Topical Issues In The Nigerian Law:

A Book of Readings



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FOREWORD

I have the honour and unique privilege of writing the foreword to this book titled ***"Topical Issues in the Nigerian Law: A Book of Readings".***

The publication is a product of well-researched papers by thorough-breed academicians and practitioners on diverse but contemporary legal issues in Nigerian jurisprudence. The book's academic quality, resourcefulness and robustness stem from the array of well experienced, brilliant and highly cerebral contributors who carefully, but painstakingly analysed the laws and in their quest for a better, just and egalitarian society, drew experiences from other jurisdictions in making suggestions for a reform of our laws in diverse areas.

The book is in-depth in scope, content and analysis as it pungently examines contemporary issues in both traditional and Islamic jurisprudence. The contributors are deeply appreciated for the scholarship and efforts that were put into their contributions. Members of the editorial board are equally appreciated for meticulously vetting the legion of papers submitted for publication in the book.

In view of the foregoing I have no hesitation in recommending this book to Lawyers, Judges, Legal researchers, Law students and every one that desires forensic knowledge of both Traditional and Islamic jurisprudence in Nigeria.

Thank you.

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CHAPTER NINE

WOMEN'S RIGHTS UNDER THE NIGERIAN TRIPARTITE LEGAL SYSTEM

Mahmud Kayode Adebayo Ph.D.
&
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Summary of the Chapter

The rights of all Nigerians are contained in Chapters two and four (justiciable and non- justiciable rights) of the 1999 Constitution of Nigeria (as amended). These rights guarantee substantive and procedural justice. Equally the international conventions on human rights as represented by the international bill of rights as set out in the United Nations documents. Unfortunately, the Constitution, as well as these Conventions/Documents is gender biased and discriminatory of women. The focus of this paper is the establishment of these rights of women through a predominant normative approach in both a secular and religious society. The chapter concludes that some of these documents/declarations are not necessarily enforceable in International or National law; but nevertheless, they provide a standard of comparism through which activist who favours rights of women can access their governments, especially when governments have ratified or alluded to them. The writer recommends the total prohibition of all the violations/discriminations against women's rights which are supposed to be integral, inalienable and indivisible parts of our constitution, conventions and declarations.

Introduction

Both men and women are entitled on equal footing to the full protection of their rights and freedoms because they are human beings. Concern for the protection of individual human welfare is what human rights discourse is all about and human rights standards and procedures have been evolved at the international, regional, and domestic levels as a concrete expression and concern[1]. International human rights standards are generally couched in gender neutral terms. The term human is inclusive of both men and women and it often therefore assumed that these standards provide automatic protection for women in the same way that they do for men. However, this neutrality often amounts in practice to a disregard of women and a failure to respond to women's distinct experiences of injustice[2].

The issue is not so much that there is a distinct category of women's rights warranting special treatment, as much as that human rights norm must be made fully applicable to women as human beings. What is desired is a critical re-characterization of international human rights so that women's distinctive concerns are not marginalized and the implementation of the human rights of women becomes part of the central agenda of human rights framework. Most African states including Nigeria have agreed in principle to these sets of human rights documents and many African constitutions made specific reference to it. These rights are too numerous to be listed, but they include protection against state abuses of a citizen's physical integrity, personal freedom, privacy, right to food, livelihood and adequate standard of living, right to cultural life, reproductive rights, and so on.

[1] Ladan, T. M 'Women's Rights and Access to Justice Under Shariah in Northern Nigeria' *In:* Shariah & Women's Human Rights in Nigeria: Strategies for Action. Being Proceedings of a Two Days Strategic Conference on Islamic Legal System and Women's Rights in Northern Nigeria, organized by WARDC, Lagos and WACOL Enugu, at Rockview Hotel, Abuja, 27-30th October, 2002. P.38

[2] Ibid p.39.

The contending issues are among others, the extent to which Nigerian women can rely on the provisions of some of these Constitutions, Documents, Instruments, and Declarations to promote and protect their rights. Many women's rights violations are grounded on cultural and religious practices. Women's right activists in a number of national settings have stressed that the need to transform religious law and practice, not only as a means of ending gender –based restrictions on specific human rights, but also as an essential step towards dismantling systemic gender inequality[3].

Secularization of the society on the other hand grew out of the realization of modern processes and modernity of religion. It tilts toward the development of greater independence from religious influence. A secular society is a society where options of religious disbelief and doubts are freely available along with options of belief. It is a society where the right to free formation and choice of belief in matters of religion is alright for everyone, and where this right includes the right to adopt or have a view of human existence which is considered non-religious, by others or by oneself[4].

These rights are very important in a private choice which includes the right to express any belief in public communication and the right to practice one belief in a religious ceremony. The impression about religion is that it is a personal and private affair of the individual. A secular state is one in which no religion is given official recognition or endorsement. The reality of the Nigeria's situation is that successive Nigeria governments have never made pretences about their recognition and development of two major religions.

[3] Dahlerup, D 'Women, Quotas and Politics (London; Routlegde, 2006) p.19-21 available at http://www.quotasProject.org/aboutQuotas.htm accessed 27/11/2015.

