

# SHARI'AH AND THE HUMAN RIGHTS PROVISIONS IN THE 1999 CONSTITUTION.

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## Introduction

Nigeria is a country with a multiple legal systems. This is in consonance with the practice in other countries with the Federal system of government all over the world. For example in the United States of America, each state has its sets of laws and a lawyer in one state must have a license by passing the relevant bar examinations to be able to practice in another one. In the same vein, possession of driver's license in one state is not automatic qualification to drive in another state. It is therefore not correct as some people have argued that having more than one legal system will bring problems to the country.

At present, there are certain offences created under the penal code that are not offences in the area of Nigeria where the criminal code operates. For example adultery is an offence under the penal code but is not an offence under the criminal code.

What the extension of the Shari'ah code will achieve at the end of the day is to increase the choice of Nigerians who want same in choosing any legal relations with others.

At the onset we intend to point out that there is a general misconception among lawyers that Magna Carta of 1215 was the

oldest document evidence of the entrenchment of human rights. Nothing could be farther from the truth. There are copious references in the holy Qur'an and the Sunnah in which immutable provisions have been laid down on the rights of man more than a thousand years before magna Carter came into being. It is now a matter of common knowledge that Europeans had early contact with works of Muslims on various areas of discipline including Law, Medicine, Astronomy, Geometric, and others. From the works of many of these early scholars of Islam, many ideas are espoused by Qur'an and the Sunnah where taken to Europe and adapted as original ideas. The Arabic numeral, which is the most popular of the media of counting in today's world, is one such example.

In order to do a semblance of a thorough analysis of the topic, it is necessary to trace the historical developments of the entrenchment of fundamental human right provisions in Nigeria's constitution from 1960. This is necessary because the earlier constitutions.

## Fundamental Human Rights Provisions Under Nigerian Constitutions

The geo-political entity known as Nigeria came into being in 1914, following

the amalgamation of the Northern and Southern protectorates and the Colony of Lagos by Sir Fredrick Laggard, then governor-general. Not much could be said about Nigeria's Constitutional Development and the amalgamation by the Colonialists.

As a matter of fact, one can say that the amalgamation of 1914 was the harbinger of real constitutionalism into the Nigerian body politic. The Colonialists realized early enough, that the then uncomfortable union forged among the various nation states and balancing in order to survive.

In the constitutional conference leading to the Macpherson Constitution in 1951 there were muted suggestions that the constitution should contain a "human right". That Constitution was promulgated but rather than provide for right, it provides for one central and three regional governments.

At the London Constitutional Conference of 1953, the Action Group (AG) and National convention of Nigeria Citizens (NCNC), presented a common view by the desirability of the Constitution containing a 'Bill of Rights'.

The call by AG and NCNC for the inclusion of a 'Bill of Rights' was not borne by any higher constitutional ideal but, rather, due to what the two parties perceived as political persecution of their supporters in the hands of the supporters of

the Northern peoples' Congress (NPC) in the Northern part of the Country. The main gist of the allegation was that members of the Action Group and National Convention of Nigerian Citizens were not given free movement in the North to campaign and canvass for members, a move which the members of the Northern peoples Congress perceived as an "unwarranted incursion".

Hence, the Action Group and national Convention of Nigeria Citizens suggested at the 1953 Constitutional conference in London, that the new Constitution "should contain a declaration of certain basic human rights for Nigerian Citizens in all parts of Nigeria".

The Colonial Secretary, Lord Chandos, dismissed the suggestion with a wave of the hand and noted that it was "not a very important group" that suggested the idea of the incorporation of the Charter of Human Rights, in the Constitution.

In the Constitutional Conference of 1957, the Action Group apart from its leading role as the proponent of the inclusion of a charter on Human rights in the Constitution also championed the call of some minorities for the creation of separate states for their tribes. These measures were aimed, as earlier noted, at weakening the stronghold of the Northern People's Congress in the North and to pave way for the Action Group, in particular, to have political foothold in the North.

The call for the creation of new states for the minorities did not have the blessing of the National convention of Nigerian citizens and the Northern Peoples Congress, both of which decided not to favour the call because of geo-political agree on the inclusion of a “Bill of Rights” in the Constitution but there was no agreement at all on creation of new states.

