

HARMONIZATION OF CIVIL AND ISLAMIC LAW ON CHILD LABOUR

Yusuff Jelili Amuda ^a

^a International Islamic University, Malaysia

Corresponding author: akorede4@yahoo.com

© Ontario International Development Agency. ISSN 1923-6654 (print),
ISSN 1923-6662 (online). Available at <http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html>

Abstract: This paper examines harmonization between Islamic Law, Civil Law, and United Nations Conventions on child labour elimination. Many contemporary Muslim jurists strongly maintain their position that civil laws or common laws are un-Islamic while the majority of man-made law advocates consider Islamic fiqh unsuitable for the contemporary life of Muslims and new issues in the world. The harmonization of Islamic Law rulings, UN Convention and civil law on contemporary issues where there is no textual evidence, opinion of classical jurists, or *fatawa* might help in these circumstances. Certain strict limitations and principles laid down by Muslim jurists are maintained and followed. For instance, if the law or conventions on the elimination of child labour are in line with the *Qur'an* and *Hadith* as well not contravening the principles of the *Shari'ah*, then the provisions are permissible. So, any United Nations conventions or Common law on the elimination of child labour or child rights in the affected Muslim countries that oppose or contrary to the Islamic law principles are to be strictly disallowed and discarded or otherwise should be amended and implemented. This findings will apply both qualitative and quantitative methods in the analysis while suggestion would be made in the best interest of child.

Keywords: Key words: Child, Fiqh, Harmonization, UN Convention.

It is a fact that the majority of Muslim countries inherited and are still implementing the civil or common law of their colonial masters such as Britain, France, the United States, Italy and Portugal as a result of colonization. Man-made law

is being widely imposed on Muslims and non-Muslims in

their respective countries except for certain issues and cases where some countries permit their citizens to seek judgment from the *Shari'ah* court. The *Shari'ah* was fully implemented in some Nigerian states while partially implemented in some other states until the advent of colonialism stopped and restricted the Divine law. *Shari'ah* implementation became restricted to family law and *hudud* punishments were abolished and aborted by the colonial power. [1] This chapter deals with harmonization between *Shari'ah* and civil law. Many contemporary Muslim jurists strongly maintain their position that civil laws or common laws are un-Islamic while the majority of man-made law advocates consider Islamic fiqh unsuitable for the contemporary life of Muslims and new issues in the world. [2] However, some Muslim scholars are now thinking of ways and types of harmonization between *Shari'ah* and civil law. These efforts and contributions are being made under the guidance of some secular Muslim governments which are obviously against the implementation of the *Shari'ah* such as Egypt and others. [3] In Nigeria, the entire attempt made by Muslim leaders and the community to have *Shari'ah* courts in their constituencies has not been completely successful. [4] This is because of a lack of committed Muslims leaders in power even though many Nigerian Muslims have ruled the country and they have had opportunities to reintroduce the implementation of full *Shari'ah* for Muslims through the Courts. [5]

The harmonization of *Shari'ah* rulings and civil law on contemporary issues where there is no textual evidence, opinion of classical jurists, or *fatawa* might help in these circumstances provided that certain strict limitations and principles laid down by Muslim jurists are maintained and followed.

For instance, if the law or conventions on the elimination of child labour are in line with the *Qur'an* and *hadith* as well not contravening the principles of the *Shari'ah*, then the provisions are permissible. So, any United Nations conventions on the elimination of child labour in the affected Muslim countries that oppose the principles of the *Shari'ah* are to be strictly disallowed and discarded.

I. MEANING OF HARMONIZATION

The word harmonization is equivalent to the Arabic word "*tawfiq*" which is the verbal noun of the verb "harmonize" which means to bring one thing into harmony or agreement with another.[6] According to Muhammad Hashim Kamali, harmonization is usually between two different types of things or ideas. He also said if two things are identical, there is no necessity for harmonization because they are already harmonized. For that reason, it is admissible and acceptable to harmonize the two laws. Kamali put the two laws on an equal footing to permit the harmonization process. [7]

Similarly, Mohd Daud Bakar also puts *Shari'ah* and civil law on an equal footing in order to pave the way for harmonization work. [8] Nevertheless, these views are slightly unacceptable on the basis that equalizing civil law with the *Shari'ah* is in total contravention of the principles *Qur'an* and *hadith*. This is because the *Shari'ah* is totally divine, unchangeable, and implementable at any time and in any place while man-made law is un-divine and changeable and also susceptible to amendment. Harmonization between *Shari'ah* and Civil law would not be permitted, while the harmonization between *fiqh* and laws on the elimination of child labour, for instance, should be permitted because it is completely divine while *fiqh* is based on the views and opinions of jurists on the bases of speculative and indefinite verses that are open to personal and collective *ijtihad* in the public interest. Furthermore, some views and opinions were expounded by classical scholars based on the Islamic principles but are subject to change. The following verses indicate that Muslims should not seek judgment from any law except the *Shari'ah* which means the *Shari'ah* should not be harmonized. Rather, the jurists' views could only be harmonized with civil laws on child labour provided that the principles are followed and maintained.

This is based on the verse which states to the effect:

"Do they then seek the judgement of (the days of) ignorance. And who is better in judgement than Allah for a people who have firm faith." [9]

II. JURISTIC VIEWS ON THE POSSIBILITY OF HARMONIZATION

According to Abd Qadir, it is a fallacious analogy to compare between the divine law and man-made law or conventional law on any issue and case due to the complete difference between them. Any attempt to compare the *Shari'ah* with man-made law such as common law, civil law, and United Nations Conventions on child labour elimination is like comparing human beings with the Creator, which is out of line, irrational, and senseless. [10] This present research is in line with the above view that the *Shari'ah* should not be compared with any other law that will contravene the spirit of the *Shari'ah*. Therefore, there should be no comparison between the *Shari'ah* stance on child maintenance and the UN Convention on the elimination of child labour. Harmonization between man-made law and *fiqh* might be possible provided that the *Shari'ah* prevails over man-made law in any circumstances and conditions. The above mentioned differences between the *Shari'ah* and common law do not necessarily mean that the *fiqh* and common law systems of law are irreconcilable. Indeed, there are remarkable similarities between the legal systems which make them compatible with each other in many ways. The broad and main objectives of the *Shari'ah*, common law, and the U.N Convention on child labour elimination are child welfare, child maintenance, and child freedom from any hazardous work are similar. According to the three above mentioned system of laws, there is an element of obligation common to all but which is different in the spiritual aspect. This is because of the nature of the *Shari'ah* as the law of the Creator (Allah) that makes it suitable and applicable to every age and not open to any amendment. [11] The following illustrates the undeniable distinctive features of the divine law:

Firstly, Perfection means that the *Shari'ah* is absolutely superior to any other law or conventions on the current issues by virtue of its perfection. So, neither conventional, common law, nor civil law on child labour can be at the same level or possess similar virtues to the *Shari'ah*. This is because of its rules, principles, and doctrines that are applicable to all ages. [12]

Secondly, Sublimity means that *Shari'ah* principles and rules always remain intact at a higher level to find everlasting solutions and give provision to the social standards and current requirements whatsoever the demands. The *Shari'ah* will always maintain its superiority over other laws and conventions as the divine law. The UN Conventions on child rights and the eradication of child labour in order to free children from hazardous labour find

their provision under *fiqh* which is based on principles. [13]

