

Right to Life Under Islamic Law and the Nuances of Section 33 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended)

By
Falalu Abba *
Dikko Abbas **

Abstract

The right to life is both sacred and sacrosanct. It is the highest and most important of all the fundamental rights of the Citizen as constitutionally guaranteed¹. Under the constitutional law, right to life is usually the first right guaranteed by every human rights instrument because of its fundamental nature. However, a perception exists amongst many scholars and writers of Western orientation that Islamic law, and indeed the religion of Islam in its entirety, are antithetical to the protection of international human rights. Hence, this article appraised the concept of Right to life under Islamic law and the Nuances of section 33 of the Constitution of the Federal Republic of Nigeria 1999(as amended)the aim of which is to make novel contribution in the body of existing literature. This became imperative because as Breiner put it, Islam developed the concept of human rights early in its legal tradition.²The study adopted the doctrinal research method which involves the use of primary and secondary sources of law. Having appraised the concept of Right to life under Islamic law and the Nuances of section 33 of the Constitution of the Federal Republic of Nigeria 1999(as amended), it was discovered that there is nothing in Islamic law that prevents human rights and if there is, it is due to misunderstandings and wrong interpretations of the law. The article therefore recommended that both Islamic law and constitutional law jurists should adopt an accommodative and complementary approach to achieve the noble objective of enhancing human dignity, fostering an ideal human community, ensuring justice, peace and the general well being of all human beings, which are common aims of both the Shari`ah and international human rights law.

1.1 Introduction

Fundamental rights are a group of rights that are accorded a high degree of protection from encroachment. In Nigeria, fundamental rights are recognized and entrenched in

* Falalu Abba Esq., MCL. (IIU, Malaysia), Faculty of Law, Umaru Musa Yar'adua University Katsina. Phone No: 08036852555, email: Falalu.abba@umyu.edu.ng

** Dikko Abbas Esq., Faculty of Law, Umaru Musa Yar'adua University Katsina. Phone No: 08038529624, email: dikko.abbas@umyu.edu.ng

¹ IGP & ORS v. IKPILA & ANOR (2015) Law Pavilion Electronic Law Report(LPELR)-40630(CA)

² B. Breiner, *A Christian View of Human Rights in Islam* available at <https://www.jstor.org/stable/43070148> accessed on 1st October 2021.

chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The rights include right to life. Section 33(1) of the Constitution of the Federal Republic of Nigeria (CFRN), 1999, provides that:

every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

This provision goes to show that Human Rights are rights possessed by all persons by virtue of their common humanity to live a life of freedom and dignity.³ Article 4 of the African charter on Peoples and human rights as well as the provision of Article 3 of the Universal Declaration on Human Right equally have the same provisions. The implication of this is that, Human Rights are universal and are the same for everyone' everywhere. They are inalienable; they are neither be taken away nor given up and they are indivisible, there is no hierarchy among rights and no right can be suppressed in order to promote another right.⁴ However, a perception exists amongst many scholars and writers of Western orientation that Islamic law, and indeed the religion of Islam in its entirety, are antithetical to the protection of international human rights. According to this view Islamic law is a formidable impediment to the universal realisation of the norms of international human rights law which they said originated from the Magna Carta of Britain. This may not be unconnected with the fact that the people in the West have the habit of attributing every good thing to themselves and try to prove that it is because of them that the world got this blessing, otherwise the world was steeped in ignorance and completely unaware of all these benefits⁵. As rightly put by Briffault⁶, the ideals of freedom for all human beings, of human brotherhood, of the equality of all men before the law, of democratic Government by consultation and universal suffrage, the ideals that inspired the French Revolution and the Declaration of Rights, that guided the framing of the American Constitution and inflamed the struggle for independence in the Latin American countries were not inventions of the West. They find their ultimate inspiration and source in the Holy Quran. They are the quintessence of what the intelligentsia of Mediaeval Europe acquired from Islam over a period of centuries through the various channels of Muslim Spain, Sicily, the Crusader; and of the ideals propagated by the various societies that developed in Europe in the wake of the Crusades in imitation of the brotherhood associations of Islam.⁷

³J. N, Aduba, *Inquiries on Human Rights Practice in Nigeria Past, Present and Future* being an Inaugural Lecture delivered the University of Jos Inaugural lecture series, 54 on 29th June, 2012. P. 8

⁴ Ibid.