[4] Lucas, L. E 'Does Gender Specificity in Constitutions Matter' *Duke Journal of Comparative International Law* Vol.20 133 (2006).

Human Rights Approach to Women's Rights

Modern human rights movement championed by the United Nations started in response to gross violations of human rights perpetrated during the Second World War[5]. Among the earlier international norms developed to protect the dignity, rights, and freedoms of women and men of the world is the Universal Declaration of Human Rights 1948; still regarded as the bedrock for the development of other international human rights instruments.

One of the striking principles of the human rights norms is the principle of equality and non-discrimination which basically reiterates the equal worth of human persons and equal rights of men and women. This principle also transcends into and formed part of customary international law for which no derogation is permissible[6]. Human rights treaties like the Universal Declaration of Human Rights, 1948; the International Covenant on Civil and Political Rights, 1966; the International Covenant on Economic, Social and Cultural Rights, 1966;
the Convention on the Elimination of All Forms of Discrimination Against Women, 1979; the Convention on the Rights of the Child,1990; the Convention Against Torture, and many other conventions emanating from the United Nations are taken to have universal application because they are multilateral treaties[7].

The Convention on the Elimination of All Forms of Discrimination Against Women, guarantees women equality with men before the law and the legal capacity identical to that of men in civil matters, but the status of women before religious tribunals or secular courts applying religious law is not clarified by this guarantee.

[5] Robertson, J. G Merills International Human Rights World 3rd ed. (Manchester New York: Manchester University Press, 1989) p.3

[6] The First Paragraph of the preamble to the United Nation Charter, 1045

[7] Shaw, M. N International Law 3rd ed. (Cambridge University Press; 1991) p.5

The situation of women worldwide; Nigeria in particular, and elsewhere in Africa have shown the gaps between formal guarantees of human rights especially to women and what obtains in practice. Perhaps, the inherent conflict has to do with the jurisprudential definition of rights. The non-observance of human rights of women has resulted in re-echoing of the still controversial catchphrase' women's rights are human rights'[8]. Surprisingly, the Universal Declaration of Human Rights recognized and reiterates that all human beings are born free and equal in dignity. Also the World Conference on Human Rights held in Vienna 1993, categorically provides that human rights of women and of girl child are inalienable, integral and indivisible part of universal human rights.

The issue raised here is the failure to ensure, protect, and fulfil women's human rights clustered around the universal cultural legitimacy of human rights contained in the plethora of documents/instruments; and the inability of state responsibilities to enforce human rights norms. This issue has been fuelled by the inherent contradictions between tradition, religion and human rights standards. In order words, a cross cultural approach toward human rights that fit both religious and customary law criteria. To find a solution to this issue, there must be in existence models and values that question the traditional theories, foundations and boundaries of human right norms[9].

An analysis of the statement above, suggest that culture should be and an integral part of international human rights norms, so also is the responsibility of state to enforce human rights. For instance, the International Covenant on Civil and Political Rights provides that: in those state in which ethnic, religious or linguistic minorities exists, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to

[8] Ibid.
[9] Ibid p.88

profess and practice their own religion, or to use their own language[10].

Equally Article 1 of the International Covenant on Economic, Social and Cultural Rights, recognised the right to self-determination of people. It thus appear that the dividing line between western concept of human rights and the African concept, has always been on individual autonomy and communitarianism (that rights are culturally specific). The western concept of human rights emphasizes on individual autonomy, whereas the African concept tends towards collective rights placing the community rights before the individual[11]. Undoubtedly, the third and fourth generation of human rights law, has moved from the narrow conception of individual rights to recognizing community and group rights regarded as collective rights.

The right to one's culture which include customary and religious practice and self-determination fall within the collective right category. On the other hand, the use of cultural justification, use of stereotype, customs and religious norms is one of the major challenges to women's enjoyment of equality. Notable also is the fact that women have been barely visible in systems that create, interpret and apply laws because of their subordinate status in the society.

Nonetheless, according to Ezeilo[12], some women's groups and activists tend to place less emphasis on collective or community rights in the belief that it undermines particularly advocacy for women's rights.

[10] Article 27 of the International Covenant on Civil and Political Rights 1966.
[11] CEDAW General Recommendation No.23 available at http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm #recom23 accessed 23/11/2015.
[12] Ezeilo, J. N 'Towards A Cross-Cultural Approach To Women Human Rights' *In*Sharia Implementation in Nigeria: Issues & Challenges on Women's Rights and Access to Justice Ezeilo, J.N (eds) Published by WACOL & WARDC Lagos, 2003 p. 89

This in effect implies that in international sphere, implementers of human rights will not hesitate to uphold individual human rights in cases of conflict with culture and traditional practices. Recent developments in Nigeria have also shown that some courts are willing to recognize the human rights of women even where customary practices dictate otherwise[13]. For instance, in the cases of *Mojekwu v. Mojekwu*[14], *Muojekwu v. Ejikeme*[15], in these two cases, the courts recognized the equality of all sexes in cases of inheritance under the Igbo customary law that denies women the right to inherit.