Thirdly, Permanence is a fact that the *Shari'ah* is immutable and everlasting law that is compatible with all human beings in the best interests of society. Its unavoidable provisions cannot be influenced or affected by time, age, period, status, or position. [14]

Conditions of Harmonization

Since harmonization can only materialize and be manifested between the United Nations Convention, common law, and *fiqh*, some conditions should be adhered to in order to protect and maintain the sanctity of Islamic *fiqh* because it is derived from and based on the divine texts and any contradiction with divine law must be avoided. [15]

The conditions that should be borne in mind during the harmonization process are as follows:

Firstly, Muslims should not have the belief that positive law is equivalent to the *Shari'ah* or on the same level as the Islamic view whose roots are mainly derived from divine texts such as the Holy *Qur'an* and *hadith*. [16]

Muslims should not be tried and judged under any law except the *Shari'ah* because the *Shari'ah* covers all aspects of human life and nothing is left uncovered in the *Shari'ah*. [17]

Secondly, Islamic *fiqh* should be allowed to be imposed on Muslims in order to avoid the domination of positive law over Islamic *fiqh* in the field of child labour. Islamic *fiqh* is competent to rule on the eradication of child labour in a Muslim community instead of implementing positive law that is limited to the capacity of the human brain. [18]

Thirdly, Islamic scholars should be aware that harmonization should not be allowed to overwhelm their minds to separate religion from state government. This is because religion covers all aspects of human life and the hereafter. So, religion and the state are working together to free children from the hazardous and dangerous work in which many of them are engaged. [19]

Fourthly, Positive law should be harmonized with definite texts in the *Shari'ah* and Islamic *fiqh* on child maintenance and the elimination of child labour to be more acceptable and practicable in the Muslim community. [20]

In addition, during the harmonization process on the elimination of child labour, the parents' rights over their children should not be overlooked because any ridiculous attempt against parents' rights will be contrary to the *Shari'ah*. Under positive law, children are allowed to report their parents to the police on the basis of the irrational and irreligious rights granted to children which go

against the sanctity of law. So, positive law should be put in line with Islamic *fiqh*.

On the other hand, behaviour and ethics should not be compromised during the harmonization of laws on child labour because Islamic *fiqh* has laid down the divine guidance and good behaviour and noble character that children should imbibe in the community and in society.

Similarly, man-made law should not be given priority blindly over the opinion of classical scholars because their views are derived from the sources of the *Shari'ah*. So, Islamic jurists' views are more acceptable on the elimination of child labour than those of positive law due to the lack of religious spirit in those who have drafted bills on the elimination of child labour. [21]

Another point is the United Nations Convention on child labour elimination should be adapted to the Islamic *fiqh* in the interests of Muslim children. This will pave the way for courts to have jurisdiction over the elimination of child labour in the Muslim community.

Furthermore, Non-Muslims should not be permitted to be active members of draft committees on the harmonization of the child labour elimination process. This is to maintain the spirit of faith and religion in the best interests of children and society. In addition, the causes of child labour should be treated and examined from the Islamic *fiqh* perspective to avoid any undesirable predicaments confronting children.

Moreover, punishments should be prescribed and drafted by the committee on the harmonization of child labour elimination according to *fiqh* in line with the *Shari'ah* principles.

Finally, the causes of injustice of wealth distribution in Nigeria by the ruling government should be investigated during the process in order to put an end to child labour and the hazardous conditions in which they work.

In addition to the condition of harmonization between *fiqh* and man-made laws, in order to achieve the objective and prime purpose of harmonizing positive law with Islamic *fiqh* to protect Nigerian children from the precarious conditions facing them in labour, the following conditions should be employed by the Islamic scholars to protect the sanctity of the *Shari'ah* during the process.

The contemporary scholars who are involved in the harmonization process should put aside all their Western orientation in order to avoid any destructive intervention in the harmonization process. They should not forget that *fiqh* is superior to positive law. So, any positive law or convention on child labour that is contrary to Islamic *fiqh* should be abandoned. [22] In order to eliminate child labour in Nigeria, the principle of public interest (*maslahat mursalah*) [23] should also be explored during the

harmonization process in the best interests of the public. Islamic scholars who are involved in the harmonization process should have good faith, be committed and well disciplined in order to prepare themselves for the accountable tasks in this life and the hereafter. They can also codify their drafted convention on child labour elimination in the best interests of Muslim children and society. However, (*'urf*) should also be critically examined when harmonizing both laws with fiqh provided that (*'urf*) is not repugnant to the principles of the *Shari'ah*. They should also bear in mind that both common and conventional law are based on the customs of the drafting committee that passed such laws in the interest on their society. In order to suit the Muslim community that Nigeria belongs to, custom and culture must be consciously noted during the harmonization process. In addition, common and civil law and also the UN Convention should be imposed on non-Muslims while the convention drafted by Muslim jurists should be imposed on Muslims due to religion and in the best interests of Muslim children.

1) *Basis for Harmonization between Shari'ah and Civil Law on Child Labour*

Since the *Qur'an* and *hadiths* are prone to different understanding and interpretation in indefinite and speculative verses and quotations, harmonization can be done and incorporated to eliminate child labour in the best interests of the child. As a result of that, any attempt to point fingers, accuse, and fight over hearsay is totally inadmissible and is also contradictory to the principles of the *Shari'ah* that allow personal and collective *ijtihad* based on the well known tradition of Mu'adh ibn Jabal:

When the Apostle of Allah intended to send Mu'adh ibn Jabal to the Yemen, he asked: How will you judge when the occasion of deciding a case arises? He replied: I shall judge in accordance with Allah's Book. He asked: (What will you do?) if you do not find guidance in Allah's Book? He replied: (I will act) in accordance with the *Sunnah* of the Messenger of Allah. He asked: (What will you do?) if you do not find guidance in the *Sunnah* of the Apostle of Allah and in Allah's Book? He replied: I shall do my best to form an opinion and spare no pains. The Apostle of Allah then patted him on the

breast and said: Praise be to Allah Who helped the messenger of the Apostle of Allah to find a thing which pleases the Apostle of Allah.

However, it has to be borne in mind that the harmonization of the two laws on the elimination of child labour should be carefully and consciously analyzed and performed. Similarly, those who want to carry out harmonization should be well-versed Islamic scholars, NGOs, and intellectuals in order to contribute and give more input based on their ideas and knowledge within the spectrum of divine limitation.