The Colonial Secretary set up a Commission to look into the two questions; the creation of states and the inclusion of a Bill of Rights in the Constitution. The Commission, under the chairmanship of Sir, Henry Willink after a thorough assessment, came out with the finding that the demand for states was not wide spread enough, moreso when there would still be minority groups in any new states created. On the issue of a Bill of Rights, the committee said it found no wide spread demand for same, but nevertheless, recommended its inclusion in the Constitution.

The committee drew heavily from the provisions of the European Convention on Human Rights and almost all the rights in that Charter were copied in to the Nigerian version. The committee borrowed Article 13 (1) and (2) from the 1956 constitution of Pakistan and Article 9 (2) of the Malayan Constitution.

As it will be shown when considering the Fundamental Human Rights Provisions of the 1960 Constitution, all the rights were

not absolute but qualified in many respects. That this is so is brought out by Gaius Ezeji for when he said:

It is obvious that the commission, in making its recommendations, which demonstrate that it is after all possible to formulate a Bill of Rights, not in absolute terms, but in a reasonably precise form, which imposes fairly clean obligations on Governments to respect the guaranteed rights and which at the same time restricts the scope of the court’s discretion in enforcing them.

### **The 1960 Constitution**

The whole of Charter III of this Constitution was devoted to “Fundamental Rights”. It runs from Sections 17 to 32.

The rights guaranteed and protected under the charter are: The right to life, freedom from inhuman treatment or torture, freedom from slavery and forced labour, the right to personal liberty right to be informed promptly of ones offences and right to speedy trial by a court, the right to their hearing in the determination of a litigant’s civil rights and obligations, “by a court or other tribunal established by law”. The right to private and family life, home and correspondence freedom of thought,

conscience and religion, freedom of expression, right to peaceful assembly and association, freedom of movement throughout Nigeria, and freedom from discrimination based on ethnic political or religious consideration.

As it was earlier stated, these rights are not absolute and apart from the derogation contained in each section 28 goes further to provide an umbrella derogation from the provisions of Sections 17,20,21 and 27 in a period of emergency pursuant to Section 65 of the Constitution.

The derogation from section 17 is also limited in that provision to section 28 which provides:

Provided that nothing in this section shall authorise any derogation from the provisions of section 17 of this Constitution except in respect of death resulting from acts of war or any derogation from the provisions of subsection (8) of section 21 of this constitution.

Under the provisions of section 29, any person that detained by an act of parliament in derogation of section 20, could ask that his case be referred to a special tribunal constituted by the Chief Justice of the Federal and such a tribunal:

Established for the purpose of this section shall be constituted in such manner as to ensure its independence and impartiality and its Chairman shall be appointed... from among the persons qualified to practice in Nigeria as advocates and solicitor.

Section 30 provides for the protection of the citizen's property from compulsory acquisition without payment of just compensation. The special jurisdiction of the High Court of a territory is provided for under Section 31 and it gives:

Any person who alleged that any of the provisions of the charter has been contravened to any territory in relation to him may apply to High Court of that territory for redress.

Section 32 is an interpretation section for charter III of the Constitution.

### **The 1963 Constitution**

The constitution came into force with effect from 1<sup>st</sup> October 1963. Apart from the change in the numbering of the Sections of this Constitution dealing with fundamental rights, the provisions are substantially in Pari material with those of chapter III of the 1960 Constitution. One remarkable difference in the two Constitutions is that

the country became a Republic under the 1963 Constitution.

It should be noted that there are textual changes in the provision relating to right to fair bearing in the two Constitutions. In the 1963 Constitution, Section 22 (1) (b) executed Chieftaincy matters from provision of the section. Also under the Section that there is the addition of a sub-section (4) in the 1963 Constitution which provides thus:

Nothing in the section shall invalidate any law by reason only that provide for the removal for execution of a person who is or was a chief by reference to a territory or a part of a territory from a particular area within that territory.

### **The 1979 Constitution**

The Military took over the affairs of the government of the country on 15th January 1966 after a coup d'état against the elected government. The first thing the Military did was to suspend a sizeable portion of the 1963 Constitution. The Military again on 27<sup>th</sup> July 1967 overthrew the regime of Major General J.T.U Ironsi and this second coup d'état brought Lt. Col. (later General) Yakubu Gowon to power.