⁵ A. A Maududi, *Human Rights in Islam* al Tawhid Journal, vol. IV No. 3 Rajab-Ramadhan 1407 available at <https://www.iium.edu.my/deed/articles/hr/hr.html> accessed on 4th October 2021.

⁶ C. L. Ostorog, *The Angora Reform* London Press Ltd, London (1927) p. 30.

⁷ M. E. Bari, *Human Rights in Islam with Special Reference to Women's Rights* Dhaka University Series, (1994) Part-F, No. 1, p12.

Contrary to their assertion, Islam is a religion that regulates the totality of the life of every Muslim. According to the Quran, life is a divine bestowal on humanity that should be secured and defended by all means.⁸ It is the individual and universal duty of Muslims, according to the Quran, to protect the human merits and virtues of others.⁹ Life in the Quran is attributed tremendous value, in fact the Quran says that "whoever slays a soul, it is as though he slew all men; and whoever keeps it alive, it is as though he kept alive all men;"¹⁰ The Quran forbids the taking of life without due process of the law, and it also obligates Muslims to provide for those who cannot provide for themselves. The right to life is conferred by the Quran even on one's enemy during war as Muslims are forbidden from using force except in self defense. To show that its tenets are compatible with the global human rights concern, Islamic human rights documents were formulated modelled on the design of the Universal Declaration on Human Right in the latter half of the twentieth century by Organization of the Islamic Conference (OIC) in 1972. The 1972 Charter of the Organization of the Islamic Conference (OIC) affirmed the legitimacy of international law and human rights. The OIC is comprised of fifty-seven member states, and in 1990 the organization signed the Cairo Declaration of Human Rights (CDHR). The Cairo Declaration bears some resemblance, in form and content, to the UDHR. The central difference is that it draws upon specific Islamic teachings and sources for example, Qur'an, hadith in its formulation of human rights. In contrast to the UDHR, the opening paragraph of the document stipulates a different foundation for human rights: the narrative of the Islamic Umma as having a "civilizing and historical role" as a model for all of humanity. The document goes on to state that Islam is the basis for fundamental human rights and freedoms, because it is based upon teachings of justice and freedom found in the Qur'an and in the Shari'a. This provision justifies to some extent the view of Weston that:

To say that there is widespread acceptance of the principle of human rights on the domestic and international plane is not to say that there is complete agreement about the nature of such rights or their substantive scope¹¹.

It is in the light of the above that this article discusses the concept of human rights under Islamic law with a specific reference to right to life under section 33 of the constitution of the federal republic of Nigeria 1999 as amended. To achieve this, this article will discuss the concept of human right under the common and Islamic law and as well outline their similarities and differences.

⁸ M. H. Shakir, *The Qur'an*.

⁹ Ibid.

¹⁰ Q5: 45.

¹¹ B. Weston, *Human Rights* New Encyclopaedia Britannica, 15th Ed. Vol. 20, p. 713.

1.2 Objectives of the research

The objectives of this article is to make novel contribution in the body of existing literature by elucidating the concept of right to life under Islamic law.

1.3 Research methodology

The methodology employed in the conduct of this research is doctrinal research method for being the prevalent. This involves the use of primary and secondary sources of law. The relevant materials in the libraries such as, books, journals, legal encyclopaedia, news-letter, magazines, periodicals, statute books and law reports would be consulted. The doctrinal method is considered best for this research for a simple reason that the issue to be discussed is associated with a divine law. There are therefore number of books in both academic and public libraries at the disposal of the researcher. The primary sources in the context of this research includes Quran, Hadith of the Noble Prophet (SAW) while the secondary source includes Ijma, Qiyas, and other relevant text usually found in the library (such as journals, text books, periodicals etc.).