The *Qur'an* states to the effect;

O Dawud! Verily! We have placed you as a successor on the earth; so judge between men in truth (and justice) and follow not your desire for it will mislead you from the Path of Allah. Verily, those who wander astray from the path of Allah (shall) have a severe torment, because they forgot the Day of Reckoning. [24]

The *Qur'an* says to the effect;

And so judge (you O Muhammad (S.A.W) among them by what Allah has revealed and follow not their vain desires, but beware of them lest they turn you far away from some of that which Allah has sent down to you...[25]

According to the *Qur'an*;

"And when they are called to Allah (i.e. His words, the *Qur'an*) and His Messenger (s.a.w) to judge between them, lo! A party of them refuses (to come) and turns away". [26]

But no, by your Lord, they can have no faith, until they make you (O Muhammad (S.A.W) judge in all disputes between them, and find in themselves no resistance against your decisions, and accept (them) with full submission. [27]

The *Qur'an* states to the effect;

Surely, We have sent down to you (O Muhammad (S.A.W) the Book (this *Qur'an*) in truth that you might judge between men by that which Allah has shown you (i.e. has taught you through Divine Revelation), so be not a pleader for the treacherous. [28]

And whoever contradicts and opposes the Messenger (Muhammad (S.A.W) after the right path has been shown clearly to him, and follows other than the believers' way, We shall keep him in the path he has chosen, and burn him in Hell what an evil destination! [29]

There are also several *hadiths* of the Prophet (S.A.W) which are relevant to harmonization such as *hadith Mu'adth* cited in previous page. This tradition indicates that Muslim judges or scholars can exercise their personal *ijtihad* in order to provide law in a case where the *Qur'an*, *hadith*, *ijma'* are silent by way of applying the rule of *qiyas* in deducing new law for the contemporary and current issues and cases such as child labour. Therefore, Muslim jurists can pass laws against child labour since the *Shari'ah* explicitly rules on child maintenance. As regards *Ijma'*, all classical Islamic jurists unanimously agreed on the implementation of the *Shari'ah* among the Muslims. [30]

The unanimous view of Islamic jurists, in line with the *Qur'an* and *hadith*, indicates that no Muslim is allowed to seek judgment from any other law except the *Shari'ah*, so, Muslims should not obey, follow, or implement any law from non-Muslims due to the lack of the Islamic spiritual aspect. The *Shari'ah* has laid down the rules and conditions about how to apply *ijtihad* in making law when the *Qur'an* and *hadith* are silent.

1) Harmonization of Civil Law and Fiqh

Since harmonization can be only performed between the United Nations Convention, common law, and *fiqh*, the previously discussed conditions should be adhered to in order to protect and maintain the sanctity of Islamic *fiqh* because it is derived from and based on the divine texts and any contradiction with divine law must be avoided. [31] All the conditions should be maintained during the harmonization process in the interest of the *Shari'ah*.

a) Similarities and Differences between Civil Law and Fiqh

There are similarities and differences between civil law and *fiqh* and the differences and similarities should always be borne in mind whenever the harmonization is under process in order to avoid unnecessary and unlawful harmonization between

civil law and *fiqh*. The similarities and differences are follows:

It has been clearly mentioned that the *Shari'ah* cannot be equally harmonized with civil, and common law and the U.N Convention due to the inequality among them. However, it is only *fiqh* and other laws that can be compared in terms of child labour provided that the spiritual aspect is consciously maintained in the best interests of the children, family, and the nation at large. [32] There are similarities between *fiqh* and man-made law which can be harnessed in order to put an end to child labour in Nigeria as the case study in this current research. It has been discovered that *fiqh*, common law and the U.N Convention have similar aims and also share similar objectives to regulate different aspects of human life. [33] In that way, Islamic *fiqh* aims to free children from any hazardous and dangerous work which is similar to the U.N Convention and common law on child labour. [34] The opinions and views of classical scholars are subject to change due to time, place, and territorial jurisdiction. So, it is legal to deduce different rules for new issues for the benefit of society such as the principle of public interest.

Fiqh and the U.N Convention on child labour deal, to varying degrees with the elimination, development, assistance and changes that occur every day concerning children.

As regards the differences, there are many differences between Islamic *fiqh*, common law, and the United Nations Convention on child labour despite the fact that the three laws all aim at the elimination of child labour around the globe.

It is obvious that human reasoning has a role in deducing rulings where the *Qur'an* and *hadiths* are silent by making suitable rules on condition that the spirit of Islam is protected. Human beings employ their personal or collective *ijtihad* in speculative or indefinite verses mainly to deduce law in the interests of society. Islamic *fiqh* is based on the *Qur'an* and *hadith* while *ijma'* and *qiyas* are based on the divine text. On the other hand, laws on child labour are not based on the divine text but on custom, culture, and human reasoning, efforts, and intellect. However, the United Nations convention on child labour does not accept Islamic principles as its main source and neither does it adhere to such a religion. So, *fiqh* bases its principles on the divine text while the latter is secular and man-made. [35]

It is divinely right that Islamic *fiqh* could be amended and changed partially since its evidence is not definite nor prescribed in the *Qur'an* and *hadith* because any punishment prescribed in the *Qur'an* and *hadith*, including duties and responsibilities could not be changed and amended but must be implemented and executed as prescribed. It is only speculative injunctions that are open and subject to changes

provided that the Islamic spirit is preserved to avoid contradiction. Contrary to that, all common and civil laws and the U.N Convention on child labour are subject to changes because of the human reasoning and thinking of those who drafted the laws on child labour. Therefore, *fiqh* is different from common law both in terms of arguments and base. Islamic *fiqh* establishes the goodness and kindness of humans in relation to other creatures which is questionable and rewardable in this life and in the hereafter. [36]

Common law mainly focuses on a creature's relationship with others in terms of social life and a human being can only be questioned in this life not in the hereafter which is the remarkable difference between Islamic *fiqh* and positive law. [37] Since Islamic *fiqh* is based on the divine text, *fiqh* is very conscious of faith and belief as part of the Islamic doctrine and practices. Therefore, *fiqh* rules are in line with 'iman (faith) in a way that they will not be contrary with the concept of Islam. On the other hand, common law totally ignores faith and religion. [38]

In addition, *fiqh* also warns human beings, especially Muslims, that there is reward and punishment in this life and in the hereafter. Reward and punishment are only limited neither in this life nor in the hereafter under common law. Islamic *fiqh* connects and matches religion and state government together because leadership duties and responsibilities are to be accounted for on the last day while common law separates religion from state government. Their philosophy is that religion has nothing to do with state government. [39] This separation is the major cause and spark that starts the fire because the segregation of religion and the state causes the problems that are facing many countries. Islamic *fiqh* clearly and unequivocally mentions and advocates good character and good ethics. Therefore, it prohibits close proximity that can lead to and result in fornication. Adultery is prohibited as are alcoholic drinks, while usury and gambling are deemed unlawful and punishable acts. But, common law does not prohibit all these crimes and sins as punishable acts. Globally, common law advocates justice, equality, and humanity as a global development. This has existed and been paramount in Islamic *fiqh* from the times of Prophet Muhammad (s.a.w) till today.

III. POSSIBILITY OF HARMONIZATION ON THE ELIMINATION OF CHILD LABOUR BASED ON MASLAHAH (PUBLIC INTEREST)

It is unacceptable and baseless to say that Islamic *fiqh* is incompatible with the demands of the modern age such as the elimination of child labour, child rights,

and child maintenance because the arguments are not the result and outcome of academic research or logical reasoning. Academic research shows and maintains that Islamic law is applicable and can be implemented at any time, and in any place. However, it is an erroneous assumption that Islamic law cannot find provision in support or against current issues because it is barbaric. [40] It is the duty and responsibility of contemporary Muslim jurists to always follow the trend of new issues by providing holistic law based on the principles of the *Shari'ah*. Otherwise, the *Shari'ah* would be considered as a barbaric law which is not suitable for any current issue.