Buttressing this argument further, it was held in the case of *Usen v.. Iro*[16], that the rights of all sexes are protected under the constitution, which is the organic law of the land, therefore any assertion or argument that a woman cannot give evidence in relation to land matters is oblivious of the constitutional provisions which guarantee equal rights and protection of all sexes under the law.

Further, the court stated that any law or custom that seeks to relegate women to the status of second class citizens thus depriving them of their invaluable and constitutionally guaranteed rights are laws and customs for the garbage and should be consigned to history.

The case of SAFFIYATU[17] who was sentenced for stoning to death based on the offence of adultery (Zina) by the Sharia Court raised question about universal cultural legitimacy of human rights, the question of women's rights under a constitutional democracy and the responsibilities of the Nigeria state as a member of the international community to ensure and protect women's human rights within its borders.

[13] Ibid.
[14] (1997) 7 NWLR P238
[15] (2005) 5 NWLR P402
[16] (2001) 11 NWLR 196
[17] Saffiayatu Hussaini Tudu Vs. Sokoto State (unreported) Shariah Court of Appeal suit nos. 25/3/2002.

Furthermore, it raised doubt about international human rights law, its efficacy and effectiveness in relation to women's concern, particularly in religious and customary societies. The SAFFIYATU's case was resolved along constitutional line by the Shariah Court of Appeal who recognized her right to privacy, although this was foregrounded in Islamic tenets rather than the Nigerian constitution. Her conviction by the Upper Shariah Court Gwadabawa was quashed as being contrary to Sections 36(8) and 4(9) of the 1999 Constitution (as amended) that prohibits retrospective application of law.

The challenge of crafting human rights norms that fit international, religious, and customary law criteria has made a discussion on the need to engage in cross-cultural dialogue and understanding of human rights imperative. In an ethically and religious divided society like Nigeria, it is in the interests of the state and subjects to pursue a cross-cultural dialogue on how to use constitutional frameworks to safeguard rights of citizens irrespective of religious affiliations[18].

Section 10 of the 1999 Constitution (as amended) recognized the secularity of the state while giving rule of recognition to sharia and customary law as sources of Nigerian law. The constitution contains the supremacy clause[19], meaning in effect that in cases of conflicts or incompatibility between the customary law and sharia, the constitutional provision will prevail. This position may be difficult to apply in case of women's right violation; the challenge therefore, is how to protect and enforce women's rights under a secular, yet democratic state like Nigeria where women are not treated as full citizen.

[18] Bond, J.E 'Constitutional Exclusion and Gender in Commonwealth Africa' *Fordham International Law Journal* Vol. 31 Issue 2 Article 1 (2007)
[19] Section 1(1) of the 1999 Constitution (as amended)

Rights of Women in Islam

When one speaks of human rights under the sharia, it is meant that the Almighty Allah has granted these rights and no one has the right or power to abrogate, suspend, or withdraw them[20]. They are parts and parcel of Islamic faith. Therefore every Muslim or state authorities that claim to be Muslim will have to accept, recognize and enforce them or must not violate them else the verdict of the Holy Quran for such individuals and governments is clear and unequivocal[21].

Women's rights sanctioned by the Almighty Allah are rooted in the sharia, which is essentially a believer law in the sense that it is primarily binding on those who believe in it. It rests therefore o faith and conviction.

The sharia has two components: the divine and the human. The divine components constitute all that is contained in the Holy Quran and the Hadith. The human components constitute all the efforts of Muslim scholars and Muslim generations in finding the best means of applying the sharia according to their particular circumstances with due regards to the changing human conditions and experiences, which is called '*ijthihad*[22]' since ijthihadis purely human endeavour and therefore subject to error, it is not immutable and its binding nature is limited pot its relevance to a particular situation or a particular generation.

The existence of the Sharia/ Islamic Legal system in the Northern part of the country has shown tremendous concern about its implications on human rights.

[20] Ladan, M. T "Women's Rights and Access to Justice Under the Sharia in Northern Nigeria" In 'Sharia & Women's Human Rights in Nigeria: Strategies for Action' by Ezeilo. J. N (ed) Being Proceedings of a Two Days Strategic Conference on Islamic Legal System and Women's Rights in Northern Nigeria, organized by WARDC & WACOL, Rockview Hotal, Abuja, 27th-30th October, 2002.

[21] Ibid.

[22] Ibid.

The human rights community especially, at the international level has been much more concerned about the rights of women in particular[23]. The widespread impression of many especially, non-Muslims, is that the Sharia Legal System does not protect the human rights of women. The flogging of Bariya Magazu in Zamfara State convicted of adultery and the death sentence passed on Safiya Hussain in Tungari Tudubyaa Sharia Court in Sokoto on similar charge of adultery are among cases normally cited in Nigeria[24].

The position of women in Islam has been among the most controversial subjects presented to the outside world with the least objectivity. As a fundamental principle of its system, Islam holds that a woman is a human being and that she has a source similar to that of men. The Holy Quran provides that:

> *O People! Be careful of your duty to your Lord, who has created you from a single being and created its mate of the same kind and spread from these two, many men and women*[25].