After a bitter civil war lasting 30 months from 1967 to 1970, Gowon promised to hand over power to an elected civilian government in 1976. In 1974, Gowon reneged on the promise saying that 1976 was not realistic. The Gowon administration was terminated on 27<sup>th</sup> July 1975, and General Muritala Mohammed became the Head of State. As part of his programmes he promised to hand over political power to an elected civilian government in 1979.

Thus, the machinery for the hand over was set in motion and a Constitution Drafting Committee was put in place to draft a new Constitution for the country. On 13<sup>th</sup> February 1976, General Mohammed was assassinated and the mantle of leadership fell on General Olusegun Obasanjo who continued with the execution of the handing over programme.

A constituent Assembly was inaugurated and the draft of the constitution was exhaustively debated, adopted and a new Constitution, fashioned after the American executive presidential pattern, was promulgated. The Constitution came into force on 1<sup>st</sup> October 1979 even though it was promulgated on the 21<sup>st</sup> September 1978. The fundamental rights provision in Chapter IV of the Constitution reads:

The rights provided for under this Chapter include, the protection against torture, slavery or servitude, the right to

personal liberty, the right of a person arrested to keep silent, the right to be informed in writing within 24 hours the facts leading to one's arrest, right to be brought before a court of law within a reasonable time, the right to presumption of innocence, the right to be informed of the offence in a language one understands, the right to be given adequate facilities to prepare one's defence, the right to defend oneself in person or by legal practitioner of one's choice, the right to be afforded the same right to call evidence like the prosecution, the right to an interpreter, the right from retrospective criminal legislation, the right to privacy of home, correspondence telephone conversation and telegraphic communications, the right to freedom of thought, conscience and religion, the right to freedom of expression, to hold opinion and impart idea, the right to assembly and to associate with others lawful associations, the right to move freely within Nigeria, the right against discrimination base on the circumstances of the birth.

The right to property and protection against its compulsory acquisition without the due process of law was provided for under Section 40. Section 41 (1) provides that the general derogation from the rights guaranteed under Sections 34,35,36,37 and 38 when it provides:

Nothing in Sections 34,35,36,37 and 38 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society:-

- (1) In the interest of defence, public safety, public order, public morality or public health, or
- (2) For the purpose of protecting the right and freedom of other persons.

The power of the National Assembly to derogate from the right guaranteed under sections 30 and 32 during a period of emergency was also provided for. The Constitution further stipulated the only condition under which the provisions of section 30 could be derogated from in the following term:

Provided that nothing in this section shall authorise any derogation from the provisions of death resulting from acts of war or authorise any derogation from the provision of section 33 (8) of this Constitution.

It could be seen from the above that there is only a qualified derogation from the provisions of section 30 while there is no derogation allowed with respect in section 33 (8) which provides thus:-

No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at that time offence was committed.

The provision was designed to curb the excesses of the party in power that persecuted their opponents on trumped up charges which many a time were retrospective and vindictive.

The special jurisdiction of the High Court of adjudicate on any infringement of the rights contained in Chapter IV was also provided for in the last section of the Chapter. It should be pointed out that the power to make rules for purposes of Chapter IV was from the position under the 1963 Constitution where that power was given to the parliament.

Although, most of the rights provided for under Chapter III of the 1963 Constitution, are also repeated in chapter IV of the 1979 Constitution, the later provisions are better drafted and clearer. Like the 1963 provisions, all the rights were not granted in absolute terms. It is a matter of interest that the 1979 copious portions of it were suspended when the Military came to power through a *coup detat* on December 1983 by various other decrees: for example Decree No. 3 and 17 of 1984.

## **The 1989 Constitution**

The provisions of the Constitution came into some from 1<sup>st</sup> October 1992. In substance, the provisions of Chapter IV of the Constitution are substantially in *pari material* with provisions of Chapter IV of the 1979 constitution. The provisions of Fundamental Rights run from Section 32 to Section 44.

In providing for the special jurisdiction of the High Court, the High Court of the Federal Capital Territory, Abuja is included under section 14 while, The section also has a new subsection (5) which provides:-

In this section reference to a High Court includes reference to the Federal High Court of Federal Capital Territory, Abuja.