The current research maintains that the harmonization of Islamic *fiqh* and laws on the elimination of child labour could be achieved using such Islamic principles as public best interest and necessity in the interest of children. A number of laws, conventions, and enactments have been developed and passed by non-Muslims on the elimination of child labour as a contemporary issue. These laws and conventions are not available and do not exist directly in Islamic *fiqh* and classical books because there was no reason to make such laws since child labour did not exist in the post verdict age. Rules and procedures which could be fully implemented through governments and courts were not given to Muslims. The proposal for implementation in the Muslim world was developed by Muslims many years ago. For instance, in Nigeria, the implementation of full *Shari'ah* was erroneously stopped by the colonial masters and replaced by common law. [41]

So, it is very difficult to abolish common and civil law from the Nigerian system of government due to different religions and tribes. [42] However, *Shari'ah* should be fully re-introduced by the Nigerian government as a Muslim's right. This will help to reduce child labour among Muslims by means of reshaping the Muslim marriage system. In addition, it would be totally unacceptable and irrational to sweep all laws on child labour under the carpet on the grounds that the laws are un-Islamic and un-divine. Rather, it is better and more rational to implement laws and conventions on the elimination of child labour by finding and adding credible evidence based on the principles of the *Shari'ah*. The most important thing is to avoid any laws and conventions on child labour passed by the United Nations and adopted by many countries including Nigeria that are contrary to the *Shari'ah* principles and requirements. This research critically and consciously examines the concept and objectives of the United Nations Conventions on the elimination of child labour and child rights and also the rulings on child maintenance, child legal capacity, and the spiritual aspects of both laws. It is discovered that

both aim to bring about the elimination of child labour and freedom of children from any hazardous work and labour. Both laws also prescribe different statutory ages for working children. [43] On the other hand, civil or common law lacks the spiritual aspect while the *Shari'ah* is mainly spiritual. Since reasoning is permitted under *Shari'ah* principles in order to pronounce a law on any current and contemporary issue and case, it is rather better for Islamic jurists to study the turbulent issues and pass laws in support or against the issues in line with the *Shari'ah* principles to make it spiritual. It also should be noted that the reasoning must be in a wholesome state (*salim*). [44]

A. Areas of Legal Harmony

The question that is confronting this research is whether there is any legal harmony between the *Shari'ah*, civil law, and the United Nations Convention on child labour. The *Shari'ah* has been practised and implemented in Nigeria for fifteen centuries where it has functioned as the sole law with the indigenous law as a supplement on matters where the *Shari'ah* is silent. [45]

The Nigerian experience of British injustice and the imposition of English common law largely supplanted our time-honoured judicial principle and process of English law has been endorsed in Nigeria since 1863 when ordinance No.3 of that year introduced English law into the Colony of Lagos. [46]

The United Nations convention on the elimination of child labour was adopted in Nigeria in 2005 by some states in Nigeria whereas others did not adopt the child rights due to religion and culture. Even though it was said that it is unlawful for any Muslim to be judged under man-made law or follow any law except the *Shari'ah* as divine law, civil law has been forcefully imposed on Nigerian Muslims from the colonial period till today. [47] In addition, the U. N Convention was recently passed in Nigeria where the majority of Nigerian Muslim states declined the U.N Convention because it is believed that the convention is contrary to their religion and culture. This research examines the word convention which does not have connotations of legal or binding because it is defined as an official agreement between countries or leaders. [48] Their agreement would be based on their countries custom, behaviour that is generally accepted. [49]

Since a convention is not binding and the *Shari'ah* is a binding law on all Muslims, it is irrational to compare the *Shari'ah* with the U.N Convention on child labour elimination due to their obvious differences but their ideas and theory can be implemented on the basis of *Shari'ah* and *fiqh*

principles in order to meet the *fiqh* concept in the best interest of children at large.

1) *Legal Principle on Child Labour*

In order to eliminate child labour according to the *Shari'ah* rulings, *Shari'ah* courts should be allowed to develop their own legal principles and rulings on child labour instead of imposing man-made laws and conventions on Muslims. However, the interest of the child should prevail and be paramount in determining the rights of custody, the principle of child's welfare, child maintenance either under wedlock or after divorce. Since the *Shari'ah* stipulates the rules on child maintenance as the biological parents' responsibilities and duties, unless otherwise proved, then, the immediate family or government will be responsible for the proper and adequate maintenance of the child. If the proper and adequate maintenance is given to children, the children's labour plight will definitely disappear and children will be well prepared for the future in the best interests of the children themselves, the family, and the nation at large.

2) *Legal Capacity under Fiqh and UN Convention*

The main and prime objective of the United Nations Convention on child labour is to eradicate child abuse in working places and also to free them from hazardous working places. In the *fiqh*, the age of majority is the main essential requirement and condition to acquire legal capacity to contract and the execution of such contracts legally. The capacity of execution constitutes the full legal capacity to enjoy one's right. Children should not be allowed to be involved in any contract until they possess the mental capacity to do so and reach the age of maturity. According to the *fiqh*, there is no specific age setting to determine the age of maturity, but Islamic jurists have expounded different views on the age of puberty in order to determine whether a child is legally able to work or not under any circumstances. Seventeen years was proposed by Imam Malik for girls while eighteen years was suggested for boys as their age of maturity to be legally competent and qualified to be involved in any contract. However, the Shi'ah took fifteen years for boys and nine years for girls as their ages of puberty respectively. The Convention on the Rights of the child stipulates that any child under the age of eighteen years is still a child unless it can be otherwise proved that he or she has attained the age of majority. Article 1 of the UN Convention states that:

For the purpose of the present Convention, a child means every human being below the age of eighteen years unless, under the law

applicable to the child, majority is attained earlier. [50]

The above discussion on the age of a child reflects the similarities of the purpose of the law which aims at the elimination of children from hazardous work due to their unsuitable age for labour. The UN convention and Nigerian law on children do not differentiate between the male child and female child in terms of age. On the contrary, Islamic *fiqh* stipulates different age for male and female child in order to determine puberty age as earlier discussed. It is obvious that the *fiqh* gives male and female rights to education in order to develop their intellectual capacities which will enable them to face and solve future challenges. Seeking knowledge is a religious duty and biological parents are responsible for their children's education based on the following evidence:

Imam 'Ali ibn Abi Talib said to the effect;
"Teach your children things you did not learn when you were their age, for they have been created for a time that is different from your time". [51]

"The seeking of knowledge is obligatory upon every Muslim male and female Muslim".

"Seek knowledge even if it be in China".

In light of the above cited quotations, children should be allowed to acquire any useful knowledge and they should not be restricted to primitive ideas and knowledge. So, both Religious and modern knowledge should be imparted to them in their interest. As nine years is not considered enough for compulsory education in order to allow a child to work, this period is out of tune for both females and males. In order to harmonize the United Nations Convention and common law with the *fiqh* on the age of puberty, eighteen years is rationally accepted as the age for both male and female. On this analysis, the first six years is for parental training, after that, the next six years is for primary school, and the last six years is for secondary school and is known as (6,3,3) that is six years for primary school, three years for junior secondary school, and the last three years for senior secondary school. So, before any child could be employed, he should reach eighteen years of age based on the Islamic *fiqh* and unless if otherwise proved. Therefore, fifteen years should be considered based on the principle.