Thus men and women are quite equal to each other in their origin, abode, as well as their place of return and as such entitled to similar equal rights; for instance right to life, honour and to property.

> *O ye who believe, let not some men among you laugh at others; it may be that the latter are better that the former; nor let some women laugh at others, it may be that the latter are better than the former, nor defame nor be sarcastic to each other;*

[23] Nasir, J.M 'Women's Human Rights in Secular and Religious Legal System' *In:* Shariah & Women's Human Rights in Nigeria: Strategies for Action. Being Proceedings of a Two Days Strategic Conference on Islamic Legal System and Women's Rights in Northern Nigeria, organized by WARDC, Lagos and WACOL Enugu, at Rockview Hotel, Abuja, 27-30th October, 2002. P.19

[24] Ibid. p.20

[25] Quran 4:1

nor call each other by offensive nicknames, and spy not on each other, nor speak ill of each other behind their backs[26]

Stressing this noble and natural conception, the Quran states further that:

He (God) it is who did create you from a single soul and there from did create his mate, that he might dwell with her in love[27]

Spiritually, the Quran provides clear cut evidence that the woman is completely equal with man in the sight of God in terms of her rights and responsibilities. In this regard, the Quran states: "Everyone will be (held) in pledge for its deed[28]"it also state further that:

...so their Lord accepted their prayers (saying): I will not suffer to be lost the work of any of you, whether male or female. You precede one from another...[29]

Under the sharia every person irrespective of his country of origin, religion, race, sex, age or colour, has some basic human rights simply because he or she is human being, which should be respected by every Muslim. Equally, under the sharia women are guaranteed the following specific rights because of their special responsibilities and status in the eyes of Islam. These rights are:-

a) Rights of Equality in status, worth and value. The Quran teaches us that women and

Men are all creatures of Allah, existing on a level of equal worth and value. Although their equal importance does not substantiate a claim for their equivalence or perfect identity. According to the Quran, male or female are created *min nafsin wahindatin* (from a single soul) to complement each other[30].

[26] Quran 49:11
[27] Quran 7:189
[28] Quran 74:38
[29] Quran 3:195
[30] Quran 28:4

Women and men are clearly equal in terms of religious and ethical obligations and rewards. The Quran provides:

And who so does good works, whether male or female, and he or she is a believer, such will enter paradise and they will not be wronged the dint in a date stone[31]

b) Right to Education: the very first revelation to prophet Muhammed (SAW) was

Concernedwithknowledge. In a Quranic society, there can never be a restriction of knowledge to one sex. It is the duty of every Moslem and every woman to pursue knowledge throughout life. The prophet Muhammed (SAW) even commanded that the slave girls be educated[32].

The holy Quran, for over 14,000 years, proclaims the right of every woman to buy and sell, to contract and to earn, and to hold and manage her own property and money. The Quran provides:

unto men a fortune from that which they have earned, and unto women a fortune from that which they have earned[33]

a) Right to Inheritance and Dower: the Holy Quran grants a woman a share in the inherit

Of the family, warns against depriving her of that inheritance specifies that the dower of her marriage should belong to her alone and never be taken away by her husband unless offered by the woman as a free gift. The Quran reads:

o you who believe, it is not lawful for you to inherit forcibly the women of your deceased kinsmen nor that you should put constraint upon them that you may take away part of that which you have given them, unless they be guilty of flagrant lewdness'.

[31] Ibid.
[32] Abd al, A 'The Family Structure in Islam' Islamic' Peace Publications Bureau, Lagos
[33] Quran 2:256

But consort with them in kindness, for if you hate them it may happen that you hate a thing wherein Allah has placed much good[34]

It is clear that the Quran not only recommends, but also is even insistence upon, the equality of women and men as an essential characteristic of a Islamic society.

b) Right to Maintainance: the Quran recognizes the importance of complimentary sexual role of the couples; thus granting women the right to maintainance in exchange for her contribution to the physical and emotional well-being of the family and to the care that she provides in the rearing of children[35]. Despite the fact that a woman has full legal capacity in propriety matters, and the possibility that she may be wealthier than her husband the sharia provides that the husband has to maintain her to a reasonable standard taking into account her social position, the husband's means and all other relevant circumstances.

This means that the husband has to provide her with all her needs; foods, clothing, shelter, and even cosmetics, as well as all other things[36].

The right to maintainance is absolute and does not depend on the wife's means. Even if she is the richest woman on earth, her husband must maintain her. If the husband becomes indigent and unable to maintain her, then she becomes entitled to a divorce on that ground.

a) Right to Custody of Children: dissolution of marriage immediately raises the question of the right to the custody of the minor children of the marriage, if any. The rule under Islamic Law is that the right belongs to the wife, subject to certain conditions, i. e that she is mentally and physically capable of care of the child that she is not of bad character.