1.4 The concept of right to life under the common law

The right to life is both sacred and sacrosanct. It is the highest and most important of all the fundamental rights of the Citizen as constitutionally guaranteed¹². Under the common law, right to life is usually the first right guaranteed by every human rights instrument because of its fundamental in nature.¹⁴ The right to life is the most basic, the most fundamental, the most primordial and supreme right which human beings are entitled to have and without which the protection of all other human rights becomes either meaningless or less effective.”¹⁵ In *Forum of Conscience v. Sierra Leone*¹³ the African Commission on Human and People’s Rights acknowledged that ‘the right to life is the fulcrum of all other rights. It is the fountain through which other rights flow. In the words of Umozurike:

*Human rights are thus claims, which are invariably supported by ethics and which should be supported by law, made on society, especially on its official managers, by individuals or groups on the basis of their humanity. They apply regardless of race, colour, sex or other distinction and may not be withdrawn or denied by governments, people or individuals.*¹⁴

1.5 Concept of Right to life under Islamic law

The common Arabic term used today to express human rights in Islamic legal writings and discourse is "huqūq al-insān". The term is a construct derived from two words *huqūq*

¹² IGP & ORS v. IKPILA & ANOR (2015) LPELR-40630(CA)

¹³ [2000] AHRLR 293.

¹⁴ U. O. Umozurike, The African Charter on Human and Peoples' Rights Journal of [Annual Survey of International & Comparative Law](#) golden gate university school of law (1997) p. 5.

(rights) plural of *haqq* (right), and *insan* (human being). The term *huqūq al-insan* is of recent coinage and it neither appears in the primary sources of Islamic law nor in the writings of the founding jurists of Islamic law. The term *huquqAdamiyyin* which also means "rights of humans" is however found, used at least, as early as the eleventh century by al-Mawardi in his famous work titled "The Principles of Government ", wherein he discussed the duty of the ruling authority to protect and ensure certain rights of individuals.¹⁵Conceptually, many scholars have observed that the idea of human rights is not alien to Islamic law. Breiner has noted that "Islam developed the concept of human rights early in its legal tradition."¹⁶Ostrorog had also stated earlier before him that:

Considered from the point of view of its logical structure, the system (Islamic law) is one of rare perfection, and to this day it commands the admiration of the student. If the contents of that logical fabric are examined, some theories command not only admiration but surprise. Those Eastern thinkers of the ninth century laid down, on the basis of theology, the principle of the Rights of Man, in those very terms, comprehending the rights of individual liberty, and of inviolability of person and property, elaborated a Law of War of which the humane, chivalrous prescriptions would have put to the blush certain belligerents in the Great War; expounded a doctrine of toleration of non-Muslim creeds so liberal that our West had to wait a thousand years before seeing equivalent principles adopted¹⁷.

The concept of human right receives clear exposition in the Qur'an which says:

Verily we have honoured the children of Adam. We carry them on the land and the sea, and have made provision of the good things for them, and have preferred them above many of those whom we created with a marked preferment.

The first thing that muslims find in Islam in this connection is that Islam lays down some rights for man as a human being. In other words it means that every man whether he belongs to this country or that, whether he is a believer or unbeliever, whether he lives in some forest or is found in some desert, whatever be the case, he has some basic human rights simply because he is a human being, which should be recognized by every Muslim. The first and the foremost of this basic right is the right to live and respect human life. Allah (SWA) says in the glorious Quran:

¹⁵A. Yate, *The Laws of Islamic Governance* Ta-Ha Publishers London(1996) p. 337.

¹⁶ B. Breiner *supra*

¹⁷ C. L. Ostrorog *supra*.