Under the right to life provisions of the Constitution, there is a provision to subsection (2) and the inclusion of a new subsection (3) wherein the word “judicial inquiry” is defined to include a Coroner’s inquest. Another innovation into the 1989 constitution in the area of fundamental rights is the inclusion of a new sub-section under the right to personal property concerning juveniles. The sub-section provides:-

Juveniles accused or convicted of offences shall be kept in remand homes or reformatory centres and their treatment including rehabilitation shall be the underlying principle for their custody.

The definition of “secret society” has been removed under the provision throughout to freedom of thought, conscience and religion. The separate sub-section under the right to fair hearing dealing with public sitting of Court has been removed. The freedom of expression has been extended under the 1989 Constitution to persons working with the Local Governments. Also the restriction under the right to freedom from discrimination placed on employment “to an office in the service of a body corporate established directly by law in force in Nigeria “has been lifted and substituted with “or other government security service establishment by law”.

Apart from these minor changes in the 1989 Constitution touching on fundamental rights, the other provisions are in *pari material* with similar provisions under the 1979 Constitution.

It must be noted that like the 1979 Constitution, the 1989 Constitution is the by-product of a military regime and both Constitutions bore large imprints of military input. It is noteworthy that the Constitution

became stillborn when the 1993 presidential election conducted to usher in the Constitution was annulled by the government of General Babangida.

### **Fair Hearing**

In concluding this aspect of the paper we shall briefly examine the concept of the hearing itself. Justice itself and like many concepts in law is devoid of any mathematically accurate definition.

### **The 1999 Constitution**

Expect for few rewarding and renumbering the provisions on fundamental human right, the 1999 Constitution is *ipsima verba* of the corresponding provisions of the 1979 constitution. Whereas in the 1979 Constitution the provisions ran from section 30 to section 42, in the 1999 Constitution they ran from section 33 to section 46.

The rights provided for in the 1999 Constitution are: right to life, right to dignity of human person, right to personal liberty, right to fair to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press, right to peaceful assembly and association, right of freedom of movement, right to freedom from discrimination, right to acquaint of own immovable property anywhere in Nigeria, and right to get adequate compensations for the compulsory acquisition of property. Section 45 of the 1999 constitution makes general derogation from some of the right



created while section 46 provides for the Courts in the jurisdiction of the enlargement of the rights.

In our treatment of the human rights provisions and the prescription of Islam, we are not following the constitutional provisions on the subject serially but we shall take the sections one after the other as it may be convenient.

### **Islam and the Fundamental Human Rights Provisions Under the 199 Constitution.**

Section 34 provides for the dignity of human person and by implication provides for the equality of man and that he is endowed with reason and conscience. It also enjoins man to act towards each other in the spirit of brotherhood.

Islam preaches the equality of man. As vicegerent of Allah on earth He endows and accords him great dignity and that man is a brother to another man is emphasised by Islam more than any other belief system. In this regard, we shall refer to a few portions of the glorious Qur'an to establish the above facts. The Holy Qur'an states that:

O mankind, We erected you from a single (pair) of a male and a female, and made you into Nations and tribes, that ye may each other, (Not that be 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) (Q49:13).

The Qur'an in Surah al-Nisa' chapter 4 verse 1 reinforces the above message the more. To teach man that brotherhood is the bedrock of peacefully co-existence, the Qur'an commands thus:

Kind words and the covering of faults are better than charity followed injury: Allah is free from all wants and He is most forbearing. (Q.2: 63).

The Holy Prophet (SAW) gave a practical hint to the message when he states that:

None of you is a Muslim until you desire for others what you desire for yourself.

2. The constitution in section 42 provides for freedom against discrimination on ethnic sex or religions grounds among others. Long before the constitution was conceived Allah (SWT) has through the noble mouth of the Prophet of Islam (SAW) decreed not superior to a non Arab and that a white man is not superior to a coloured person greatness before Allah is measured

by piety. The Prophet (SAW) further states thus:

You are brothers, one to another, so no one transgress against another, nor leave another endure transgression unaided. Remember, that he who occupies himself in assisting his brother will find Allah coming to his brother of anxiety will find himself shielded against anxiety by Allah on the Day of Judgment and he who overlooks his brother's fault will find his own faults overlooked by Allah.