[34] Quran 18:29; 14:46
[35] Quran 46:15
[36] Ladan, M. T Op. Cit. p. 62

If the wife becomes disqualified to be given the custody of the children or if she dies, then the right is transferred to her mother, if the mother is alive and capable, and failing that, her grandmother, and so on. Only if these are not in existence or are incompetent that the husband's mother and the grandmother and so on, can be resorted to.[37]

b) Right to Obtain Divorce: Under Islamic Law a married woman can insist that the Husband's unilateral right to divorce (talaq) be shared so that she too can end the marriage at her will. The woman can obtain divorce on any of the three principal grounds: i) due to her husband's physically or mental cruelty towards her; ii) desertion from the husband or by abandoning conjugal relations with her; iii) where the husband becomes afflicted with an intolerable disease, physical or mental.[38]

On a contrary view, however, there are those believe that Islam and human rights are irreconcilable. According to militant Islamism, sharia is opposed to men and women mixing up in public places, which is difficult in modern world and makes it impossible for women to have a professional job in the civil service or in private sector as well as participate in national political life.[39]

Though, many verses in the Quran put emphasis on men and women's spiritual equality and on their duty to obey religious obligations, the Holy Quran contain categorically texts bestowing different roles and powers to men and women due to their natural differences. For instance, women's role in the domestic spheres is of utmost importance and her other activities are tolerated as long as they do not come into conflict with the family role.[40]

[37] Ibid.
[38] Ibid at p. 64.
[39] Rashis, K. S., Islamic Law in Nigeria: its Application and Teachings (Islamic Publication Bureau; Lagos, 1986) p.89
[40] Ibid.

Two important principles worthy of illustration in the Holy Quran, clearly established the differences in power of men and women. These two principles are the notion of 'qawama' and 'hijab'. The qawama is the authority or guardian that men can exercise either individually or collectively over women in respect of issues like marriage, repudiation, inheritance and so on[41]. For instance, women cannot claim to have more than one husband, but men can have up to four wives. Men exercise their full authority on women and on their children, as long as they are married. Married women owe their husbands total submission and fidelity[42]. He in return has a duty to support them.

In effect, this translate to mean that many rights namely the rights to economic, political, and social participation including the rights for physical integrity as well as reproductive and sexual rights that women gained through women's struggles, depend on men's approval. Furthermore, while acknowledging the fact that it is difficult for a man to perform his obligation to support and to be fair to all his wives, he may divorce them without having to give justification. A woman may only do so if it is notified in the marriage contract or if she gets an authorization from a court, in which case she has to produce a precise reason to a court and gibe evidence of her accusations against her husband.

Another notion of the Islamic law containing significant implications regarding women's status and rights is the notion of hijab or veil. The confederates and the Al-Azhab Surahs contain most verses on modesty and chastity.

The Holy Quran provides that O Prophet, tell the wives and daughters, and the believing women that they should cast their outer garments over their persons. This is most convenient, that they should be known and not molested. And Allah is oft-forgiving most merciful[43].

[41] Quran 4:34 (Al Nisa)
[42] Quran 4:19 & 33.
[43] Quran 33:59

The interpretation of hijab in sharia means more than the act of covering one's face or body in a public place, it also require that womenshould be reserved and to stay at home and to avoid going out except for an urgent matter; in order words to abstain from any public life[44].

Rights of Women Under The Nigerian Legal System

Nigeria is undoubtedly one of the few countries in the world which experience the juxtaposition of secular, indigenous n d religious laws resulting into conflict of law problems of every conceivable dimension that is, i. e international, national or local. There is also in addition the conflict between territorial systems of law arising from the co-existence of the federal and state laws.[45]

Furthermore, there is also conflict between the general and the customary/Islamic laws, between Islamic/ customary laws and between systems of laws inter se. The introduction of British laws into Nigeria co-exist with the indigenous customary law and the religiously inclined Islamic law, which has produced a tripartite system of law. It is this type of multiplicity system of law that is often referred to as 'legal pluralism'.

Note however, that in the event of any of the above systems of law and the Nigerian constitution of 1999 (as amended), the supremacy clause of the Constitution is very clear under Section 1, in the sense that any other law which is inconsistent with the provisions of this Constitution, shall to the extent of the inconsistency void. On the other hand, the chapter four of the 1999 Constitution (as amended) which is the centre point of this paper, guarantees human rights generally on a wide range of civil liberties similar to those contained in the International Bill of Rights. It contains the most basic safeguards for the civil and political rights of the individual citizen, including women's rights *vis a vis* the state, while the socio-economic and cultural rights of citizens are declared non-justiciable under chapter two of the same constitution.

[44] Quran 33:30, 31, 51-3.
[45] Ladan, M. T op cit p. 62

Notwithstanding the above position, Nigeria is a party to so many international conventions, covenants, as well as instruments which safeguards women's human rights. Notable among these are: the International Covenant on Civil and Political rights (ICCPR); and the International Covenant on Economic, Social and Cultural Rights (ICESCR). It has also signed and ratified among others the Convention on the Rights of the Child (CRC); the Convention on the Elimination of All Forms of Discriminations Against Women (CEDAW); and at the regional level, Nigeria became a party to the African Charter on Human and People's Rights in 1983.