3) Principle of Child Welfare under the Shari'ah and Common Law and United Nations Convention on Child Labour

Under the *Shari'ah*, there are many authorities from the Holy *Qur'an* and *hadith* to the effect that fathers are responsible for their biological children's welfare in terms of food, shelter, potable water, accommodation, and medical treatment. [52] If a

father is incapable of maintaining his children due to financial constraints, the responsibility would be shifted to the family or government in order to achieve the prime principle which is child welfare. The principle of child welfare and maintenance still remains the duty and task of the parents regardless of whether they are together as husband and wife or divorced, and the child's rights to maintenance prevail and remain. If the biological parents are separated, a child should be properly provided for either under the mother or father's custody. The most important thing is the provision of child welfare in order to protect the child from the need to be engaged in hazardous labour while he or she is supposed to be at school. [53]

Similarly, the United Nations Convention on child rights on the elimination of child labour in their General Assembly Documents A/RES/44/25 (12 December 1989) reaffirms that children require adequate and special protection in order to improve their situation globally as well as for the children's development and to improve the educational facilities in a conducive and peaceful environment. [54]

For the purpose of the protection of children, the UN Convention provides that parents have and share the same responsibilities towards their biological children's upbringing and development. Similarly, the family, communities, and governments are also responsible for child maintenance. [55] The above provisions mainly aim to liberate children from hazardous work and also protect the child from any kinds of abuse within and outside the family in order to give the rights to the children. The law further provides for the protection of children from any sort of abuse, exploitation, hazardous work, and corporal punishment. [56] These principles are also emphasized under the *Shari'ah* when dealing with children's rights.

The UN Convention provides inter alia that state parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health. This provision is in line with the general rules known as the rule of harm prevention as stated in the tradition of Prophet Muhammad (s.a.w) according to which

"There should be neither harming nor reciprocating harm" This general principle applies to every act that may endanger other life, so children should be well protected from any harm. [57]

Since there is a basis for the rules, principles, and evidence on child protection, the UN Conventions and Common law can be harmonized with Islamic *fiqh* to be under the spectrum and supremacy of the *Shari'ah* principle to be fit and suitable for Muslims to adhere to and follow. Another provision demonstrates that state parties should recognize the right of the child to social

security, insurance, and also to be given the opportunity to realize his right. The UN Convention also states that it is the state duty to provide a child adequate living standards physically, mentally, spiritually, morally, and socially. It is also further stressed that the biological parent is responsible for child maintenance while state parties should take appropriate measures to secure the recovery of child maintenance in the interests of child in a situation in which the parent is not dwelling where the child is living. [58]

Similarly, it provides the child the right to education by way of making primary education compulsory, available and free to all children regardless of their gender, religion, and tribe. Children should be encouraged to complete their secondary and higher education according to the capacity of each child. For those who are not capable of continuing their education, vocational training should be offered. [59]

The provision of the UN Convention on the right of children to education is also expounded under the *Shari'ah* according to which parents are responsible for their children's education to enable them to acquire useful skills and prepare them for future challenges. Evidence regarding compulsory child education which should be borne by biological parents or capable family members or society in order to give a sound education for children has been given in previous sections of this research. The UN Convention and the *Shari'ah* have similar aims for child education but are different in terms of their supremacy, sanctity and divinity. This is the reason why educating one's children is considered as a good deed in Islam that is rewardable in this world and in the hereafter. But under the UN Convention and Common law there is no reward or punishment for the parent who either voluntarily and refuses to educate his or her children or is unable to do so due to financial constraints. So, the UN Convention can be harmonized with the principles of the *Shari'ah* on child education because it is the child's right to acquire useful knowledge. [60] However, the UN convention provides that state parties are responsible for freeing children from hazardous work that will seriously affect their education. It is also the state parties' duties to take legislative, administrative, social and educational measures to ensure the implementation of the present article, and having regard to the relevant provisions of other international instruments.

According to the *Shari'ah*, children should be protected from any hazardous and dangerous work that can threaten their health and life. Any form of work that can have negative effects on a child's education should be controlled in society. [61]

This analysis is based on the verses of the *Qur'an* which are against any hazardous work that

many children are doing like in Nigeria due to poverty and financial constraints. [62]

"And giving (help) to kith and kin (all that Allah has ordered you to give them e.g. wealth, visiting, looking after them, or any other kind of help)..." [63]

They ask you (O Muhammad , s.a.w) what they should spend. Say: Whatever you spend of good must be for parents and kindred and orphans and al-Masakin (the poor) and the wayfarers, and whatever you do of good deeds, truly Allah knows it well. [64]

This protection is similar to the UN Convention on child rights and it can be harmonized with the *Shari'ah* principles in order to be well accepted and implemented in Nigerian Muslim states rather than conventional and Common law which is not divine law.

The UN Convention also provides for the protection of children from illicit use of narcotic drugs and psychotropic substances. The states shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances. [65]

The tradition of the Prophet Muhammad (s.a.w) says that

"each of you is a shepherd and each of you is accountable for his or her flock" The Prophet further says that "Allah will (on the Day of judgement) question each person in a position of responsibility about what he or she was responsible for in this life."

This principle is also in line with the provision of the Convention on the responsibility of governments to protect children from any abuse and illicit use of narcotics. However, both are different in terms of accountability in the hereafter because it is not stated in the Convention that the government would be held responsible on the Day of Reckoning for their bad governance. So, the UN Convention has to be harmonized with the *Shari'ah* to be able to serve the widest purposes and inculcate the fear of Allah into their minds. [66]

The UN Convention further provides for the protection of children from all forms of sexual exploitation and sexual abuse. For these purposes, state parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent any sort of child abuse.

As for the protection of children from abduction and trafficking, the UN Convention states that;

State parties shall take all appropriate national, bilateral and multilateral measure to prevent the abduction of, the sale of or traffic in children for any purpose or in any form. [67]

These two provisions are in line with the *Shari'ah* which provides protection from psychological and emotional abuse, sexual abuse, prostitution, and verbal harassment on public roads due to their precarious condition. [68] Both articles could also be harmonized with the *Shari'ah* in the best interest of children on the basis of *Shari'ah* principles and rules.

The UN Convention for child protection provides that;

No children shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age. [69]

The word "No" in the above provision is questionable and contrary to the principle of child discipline. This is because many naughty children need urgent correction and re-education. Although it is prohibited under the *Shari'ah* to cause harm that will inflict psychological and physical damage to children and neither parents nor teachers are allowed to do so for the best interest of children, however, children can be disciplined lightly without inflicting any injury as a lesson for the child and deterrence for others based on the tradition of Prophet Muhammad (s.a.w):

Play with the child for seven years; discipline him or her for seven years; accompany him or her for seven years; and then release him or her to lead his or her life

It was narrated by Ibn 'Abbas that the Messenger of Allah (s.a.w) said:

"hang your whip where the member of the household can see it..." [70]

Prophet Muhammad (s.a.w) advised parents to deter their children from doing wrong things to themselves and others. So, discipline includes preaching, warning, threatening, smacking, detaining, giving, and being kind. Disciplining one who is good and noble is different from disciplining one who is difficult and ignoble. [71]

Raising children should be a balance between encouragement and warning children from doing bad character and behaviour. The most important element and method of all is making the environment in which the children live a good one by providing the means whereby they may be guided.