1. Sections 33 and 35 provide for right to life and liberty of the human person. The sacredness of life in Islam is beyond debate. The Qur'an declares solemnly on the point thus:

We ordained for the children of Israel that if any one slew a person unless it be for murder or for spreading mischief in the land it would be as if he slew the whole people: And if anyone saved a life. It would be as if he saved the life of the whole people (Q.5:32)

Both suicide and infanticide are prohibited in no uncertain terms as contained in Qur'an 41:30 and 81 9 -10. In pursuance of

the above, the Holy Prophet (SAW) in his farewell sermon declares thus among other things.

Your persons, properties and honour are declared sacred like the sanctity attaching to this day, this month and this spot. Let them not be violated.

Islam also frowns on denial of the individual liberty without due process or at the whims and caprice of the temporary wielders of power. Section 34 (1) (b) prohibits slavery or other forms of servitude. Ever before the Western world woke up to evil of slavery upon which wealth was built in the 19<sup>th</sup> Century, Islam from inception had created avenues for the freeing of slaves and thereafter, embraced Islam automatically became a freeborn. The story of Bilal stands out clear. Islam also makes elaborate provisions for the manumission of slaves or ransoming of captives. The Holy Prophet (SAW) was reported to have said:

There are your brethren over whom Allah has granted you authority, then he who has a brother under his authority should feed him of what he eats himself, should clothe him as he clothes himself, should not set him a task beyond his capacity and if he

assigned something heavy or difficult, should help him in carrying it out.

One story that vividly illustrates the attitude of Islam to slavery was an event during the time of Umar the second Khalifah. He was billed to go to Jerusalem on state matters that needed his personal attention. He was to go with a slave as his companion. Both the Khalifah and his companion were to go on one camel and Umar arranged that he was to ride the camel in turn with the slave. The last lap of the journey was to be enjoyed by the slave riding the camel. He in deference to the Khalifah offered that Umar ride into town to enhance his status as the Khalifah. Umar declined this offer and he trekked behind the mounted slave into Jerusalem. This gesture led to the wholehearted surrender of Jerusalem nobles to Islam.

Islam in no uncertain terms prohibits torture, cruelty, inhuman and degrading treatment or punishment. The Holy proper SAW said that “No one should be subjected to chastisement by fire” and that no one should be hit on the face”<sup>8</sup>

We should call attention to the Qur’an 24:2 that prescribes flogging for fornication and adultery and 224:4 for slanderous accusations of unchastity against a woman. Also the prescription in Qur’an chapter 5:38 that a thief’s hands be

cut off should be noted. In the eyes of the modern day humans it is argued that these punishments are inhuman and cruel.

The short answer to these charges is that what Islam prescribes in these instances are the highest punishment for those offences. In many countries where Islamic punishments for those terms of imprisonment are invoked for first time offenders and not hardened infractions of the law. The corollary of these punishments is found in other systems of law including the popular imprisonment with hard labour.

Section 36 makes provisions for rights to a fair hearing and the equality of all before the law, the right to recognition as a person in law and the right for adequate remedies before the law courts without discrimination.

The rules of Islam are very extensive and it protects all persons of whatever race or religion. Under an Islamic state all forms of discrimination are abolished. The Holy Qur’an addressing the subject of dispensation of justice with sincerity states thus:

Allah doth command you to render back your trusts to those to whom they are due, and when ye judge between man and man, that ye judge with justice, verily how

excellent is the teaching  
which He giveth you (Q.4:58)

Islam also commands us to be just  
and be not swayed by any mundane  
consideration to be unjust to others in any  
circumstances. The Qur'an states as  
follows:-

O ye who believe! Stand out  
firmly for Allah, as witnesses  
to fair dealing, and let not the  
hatred of others to you makes  
you swerve to wrong and  
depart from justice. Be just:  
that is next to piety and fear  
Allah... for Allah is well  
acquainted with all that ye do  
(Q.5:8).

The practical demonstrations of  
these exaltations were carried out by the  
Holy Prophet (SAW) when in a case of a  
mission sword between a Muslim and non-  
Muslim, he awarded the disputed sword to  
the non-Muslim who was able to procure  
witnesses who testified that the non-Muslim  
was the owner. The Muslim was unable to  
produce any witness as to his claim to  
truthfulness of the Prophet (SAW) that he  
embraced Islam.