The argument in principle is that, state parties to all these conventions are obliged to recognize the rights, duties, freedom, and obligations enshrined in them and to undertake to adopt among others, legislative measures to give effect to their enforcement through a legal action. In reality, this is not so, due to the justiciability caveat. Women'srights, by their very nature constitutes socio, economic and cultural rights i. e positive rights that they involve financial obligations/commitment on the part of the government as it is provided for under chapter II of the Constitution (Fundamental Objectives and Directive Principles of State Policy).

A way out of this legal dilemma is the domestication of these international treaties through the enactment of the enabling laws[46]. Following this action, the treaties then become part of the domestic laws which can now be applied by the courts. A case in point is the African Charter on Human and People's Rights which became part of the Nigerian Statutes/legislation[47],that has now being applied by the courts in human rights cases.

[46] Section 12 of the 1999 Constitution of Nigeria (as amended)
[47] African Charter on Human and People's Rights (Ratification and Enforcement) Act, Cap A10 Laws of the Federation of Nigeria, 2004.

Article 18(3) of the Charter is very extant when it enjoins that, state parties shall ensure the elimination of all forms of discriminations against women and also ensure the protection of the rights of women as stipulated in international declarations and conventions. The Court of Appeal has equally pronounced on this issue in the celebrated case of FAWEHINMI Vs. ABACHA[48], when it held that the provisions of the Charter are in class of their own and do not fall within the classification of the hierarchy of laws in Nigeria in order of superiority. As such, the Charter is superior to domestic law embodied in Decrees as no government will be allowed to contract out by local legislation its international obligations.

The *lacuna* here is that, it is dicey whether the provisions of Section 18(3) above, has actually been tested and pronounced upon by Nigerian courts so much such that the singular provisions of the said Article 18(3) signifies an incorporation of other international standards on the human rights of women into our domestic laws as to make them directly applicable like the African Charter? So far there is no judicial pronouncement/enactment on this point. Also worthy of comment is the whether the provisions of the Convention on the Elimination of All Forms of Discriminations Against Women (CEDAW) 1979, has equally been ratified like the African Charter to make it enforceable? So far, no specific local enactment has been made in this regard pursuant to the provisions of Section 12 (1) of the Constitution 1999 (as amended) to bring this Convention into force in Nigeria. The question then is, are Nigerian courts thereby precluded from taking CEDAW into consideration in arriving at a decision?

In an attempt to resolve this ambiguity, the optional protocol to CEDAW however provides that; it is within the proper nature of the judicial process and well established judicial functions for national courts to have regard to international obligations which a country undertakes whether or not they have

[48] (1996) 9 NWLR Pt..475 p.710 at 747-8.

regard to international obligations which a country undertakes whether or not they have been incorporated into domestic laws, for the purpose of removing ambiguity or uncertainty from national constitutions: legislation or common law[49].

From a pragmatic point of view, it thus appear that since the consideration and the central purpose of CEDAW is the elimination of discriminations and the enforcement of substantive equality, and the fact that the Nigerian constitution prohibits on grounds of sex[50], it will be difficult to exclude the use of CEDAW in decisions involving questions of non-discrimination and equality. Generally, it should be appreciated that the Nigerian law on the rights of women have hardly been tested from a human rights perspective. As a result, there is a dearth of judicial decision except for a very few, and strict legal women's rights jurisprudence on the use of the judicial system for the enforcement of women's rights.

Secularism Arguments and Women's Rights

The freedom of thought, conscience, and religion is one of the fundamental rights guaranteed under the 1999 Constitution (as amended). Section 38 (1) of the Constitution provides that:

> *everyone person shall be entitled to freedom of thought, conscience, and religion, including freedom to change his religion or belief and freedom either alone or in community with others, and in public or private to manifest and propagate his religion or belief in worship, teaching, practice and observance*[51]

Further, the said section, in its subsection (2) provides for a qualifier, when it states that:-

[49] Fredman, S. 'Reversing Discrimination 13. LQR and Vos, M. D. Beyond Formal Equality-Positive Action under Directives 200/43 and 2000/78 European Commission 2007 available at http://www.migpolgroup.com/public/docs/14.Thematic Report Beyond Formal Equalitiy EN.06.07 pdf accessed 27/11/2015.

[50] Section 42 of the 1999 Constitution (as amended).

[51] Constitution of the Federal Republic of Nigeria 1999 (as amended)

> *no person attending any place of education shall be required to receive religious instructions or to take part in or attend any religious ceremony or observance relates to a religion other than his own, or a religion not approved by his parents or guardians.*[52]

The combine effect of the above constitutional provisions was to entrench the recognition of the multi-religious nature of the Nigerian polity and in order to allay the fears of religious minorities in the free exercise of their religious beliefs without interference or imposition from major groups[53].T he position was further strengthened by the provision of Section 10 of the Constitution, when it commands that:-

> *The Government of the Federation or of a State shall not adopt any religion as State Religion*[54]

It will be recalled that opinions were sharply divided both within and outside during the draft constituent stage of the previous constitutions about the inclusion of sharia in the constitution. The constitution expressly forbids the adoption of a state religion. Thought after the removal of the word 'secular' from the section of the constitution, the import of the concept of secularism still provoked a rumpus that climaxed into a stalemate leading to the walkout en mass from the meeting by the Moslem community from the North. The position of the Moslem North was articulated in the following words:-

> *The absence from the draft of a provision to cater for religion, moral and spiritual needs of the nation came as a rude shock to the silent majority of this great nation of ours... Nigeria is gradually sinking into secularism. We now have it under Section 17 of the draft that Nigeria will committed to secularism...*

[52] Ibid.