This means that their parents and educators should be religiously committed and dedicated. [72]

With all the above stated *hadiths*, parents, teachers, and those who are in charge of children have a divine right to lightly cane and punish the stubborn and naughty child in the best interests of the child, since the purpose of discipline is to change and correct a child's immoral character in order to avoid bad consequences in the future. If care is not taken at the right time, the child's bad attitude will be aggravated and will increase which might result in crime in the near future. It is agreed that giving advice, admonition, denial of leisure and play time and isolation are also applicable instead of caning but caning cannot be ruled out in child discipline. [73]

All the alternative methods are good based on the nature and type of child who is liable for the punishment. Following man-made law or conventions without carefully studying the culture and custom of conventional law drafted by committees as seen in Nigerian culture will jeopardize the religious doctrine and culture. If caning is inflicted on many children who are involved in crime, probably such children will be redeemed and became better behaved in society. So, children should keep away from immoral places and environments. They should not be left to grow up with evil things from television. If children are well prepared to do good things when they are young, it will be easy for them to continue doing good things when they grow up because they will get used to goodness and righteousness.

Finally, the UN Convention provides that State parties shall take all appropriate measures to promote the physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflict. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child. [74]

The above provision is in line with the principle of the *Shari'ah* in protecting children from neglect, exploitation, abuse, torture, and inhuman treatment and serve the best interests of children and the nation. [75]

Nevertheless, the above rule cannot play a total and full role in ending child labour in the way the *Shari'ah* will be able to fulfil such a commendable role. This is because of the sanctity and supremacy of divine law according to which all acts are considered as devotional and are accountable to Allah.

IV. LEGAL IMPACTS OF HARMONIZATION

As discussed earlier, harmonization is only possible where the sanctity of the *Shari'ah* is protected and prevails. Any conventions on child rights or child labour eradication that are repugnant and contrary to divine law will be amended in line with *Shari'ah* principles to make them acceptable to all. This work of harmonization will grant children their rights which are not contrary to Islam because not all child rights under the U.N Convention are in line with the *Shari'ah* principles. Many children will be redeemed morally and ethically in the best interests of the child and society. It will give a chance to the Court to deal with any able parents who intentionally ignore their children's suffering by taking severe action as a deterrent to others.

4) *Equal Protection for all Children*

It is the duty of government to have a strong commitment in order to act in an equal manner towards its citizens and any inequality will result in starvation and unemployment in such a nation. [76] The UN Convention does not discuss the needs of governments to be just where many children are suffering due to the government's imbalanced treatment towards their citizens where poverty is persistent. So, harmonizing the UN Convention with Islamic *fiqh* will help children by solving their distasteful predicament through the Islamic *fiqh* approaches and punishments. After the harmonization, the law will provide equal protection for Muslim and non-Muslim children. So, if the harmonization between the laws is performed successfully, equal protection would be secured for all Nigerian children.

5) *Implementation of Islamic Fiqh on Child Labour Elimination in the Shari'ah Court*

Harmonization of the laws so as to put common law and the UN Convention under the *Shari'ah* will serve two purposes. It will eliminate child labour globally because it is a divine law and it will retain and maintain the sanctity and supremacy of the *Shari'ah* over all other laws. As a positive result of harmonization between *fiqh* and man-made laws on child labour, there would be no basis or reason for Muslims, in particular, to reject man-made law or the United Nations Convention on child labour elimination.

Legal Cooperation between the Two Laws
After the harmonization between the *fiqh* and man-made law on elimination of the child labour, there would be a legal cooperation between the two laws in

terms of realizing similar goals and objectives in the total eradication of child labour in Nigeria regardless of religion and tribe. It is a Muslim's duty and responsibility to strive for kindness and cooperation which will lead them to the creation of circumstances and situations conducive for all citizens in the nation: righteousness, kindness, cooperation, and the establishment of justice and brotherhood. If the kindness and cooperation are maintained in any society, children would be carried along and the children's predicament will be addressed and eliminated in society. [77] If any country's leaders lack the philosophy of kindness and cooperation for goodness due to their heartlessness, the problem facing children would not be piously tabled and discussed in the best interests of children. Harmonizing the laws will create a sense of legal cooperation between the two laws and when there is cooperation between the two laws, legal action would be implemented easily against child exploiters and abusers in Nigeria.

V. CONCLUSION

In general, the *Shari'ah* and man-made law, such as common law and the United Nations Convention on child rights, cannot be harmonized due to the obvious differences between divine law and the so-called conventional law. It is rather a question of harmonizing the United Nations Convention with Islamic *fiqh* provided that the UN Convention is under the supremacy of Islamic *fiqh* because its principles and rules are based on *Shari'ah* principles. In addition, the *Shari'ah* is divine law which cannot be compared with any other laws or conventions on the Day of Judgement. However, if both man-made law and Islamic *fiqh* are in harmony, it will be applicable to Muslims globally. Islamic *fiqh* recognizes the right of children and advocates the liberation of children from any hazards and abuse. The conditions and precautions should dominate the minds of Islamic scholars during the harmonization process in order to maintain the sanctity of the *Shari'ah*.

REFERENCES

- [1] Tijjani Muhammad Naniya, "History of the *Shari'ah* in some states of Northern Nigeria to Circa 2000," *Journal of Islamic Studies*, vol.13, 14-15, 2002. See also, Yadudu Auwalu. H. "Colonialism and the transformation of Islamic Law," *Journal of legal pluralism*, vol. 32, 110-113, 1992.. See also, Yadudu A.H. "Impact of colonialism on Islamic law and its administration in Nigeria," *Journal of Islamic & Comparative law reviews*, vol.13, 144-146, 1993.