Also when Umar was the Khalifah he  
appeared before a court as a defendant.  
When he entered the Court the judge in  
deference to his high office stood up to  
honour him. Whereupon Umar ordered that

the case be taken to another judge since  
the first judge by respecting him might not  
be seen to be just by his opponent.

Section 35 protects the individuals  
from arbitrary arrest or detention, or exile,  
while section 36 guarantees full equality to  
a fair and public hearing by an independent  
court or tribunal, it also provides for  
presumption of innocence for anyone  
charge for the infraction of a penal statute.  
These provisions were demonstrated by the  
following incident that happened to Ali the  
fourth Khalifah of Islam. Ali has a claim  
against a Jew in Court. The witness  
frustrates such an action. The Rule can  
also operate in the converse.

Due to affinity between Ali and Hassan he  
would not rely on the testimony. He  
dismissed the claim of Ali.

Section 37 guarantees right from  
arbitrary interferences with ones privacy.  
Family home and correspondence. Further  
it protects the person from attacks upon his  
honour and reputation. In his last farewell  
address the Holy Prophet (SAW) made  
same point in the following immortal words.

Your lives, properties and  
your honour are declared  
sacred as the sanctity  
attaching to this day (the  
day of pilgrimage) and this

month and this spot  
(Arafat).

To put a cap on this injunction Allah Himself in commands in the Holy Qur'an thus:

O ye who believe! Enter not houses other than your own, until ye have asked permission and salute those in the; that is best for you, in order that you may heed (what is seemly) 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 (Q.24:27-28).

Subject to the above, Islam gives man the free undiluted latitude to associate and form bodies that will aid promotion of the world community. The founding of the United Nations itself is a testimony to the right as espoused by Islam. Allah sets the limits as to the type of association that should be promoted when He declares.

These that are charitable promote welfare and strengthen peace. Who so does that seeking the pleasure of Allah. We shall

soon bestow on him a great reward! (Q.4:114).

The constitution in section 38 (4) also prohibits Nigerians from being members of secret societies.

The right to participate in the government of his country is also the concern of section 40. To Allah belongs the dominion and sovereignty over the universe. But as vicegerents, He bestows a part of these powers on the leaders of man vide Qur'an chapter 3.6. The code of leadership in Islam is exemplified by the following saying of the Holy Prophet (SAW):

Everyone of you is steward, and is responsible and accountable for that which is committed into his care. The Sovereign is responsible and answerable for his people for the members of his family, every woman is responsible and servant is responsible and answerable for the property of his master that is in his charge.

The concept of Shurah or consultation is the bedrock modern day democratic practices of many parts of the world. In choosing the leader Islam sets the criteria when Allah states thus in the Holy Qur'an:

Verily, Allah commands you to entrust authority into the hands of those who are best fitted to discharge it. And that when you are called upon to judge between, or exercise authority over the people, you must do so equality and with justice. Surely, excellent is that with which Allah admonishes you. Allah is All-Hearing, All-Seeing.

The above presupposes that the choosing of leaders is the duty of the led thus the foundation for democratic practice had long been enshrined in Islam. Chapter II of the 1999 Constitution though not justifiable makes copious provisions for social security, right to work and employment. In Islam, the state has the duty to cater for the needy and the helpless. It is stated that it is a sin for anyone to go hungry in an Islamic State when this is due to the failure of the State to provide the wherewithal for the person to be gainfully employed to make a living. The Holy Prophet (SAW) emphatically states "safeguard yourselves against penury, for it might tend to push a person into disbelief." Allah says in Qur'an:

There is therein (enough provision) for thee not to go hungry or naked, nor to suffer from thirst, nor from the sun's heat. (Q.20: 118-120).

The above should be the aspiration of any Muslim who heads a nation, that is none of his subjects should go hungry or naked.

The right to rest, leisure and to standard of living, adequate for health and well being are provided for in Section 17.

During the time of Khalifah Umar he was reported one day to be taking a walk whereupon he came across a woman whose child was crying. He sought to know why the baby was crying the woman narrated that was no food. The Khalifah then asked what the woman was cooking on the fire. The woman retorted that she was boiling stones and that she thought that it was food would make the baby to fall asleep after his cries. The Khalifah quietly left the woman and he to seek the man that kept the key to the public food reserve and he carried a bag of food on his own head which he dropped for the woman incognito.