[53] Okeke, B. O 'Religion, Politics and National Cohesion. Being a Paper Presented at the Nigerian Bar Association's Annual General Conference, held at Abuja Sheraton Hotel & Towers, 21st-25th, August, 2000.

[54] Constitution of the Federal Republic of Nigeria (as amended)

hope and prayer that Nigerians will come to their senses and seriously diagnose this horrible Section 17 together with the implications and consequences that go with it[55]

In the words of an advocate, Islam is a way of life. The Islamic law is what enforces Islam as a way of life. Since Islamic law is meant for the happiness of mankind in this world and hereafter, it follows thereby that for this to be achieved; law must be applied as they affect all aspects of life. This has led to the agitation for the inclusion in the Constitution provisions that the state shall be responsible for the Islamic religious education of all Muslims as well as their secular education; that Islamic law (Sharia) is the only authority in both civil and criminal laws when dealing with Muslims in the court of law; the provisions of Islamic which deals with moral and inhibitions;

Islamic law should be understood in the constitution, as it is neither a common law nor a customary law because it is divine law.[56]

This advocacy has generated some critics of the sharia, in the sense that it is likely to drag the country into Muslims/ non-Muslims dichotomy. It may run afoul of the constitution of the general intendment of the draftsman of the constitution that provides that Nigeria is a secular, indivisible and indissoluble sovereign state. As a secular state, Nigeria must remained separated from, unconnected with, and not devoted to religion, but recognises religious freedom and secular citizenship. Meaning that the state would not in any way hinder the religious obligations of any group or groups subject of course to public order, morality and security.[57]

[55] Sambo, J 'Morality and the Draft Constitution' *In* the Great Debate. Nigerian View Points on the draft Constitution Ofonagoro, W. (ed) Lagos, (1996-77) p.74

[56] Ibid.

[57] Ibid.

The implication of a state in a contextual form suggest that the state must not adopt any particular creed as the state religion; it must consequently allow the free flourishing of any religion that operates within the just limits of the law, that is, in the interest of peace, order and public morality; it must declare all religions equal before the law, and in practice let them enjoy, equal treatment, protection and respect from all arms of government, by implication. The state must therefore cooperate with all religion in those areas the state is expected to do for the preservation of the entire religion heritage of the country. Any discrimination to any particular religion in whatever form will offend against this commitment to the principle of equality of rights, of opportunities and protection of all religions before the state and the law.[58]

secular state symbolises a state which has no religion of its own and which refrains from discrimination on grounds of religion. This is further buttress by the preamble to the 1999 Constitution that proclaims that Nigeria is one indivisible and indissoluble sovereign nation under God. It guarantees freedom of thoughts, conscience and religion[59]. It prescribes the taking of oaths of offices which ends with the words "so help me God". The government provides financial aid to religious bodies either directly through grants or subventions for pilgrimages or indirectly through tax exemptions.

Any issue or inquiry as to the introduction of Sharia Law in a secular state always encounter the prescribed problem of its limitation, constitutionality and the limit of its exercise. The issue of prohibition of a state religion and the guarantee of state religion and its limits are the two main irreconcilable matters that must be resolved[60].

[58] Nasir, J. M op. Cit p. 12

[59] Section 38 of the 1999 Constitution (as amended)

[60] Nasir, J.M op. cit p 14

Around year 1993-96, some states in the northern part of the country promulgated sharia law which violated some constitutional injunctions against the adoption of state religion. This development gave way for a reassessment of the nature of Sharia and the Islamic conception of the relationship between religion and the state. The sharia is of divine origin. It concerned with the whole of a Muslim's life, private and public, political, economic, and domestic life. It also regulates the activities of the tolerated members of other faith so far as they may not be detrimental to Islam[61].

Islamic conception of the relationship between religion and the state is inseparable in the sense that both religion and politics are in human affairs. The combined effects of Sections 10, 22 and 42 of the 1999 Constitution[62] guarantees the right of every Nigeria citizen to manifest and propagate his religion and belief in worship, teaching, practice, and observance either alone or in a community with others, either in public or private.

The attempted introduction of the expanded sharia legal system in some Northern states in Nigeria, have shown some concern about its implication on human rights. The human rights community, especially at the international level has been much more concerned about the rights of women in particular. The position of women in Islam has been among the most controversial subjects presented to the outside world with the least objectivity. As a fundamental principle of its system, Islam holds that a woman is a human being and that she has a source similar to that of men.