- [2] Mustafa Ibrahim al-Zulami, *Usul al-fiqh al-Islami fi Nasijih al-Jadid*, 6th ed. Kurdistan: Matba'at Ufset ha walir, 1999.
- [3] Al-Ashgar 'Umar Sulayman, *Al-Shari'ah al-Ilahiyyah li al-Qawanin al-Jahiliyyah*. Kuwait: Daar al-Furqan, 1983.
- [4] Doi, 'Abdur Rahman I. , *Islam in a multi-religious society Nigeria: A case study*. Malaysia: A.S Noordeen, 1992.
- [5] Yusuff, Jelili Amuda. " *Custody of Children after divorce under the Shari'ah, Customary, and Civil Laws in Nigeria: A Comparative Analysis.*," MCL dissertation, Ahmad Ibrahim Kulliyah of Law, International Islamic University., Malaysia, 2007.
- [6] Hornby, A.S, *Oxford Advanced Learning's Dictionary of Current English*, 11th impression. Oxford: Oxford University press, 1983, pp.392. See also, Victoria Neufeldt and David B. Guranlnik, *Webster's New World Dictionary*, 3rd college edition. Cleaveland Ohio: Simon &Schuster Inc, 1988, pp. 615.
- [7] Kamali Muhammad Hashim, " *Shari'ah and civil law: Towards A methodology of harmonization,*" presented at the International conference on harmonization of Shari'ah Unit & Law centre, Ahmad Ibrahim Kulliyah of Laws, International Islamic University, Kuala Lumpur, Malaysia, October 20-21, 2003, pp. 2-7.
- [8] Mohd Daud Bakar," *Shari'ah law from a common perspective: An Appraisal,*" presented at the International conference on harmonization of Shari'ah Unit & Law Centre, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, Kuala Lumpur, Malaysia, October 20-21, 2003, page 24.
- [9] Surat Al-Ma'idah, 50. See also, Muahammad Taqi-ud-Din Al-Hilali and Muhammad Muhsin Khan, Translation of the meaning of the Noble Qur'an in English Language. . Saudi Arabia: King Fahd Complex for the printing of the Holy *Qur'an*, 1417.
- [10] 'Awdah, Abd al-Qadir, *Criminal Law of Islam*. Delhi: International Islamic Publisher, 2000.
- [11] 'Awdah, Abd al-Qadir, *Criminal Law of Islam*. Delhi: International Islamic Publisher, 2000.
- [12] Shawi Tawfiq, *Fiqh Al-Shura Wa-al-Istihsan*. Cairo: Daar Wafai', 1992.
- [13] Shawi Tawfiq, *Al-Shura Wa-al-Istihsan*. Cairo: Daar Wafai', 1992.
- [14] 'Awdah, Abd al-Qadir, *Criminal Law of Islam*. Delhi: International Islamic Publisher, 2000. See also, Shawi Tawfiq, *Fiqh Al-Shura Wa-al-Istihsan*. Cairo: Daar Wafai', 1992.
- [15] Muhammad Amanullah, "Principles to be followed in partial harmonization between Islamic *Fiqh* and Man-made law," presented at International Conference on Harmonization of *Shari'ah* and Civil Law 2: Towards a methodology of harmonization, Ahmad Ibrahim Kulliyah of Laws, AIKOL, Kuala Lumpur, Malaysia, June 29-30, 2005, 8-10.
- [16] Wasfi, Mustafa Kamal, *Nizam al-Dusturi fi-Islam*. Cairo: Maktabat Wahabah 1994.
- [17] Zaydan 'Abd al-Karim, *Nizam al-Qada' fi Shari'ah al-Islamiyya*. Bayrut : Risalah Publishers, 2006.
- [18] Shawi Tawfiq, *Fiqh Al-Shura Wa-al-Istihsan*. Cairo: Daar Wafai', 1992.
- [19] Shawi Tawfiq, *Fiqh Al-Shura Wa-al-Istihsan*. Cairo: Daar Wafai', 1992.
- [20] Shawi Tawfiq, *Fiqh Al-Shura Wa-al-Istihsan*. Cairo: Daar Wafai', 1992.
- [21] Wasfi, Mustafa Kamal, *Nizam al-Dusturi fi-Islam*. Cairo: Maktabat Wahabah 1994.
- [22] Arif Ali Khan, *Encyclopaedia of Islamic Law*, vol.1. New Delhi: Pentagon Press, 2006. pp.59-64 and 132-137.
- [23] Abd al-Karim Zaydan, *al-Wajiz fi usul al-fiqh*. Bayrut: Risalah Publisher, 2006. See also, Arif Ali Khan, *Encyclopaedia of Islamic Law*, vol.1. New Delhi: Pentagon Press, 2006.
- [24] Surat Sad, 26. See also the *Qur'an* 612.
- [25] Surat al-Mai'dah, 49. See also, the *Qur'an*, 152.
- [26] Surat al-Nur, 48. See also, the *Qur'an*, 475.
- [27] Surat al-Nisa, 65. See also, the *Qur'an*, 120.
- [28] Surat al-Nisa, 105. See also, the *Qur'an*, 127.
- [29] Surat al-Nisa, 115. See also, the *Qur'an*, 129.
- [30] Ibn Al-Qudama & Shams al- Din Ibn Qudamiy. *Al-Mughni*, Vol. 9. Bayrut: Daar al-Kitab al-Arabiyy, 1983.
- [31] Muhammad Amanullah, "Principles to be followed in partial harmonization between Islamic *Fiqh* and Man-made law," presented at the International Conference on Harmonisation of *Shari'ah* and Civil Law 2: Towards a methodology of harmonization, Ahmad Ibrahim Kulliyah of Laws, AIKOL, Kuala Lumpur, Malaysia, June 29-30, 2005. pp. 8-10.
- [32] Shawi Tawfiq, *Fiqh Al-Shura Wa-al-Istihsan*. Cairo: Daar Wafai', 1992.
- [33] Muhammad Amanullah, "Principles to be followed in partial harmonization between Islamic *Fiqh* and Man-made law," presented at the International Conference on Harmonisation of *Shari'ah* and Civil Law 2: Towards a methodology of harmonization, Ahmad Ibrahim Kulliyah of Laws, AIKOL, Kuala Lumpur, Malaysia, June 29-30, 2005. pp. 7-8. See also, Part 1 of Convention on the Rights of the Child, U N General Assembly, Document A/RES/44/25 (12 December 1989).
- [34] 'Awdah, Abd al- Qadir Sa'id, *al-Tashri' al-Jina' al-Islami Muqarana bi Qanun al-Wad'i*. Bayrut: Mu'assasat al-Risalah, 1992.
- [35] Arif Ali Khan, *Encyclopaedia of Islamic Law*, vol.1. New Delhi: Pentagon Press, 2006.

