later metamorphosed into the United Nations

<sup>77</sup> Q4:11

<sup>78</sup> Badamausiy J. Supra P. 116

<sup>79</sup> Ibid

<sup>80</sup> Ibid

<sup>81</sup> Al-Jaza'iriy A.J., Minhajul Muslim Medina 1976 P.83-84

<sup>82</sup> Kareem AMF Supra P. 265

<sup>83</sup> Al-Jaza'iriy Minhajul-Muslim Supra P. 83-84

<sup>84</sup> Al-Jaza'iriy Minhajul-Muslim Supra P. 83-84

<sup>85</sup> Karim F., Mishkatal Masabih Hadith No.2 30 Vol. P. 162

<sup>86</sup> Gambe, H, *The Law Relating to Parent and Children*, The Law Book Company Limited, Sydney 1981 P. 1

<sup>87</sup> Ibid

<sup>88</sup> Gambe, H, *The Law Relating to Parent and Children*, The Law Book Company Limited, Sydney 1981 P. 1

<sup>89</sup> Veerman P, *The Rights of Child and the Changing Image of Childhood*, Martin Nijhoff Publishers, Netherlands, 1992, in M.U Abubakar 'Federalism and the Nigerian Child's Rights Act 2003; Between Monolistic and Multi-Culturalist Approach'. *BUJPUL*, Vol 3 No.1 June 2011 P.149

Declarations on the Rights of the Child of 1959.<sup>90</sup> Another historic event in tracing the sources of child rights law at international level was the year 1979 been the international year of the child, Polland proposed that a treaty on children's rights be adopted to mark the event and on the 20<sup>th</sup> November, 1989 the United Nations General Assembly via Resolution No. A/Res/44/25 adopted the Convention on the Rights of the Child and entered into force on September 7, 1990 the year world summit for children was held.<sup>91</sup>

### **Regional Level**

At the regional, level African Head of States adopted the African Charter on the Rights and Welfare of the Child on July 11, 1990 via resolution No. OAU/Dec/CAB/LEG/TSG/REV.1, and entered into force on November, 28 1999.<sup>92</sup>

From Islamic point of view Shari'ah is another source of child rights law. The idea of human rights of children began from the period of prophet Mohammad (SAW). Prophet Mohammad (SAW) enjoys his followers to find better mothers for their children right from the stage of betrothal. Islam entitles the child to a decent name, education, equal treatment and right to own property, right to inheritance, recreational activities and in some cases participation in armed conflict among other rights.<sup>93</sup> The sources of the child rights under Sharia firstly, is the Devine revolution that is Qur'an and Sunnah of prophet (SAW), and secondly human exertions that is the principles of the constitution or charter of Madina, historic judgments of the prophet (SAW) and practices of rightly guided caliphs, Ijma and Qiyas.<sup>94</sup>

### **National Level**

The sources of the child rights laws in Nigeria can be traced back to around 1861 when Lagos was colonized by the British Government following the reception of English Law. By Section 45(1) of the Interpretation Act, the Common Law, the Doctrine of Equity and the Statutes of General Application which were in force in England by January 1900 were deemed applicable in the Colony of Lagos.<sup>95</sup> Justice Oputa opined that the common law countries have a united political and legal heritage, being co-heirs to the Magna Carta of 1215, the Bill of Rights 1689 and the Habeas Corpus Act of 1679 and 1816.<sup>96</sup> This can be seen as the first mile stone to the development of the rights of child in Nigeria and hence source of the child rights in Nigeria. These rights can be found in the following instruments such as the Constitution of the Federal Republic of Nigeria 1999 (as amended) the Labour Act, the Criminal Code, and Penal Codes laws of the states, Children and Young Person's Law, the Child Rights Act and Laws of the States. The UBEC Act, SUBEB Law and their likes.

## **6. Conclusion and Recommendations**

This paper finds that the concept of the rights of the child as it currently exists is a product of various struggles from ancient down to our present level. This paper also discovered that definition of child under Islamic law which is dependent of physical development of child is by far more appropriate to Nigerian child situation than common law which is age based approach. It is confirmed that Nigerian Child is much protected under the existing legal regimes, having regards to the various rights of the children thereto. The study makes the following suggestions: that for a Nigeria child to be better protected, each state should be allowed to enact their respective child rights law which is in tandem with their local customs and peculiarities; that there should be a wide range of campaign by stakeholders in the matters of children in Nigeria with a view to educating parents on the obligations their children have over them so as to guard against abuse; and that there should be wide range of campaign by stakeholders in the matters of children in Nigeria with a view to educating parents on the obligations their children have over them so as to guard against abuse. From the foregoing analysis it can be said that this paper led us into a successful voyage of discovery of the concept of human rights of children. The paper after analysing the concept of the child rights went further to posit that human rights is a product of series of struggle exhibited at various time by different personalities down to our present generation. The discussion covers both perception of the child rights at international, regional and national level by reference to historic events and various instruments.

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<sup>90</sup> Papas A.M (ed), *Law and Status of the Child*, United Nations Institute for Training and Research Publications New York, 1983 in M.U Abubakar (Supra P. 150)

<sup>91</sup> Abubakar M.U Supra

<sup>92</sup> Udenbana J.N 'Can Leopard Change its Spots? The African Union Treaty and Human Rights, *American University International Law Review* Vol. 17 No. 6, 2002 P 1177-1261,

<sup>93</sup> Al-Asqalana, A.H Fath Al-Bari, commentary of Sahih al-Bukhari, Vol.5, Darul Fikir Publication 2000, P. 611 in M.U Abubakar Supra P. 149

<sup>94</sup> Mahbubul-Islam A; A.S Noor Deen, Kuala Lumpur, Malasia 2002, P. 69

<sup>95</sup> Ahmad A.B Supra P. 48

<sup>96</sup> Ahmad A.B Supra P. 49