[61] Bello, M 'Obstacles Before the Sharia', Tell Magazine, Nos10, March 6, 2000 p.48

[62] 1999 Constitution (as amended)

In Islam, men and women are quite equal to each other in their origin, their abode, as well as in their place of return and we as such entitled to similar and equal rights. Islam gave the woman the right to life, honour and to property like men. She is a respectable being and it is not permissible for anyone to find fault with her, nor hole her in contempt due to her functions as a women. These are rights; both men and women enjoyed their being no differentiation against either of them. The law laid down about these applied to men and women alike[63].

Some of the misconceptions about the rights of women in our modern day reality are grounded on cultural and religious practices.

Women's rights activists in a number of national settings have stressed that the need to transform religious law and practice, not only as a means of ending gender-based restrictions on specific human rights, but also as an essential step towards dismantling systemic gender inequality[64].

In Nigeria, although some states (like Zamfara, Niger, Sokoto) have adopted a state religion especially in the late 90s, there has not been any official pronouncement by the Fedaral Government on such action partly due to political, ethnic, and socio-cultural motivations and undertone behind such actions. With time all these actions and agitations; to quote one of the former Nigeria Head of States (General Olusegun Obasanjo rtd) will gradually fizzle out as it has done now and died a natural death.

It should be noted that religion has always been a thorny issue in the history of Nigeria polity. Most of the bloody clashes especially in the Northern part of the country were attributed to religion. The fear of domination of one religion over the other has always been the bane of our society.

[63] Nasir, J.M op. cit p.22

[64] Sullivan, D. J "Gender Equality and Religious Freedom: Towards a Framework for Conflict Resolution" *In*NYUJ of International Law & Politics Vol. 24 Winter 1992, Nos. 2

This fear has been buttressed by the government involvement in most cases on religious issues which creates the feelings that the state support religion[65]. For instance, every year, as we are aware, the government at local, state and federal levels commits a lot of resources to sponsoring delegations to the Holy pilgrimages, either to Mecca or Jerusalem. A lot of resources have also been committed to either to the building of mosque or churches for political reasons. The National Mosque in Abuja Federal capital Territory, the construction of National Ecumenical Centre; the setting up of Pilgrims Welfare Boards in all the states of the Federation; are indications of the involvement of state in religious matters.

Thanks to the present administration of General Muhammed Buhari (rtd) who has part of the anti-corruption campaign put a halt on these practices.

All these practices appear to contravene the constitutional prohibition against the adoption of any state religion as provided for in Section 10 of the 1999 Constitution (as amended). The supremacy of the constitution in Nigeria is confirmed by the provision of section 1 (1), while Section 3 states that any other law, which is inconsistent with the provisions of the constitution, shall be void. Furthermore, chapter IV of the same Constitution dwelt on fundamental human rights which include right to freedom of thought, conscience and religion.[66]

Conclusion

It would be appreciated that Islam is not the only religion that violates the rights of women, especially on issues of reproductive rights with emphasis on anti- abortion and anti-contraception activities, including sex education among others. Both the Quran and the Hadith of the Holy Prophet (SAW) have accorded the Moslem Woman over 14 centuries ago much more than what the Nigerian constitution in chapter IV on fundamental human rights and the international instruments on rights advocates for women.

[65] Nasir, J.M op. cit p.24

[66] Section 38 of the 1999 Constitution (as amended)

However, the problem lies with non-appreciation by Nigerian women of the potency of these rights either due to socio cultural values that inhibits women actualization of these rights, or low level of literacy especially among women in the rural areas where much of the violations take place; or the mischief of some Muslim scholars/ men chauvinist who deliberately misinterpreted the text in pursuit of a male domineering agenda, and the erroneous misconception by the general society of equating negative anti-women cultural practices to Islam religious provisions.

It is evident from the discussions above that, human rights standards such as CEDAW means that the government have obligations to address the socio, economic, cultural, religious, educational and political discriminations of women through a concerted effort in promoting rights awareness and attitudinal change. The constitutional commitments so far remain an abstract in principle. There should be a clear understanding of what particular rights mean in terms of concrete entitlements in order to be able to claim them. Against these backdrops, the writers recommends as follows:

Recommendations

- A revision of the laws and administrative practices to ensure women's equal rights and access to economic, educational, political and social resources is recommended.
- Promoting respect for women's rights under a secular democratic state through a cross cultural dialogue as a way of balancing relativism and universalism of women's human rights by fashioning out how best to ensure human rights of everyone and resolve the apparent tensions between some part of religious and customary law within the concept of human rights regime is also recommended.

ABOUT THE BOOK

"Topical Issues in the Nigerian Law: A Book of Readings" is a collection of well-researched and inspired articles that gladiate deep academic tradition of recasting the law through eagle-eyed analysis of issues.

Divided into two parts-conventional and Islamic, the articles presented in this volume are not only informational but scholastic and thought provoking in nature. The chapters are focused on looking at the germane issues in the Nigerian Law. The book has raised several posers as well as tendered answers which readers will find illuminating in aiding their understanding of the most contentious issues in both common as well as Islamic law in Nigeria. The contributors undertook robust discussion on the issues and proffered solutions to identified problems.