- [36] Shawi Tawfiq, *Fiqh Al-Shura Wa-al-Istihsan*. Cairo: Daar Wafai', 1992.
- [37] Seyyed Hossein Nasr, *Islamic life and thought*. New York: State University of New York Press, Albany, 1981.
- [38] Seyyed Hossein Nasr, *Islamic life and thought*. New York: State University of New York Press, Albany, 1981.
- [39] Seyyed Hossein Nasr, *Islamic life and thought*. New York: State University of New York Press, Albany, 1981.
- [40] 'Awdah, Abd al- Qadir Sa'id, *al-Tashri' al-Jina' al-Islami Muqarana bi Qanun al-Wad'i*. Bayrut: Mu'assasat al-Risalah, 1992.
- [41] Doi, 'Abdur Rahman I. , *Islam in a multi-religious society Nigeria: A case study*. Malaysia: A.S Noordeen, 1992.
- [42] Obilade, A. *The Nigerian legal system*. Nigeria: Spectrum law publishing, 1979.
- [43] Jamal J. Nasir, *The Islamic Law of personal status*. London: Graham & Trotman Ltd, 1986. See also, Part 1 Article 1 of Convention on the Rights of the Child, U N General Assembly, Document A/RES/44/25 (12 December 1989).
- [44] Seyyed Hossein Nasr, *Islamic life and thought*. New York: State University of New York Press, Albany, 1981.
- [45] Tijjani Muhammad Naniya, "History of the Shari'ah in some states of Northern Nigeria to Circa 2000," *Journal of Islamic Studies*, vol.13, pp.14-15, 2002. See also, Yadudu Auwalu H., "Colonialism and the transformation of Islamic law," *Journal of legal pluralism*, vol.32, pp. 110-113, 1992. See also, Yadudu, A.H, "Impact of Colonialism on Islamic law and its administration in Nigeria," *Journal of Islamic & Comparative law reviews*, vol.13, pp.144-146, 1993.
- [46] Rashid, Syed Khalid, *Islamic law in Nigeria: Application Teaching*. Nigeria: Islamic publications Bureau, 1986. See also, Obilade, A. *The Nigerian legal system*. Nigeria: Spectrum law publishing, 1979.
- [47] Shawi Tawfiq, *Fiqh Al-Shura Wa-al-Istihsan*. Cairo: Daar Wafai', 1992.
- [48] Hornby, A.S, *Oxford Advanced Learning's Dictionary of Current English*, 11th impression. Oxford: Oxford University press, 1983, pp.202.
- [49] Lucinda Coventry and Martin Njxom, *The Oxford English Minidictionary*, 5th ed. Great Clarendon: Oxford University Press, 1999, pp. 106.
- [50] Article 1, Convention on the Rights of the Child U.N General Assembly Document A/RES/44/25 (12 December 1989)
- [51] Ali ibn Abi 'Ualib was the last caliph after the death of Prophet Muhammad (s.a.w).
- [52] Surat al-Baqarah, verse 233. See also, The *Qur'an*. Surat al-Talaq, 6-7. See also, the *Qur'an*. See also, Yusuf Ali, Abdullah, *The Holy Qur'an: Text, Translation and Commentary*. U.S.A: Amana Corporation, 1989. See also, Surat al-Nisa 36. See also, the *Qur'an*. See also, Yusuf Ali, Abdullah, *The Holy Qur'an: Text, Translation and Commentary*. U.S.A: Amana Corporation, 1989. . See also, Surat al-Nisa, 6. See also, the *Qur'an*. See also, Surat al-Nisa, 9. See also, the *Qur'an*. See also, Muhammad Mushin.
- [53] Surat al-Baqarah, verse 233. See also, the *Qur'an*. Ibn Al-Qudama & Shams al- Din Ibn Qudamiy. *Al-Mughni*. Bayrut: Daar al-Kitab al-'Arabiyy, 1983. See also, Al-Nawawi al-Dimishqi Zakariyah Yahya ibn Sharif, *Rawdat Talbin..* Bayrut: Daar al-Kitab al-Ilmiyah, 2000. See also, Al-Shanqiti Ahmad ibn Ahmad Al-Mukhtar al-Jakni *Mawahib ' al-Jalil min Adilat Khalil*. Bayrut: al-Maktabat al-Ilmiyat, 2004. See also, Afzal Wani, *The family Islamic Law on Maintenance of women, children, parents & other relatives*. New Delhi: Nooramy, 1995.
- [54] Convention on the Rights of the Child United Nations General Assembly, Document A/RES/ 44/25 (12 December, 1989). Article 5, 10 (2) and 18.
- [55] See Part (1) Article 5, Article 10(2), and Article 18 of the Convention on the Rights of the Child United Nations General Assembly, Document A/RES/ 44/25 (12 December, 1989).
- [56] See Article 25, 26, 27, 28, 32, 33, 34, and 35 of UN Convention.
- [57] Al-Azhar University and Unicef, *Children in Islam: Their care, upbringing, and protection*. New York: Cynthia Spence Printing Service, 2005.
- [58] Article 26 and 27 of United Nations Convention.
- [59] Article 28 (1,2 and 3) of United Nations Convention.
- [60] Al-Azhar University and Unicef, *Children in Islam: Their care, upbringing, and protection*. New York: Cynthia Spence Printing Service, 2005.
- [61] Al-Azhar University and Unicef, *Children in Islam: Their care, upbringing, and protection*. New York: Cynthia Spence Printing Service, 2005.
- [62] Surat al-Nahl, verse 90. See also, Surat al-Baqarah, verse 215.
- [63] Surat al-Nahl, 90. See also, the *Qur'an*.
- [64] Surat Al-Baqarah, 215. See also, the *Qur'an*.
- [65] Article 33 of United Nations Convention of 1989.
- [66] Al-Azhar University and Unicef, *Children in Islam: Their care, upbringing, and protection*. New York: Cynthia Spence Printing Service, 2005.
- [67] Article 35 of United Nations Convention of 1989.
- [68] Al-Azhar University and Unicef, *Children in Islam: Their care, upbringing, and protection*. New York: Cynthia Spence Printing Service, 2005.

[69]Article 37 of United Nations Convention of 1989.

[70] Muhammad Salih ‘Abd Ganiy, *Taribiyat al-Tifl fi Shari’ah al-Islamiyat*. Saudi Arabia: Jamiu Uqula al-Tabih wa-nasir mahfuz al-mualaf, n.d. See also, Muahmmad Mushin Khan, *Sahih Al-Bukhari Arabic-English*. Pakistan: Kazi Publication, 1997. See also, Imam Malik, *Al-Mu’watta*. England: Diwan Press, 1982.

[71] Al-‘asqalani Ahmad bin ‘Ali ibn Hujir, *Fatih al-Bari Sharihu Sahih al-Bukhari*. Bayrut: Daar al-Kitab al-Ilmiyah, 2000.

[72] Sayed Sikandar Shah Haneef, *Ethics and Fiqh for daily life: An Islamic outline*. Kuala Lumpur: International Islamic University Press, Malaysia, 2006.

[73] Al-Azhar University and Unicef, *Children in Islam: Their care, upbringing, and protection*. New York: Cynthia Spence Printing Service, 2005.

[74]Article 39 of United Nations Convention.

[75] Al-Azhar University and Unicef, *Children in Islam: Their care, upbringing, and protection*. New York: Cynthia Spence Printing Service, 2005.

[76]Muhammad Al-Buraey, *Administration Development: An Islamic Perspective*. London: KPI Limited, 1985. See also, Shawi Tawfiq, *Fiqh Al-Shura Wa-al-Istihsan*. Cairo: Daar Wafai’, 1992.

[77] Muhammad Al-Buraey, *Administrative development: An Islamic perspective*. London: KPI Limited., 1985. Honesty is the soul of everything and the absence of honesty, it will result in negative consequences in any administration. If the leaders are honest with their people by providing for their needs accordingly, then, the people will trust them based on grass roots reality. Lack of honesty causes problems with Nigerian children that force them into labour because if there were honesty, Nigerians would not be deprived of the basic necessities of life. Parents would be able to maintain their biological children both physically and mentally. If the principle of governance is applied in Nigeria, there is a probability of positive changes in the nation regardless of tribe, ethnicity, gender, and religion.

Author Information:

Dr. Yusuff Jelili Amuda, B.A in Shari’ah Al-Azhar, Cairo), Master of Comparative Laws and Ph.D in Laws, (International Islamic University, Malaysia). (akorede4@yahoo.com). I was born in Ibadan, Oyo state of Nigeria in 1975.