The point been made is that the right to rest, leisure and a good standard of living can only be achieved by a well fed person. Therefore, except the state is alive to its

responsibilities these rights will be mirages as they are in Nigeria of today.

The right to education which should be free in the elementary stages is provided for in section 18, while section 42 gives the right to each person to freely participate on the cultural life of the community.

The premium that Islam places on education makes Allah Himself to enjoin human beings to know him before he worships Him. Knowledge is the very basis of Islam. The Holy Prophet directed Muslim to look for knowledge from the cradle to the grave. Allah Himself stated that He sustains the earth and heavens with His unlimited knowledge. The story of what happened between Adam and the angels borders on knowledge. As we alluded to earlier, Allah created us with different tongues so that we can recognize each other more easily. Same goes for the colours of our bodies. Notwithstanding the pigmentation of ones body and the languages, Islam emphasis the oneness of humanity and the common origin. To make sure that the individual partakes in the lawful socio-cultural activities of his community, Islam places emphasis on congregational activities both religious and mundane.

The provision of Chapter II are designed to enable the individual fully enjoy the right preserved in the other parts of the constitution but lamentably the provisions are not justifiable.

Islam places premium on duties to Allah and thereafter to the community where one lives. The popular saying by Muslim theologian is that the love of ones community is as high as an act of Ibadan. This does not derogate from the fact that Islam frowns at ethnics and tribalism. These last two acts that Islam frowns promote the unity of all creations of Allah.

The type of love one can legitimately have for ones community is the type that promotes the end of justice. Fair play, equity, the enthronement of the laws of Allah in the land and the unification of the creations of Allah. It must be appreciated that the difference in languages, colour and the creation of national boundaries are means towards an end and not in themselves. This university of Islam is best demonstrated by the annual pilgrimage to Mecca where peoples of all races intermingle as one corporate ummah without distinction as to age and social standing.

Nigerian constitutions from 1954 to the current 1999 Constitution contain chapter on Fundamental Human Rights, which are entrenched in the constitutions.

The subject of the observance of these rights by the state is wide, an area that one will need a distinct paper and forum to treat. Be it noted however that it is now agreed by all public commentators that the problem with Nigeria is not the

Constitutions but the operators of same. Nigeria until recently has not been blessed with the type of leadership that is alive to the sacred responsibilities of national leadership.

### **Conclusion**

We have been able to demonstrate that more than one thousand years before the Magna Carta of 1215, Allah has provided in the Holy Qur'an all the rights that man was to enjoy. We have also seen that more than ten centuries before the event of 1948 on Universal Declaration of Human Rights the Holy Prophet of Allah (SAW) and the rightly guided Caliphs has practiced and demonstrated the observance of human rights in their administrations. All these go to confirm the universal message of Islam and its eternal nature. The Muslim Communities of those periods progressed on all the indices of human development because they followed and practiced Islam. Nigeria can also imbibe the Teachings of Islam and obey the injunctions of Allah on the act of governance. Therein lies a brighter future for this nation and its people.

### **Notes and References**

1. This paper was first presented at Abuja during the conference on "Shari'ah and the Human Rights Provisions in the 1999 Constitution" held from 15<sup>th</sup> to 18<sup>th</sup> February 2000.
2. The legacies of Islam in its contribution to knowledge in the areas of medicine, Algebra, Architecture, and so on are unquantifiable.
3. see\; Ezra, constitutional Developments in Nigeria, 1961, Chap. 8.
4. See: G. Ezejiolor, Protection of Human Rights Under the LW, p. 183
5. See Sections 30 to 42 of the Constitution of the Federal Republic of Nigeria 1979.
6. See: Sahih al-Bukhari – Collection of Hadith.
7. See: The last sermon of the Holy Prophet (SAW) which can be found in any standard work on Sunnah.
8. Sahih al Bukhari, op. cit
9. Sahih al Bukhari, op. cit
10. Many columnists in Magazines like Ray Ekpu of Newswatch Dare Babarinsa of Tell and other public commentators like Prof. Wole Soyinka, Rt Rev. Abiodun Adetiloye and other 'opponents' of Shari'ah fall into this group.
11. The last sermon of the Prophet SAW op.cit
12. Sahih al Bukhari, op. cit
13. Sahih al Bukhari, op. cit