*Whosoever kills a human being without (any reason like) man slaughter, or corruption on earth, it is as though he had killed all mankind*¹⁸

As far as the question of taking life in retaliation for murder or the question of punishment for spreading corruption on this earth is concerned, it can be decided only by a proper and competent court of law. If there is any war with any nation or country, it can be decided only by a properly established government. In any case, no human being has any right by himself to take human life in retaliation or for causing mischief on this earth. Therefore it is incumbent on every human being that under no circumstances should he be guilty of taking a human life. If anyone has murdered a human being, it is as if he has slain the entire human race. These instructions have been repeated in the Glorious Quran in another verse saying: 'Do not kill a soul which Allah has made sacred except through the due process of law'¹⁹. The Prophet, may God's blessings be on him, has declared taken away someone's life as the greatest sin only next to polytheism. The Tradition of the Prophet reads: "The greatest sins are to associate something with God and to kill human beings." In all these verses of the Glorious Quran and the Traditions of the Noble Prophet (peace be upon him) the word 'soul' (nafs) has been used in general terms without any distinction or particularization which might have lent itself to the elucidation that the persons belonging to one's nation, the citizens of one's country, the people of a particular race or religion should not be killed. The injunction applies to all human beings and the destruction of human life in itself has been prohibited.

1.6 Right to life under section 33 of the constitution

The right to life is the belief that a being has the right to live and, in particular, should not be killed by another person or entity including government. The concept of the right to life normally arises in debates involving issues of capital punishment, war, abortion, euthanasia, police brutality, homicide, infanticide, and animal rights. Under the Nigerian constitution, the right to life is not only recognized but firmly enshrined and guaranteed. Section 33 of the constitution reads:

33(1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offense of which he has been found guilty in Nigeria.

The right to life is not only available to adult citizens but extends also to children. In this wise the Child's Rights Act 2004 in section 3 (1) provides that:

¹⁸ Q 5:32

¹⁹ Q 6:151.

The provisions in Chapter IV of the constitution of the Federal Republic of Nigeria 1999, or any successive constitutional provisions relating to fundamental rights, shall apply as if those provisions are expressly stated in this Act.

From the foregoing provision, therefore, it is clear that children, like their adult counterparts, are equally entitled to all the rights contained in chapter IV of the Constitution, including the right to life.²⁰

The right to life as guaranteed by the constitution is not absolute. It admits of certain exceptions which are clearly spelled out in the Constitution. By a community reading of section 33(1) and (2)(a) to (c) of the constitution the following are circumstances under which the right to life may be lawfully deprived without the assailant incurring any criminal liability in the process:

- A. In the execution of the sentence of a court
- B. In self-defense
- C. In the defense of property
- D. In effecting a lawful arrest
- E. In preventing escape from lawful custody
- F. In suppressing riot, insurrection or mutiny

Most statutes on crimes in Nigeria contain additional exceptions which are generally termed as “defenses”. These defenses include intoxication, provocation, and insanity. It is noteworthy that for any of the exceptions identified above to apply, the force employed by the assailant in depriving the person of his life must not only be lawful but reasonably necessary. See section 33(2) of the Constitution.

1.7 Death penalty and Moratorium under common and Islamic law

The first limitation on right to life is execution of the sentence of a court in respect of a criminal offence of which the offender has been found guilty in Nigeria. This is provided for in section 33(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). In *Kalu v The State*, the Court upheld the constitutionality of the death penalty. Same is the position under Islamic law. In chapter five (5) of the glorious Quran, Allah (SWA) ordained soul for a soul. Allah says: ‘and kill not anyone whom Allah has forbidden, except for a just cause (according to Islamic law)’²¹

²⁰ AO Enabulele the right to life or the right to compensation upon death: perspectives on an inclusive understanding of the constitutional right to life in Nigeria available at <https://www.ajol.info> accessed on 4th October 2021.

²¹ Q6:151.

However with the introduction of moratorium²², One of the points canvassed for the abolition of the death penalty in Nigeria is that there is sometimes delay in the execution of convicted persons awaiting the death penalty. Generally, in most jurisdictions, the place where condemned prisoners are confined is called “death row”. Death row refers to the area in a prison where the inmates awaiting execution are housed.²³ Due to delay on death row, in many cases, a convicted death row convict is subject to many years of waiting after the sentence is passed. The case of *Peter Nemi & Others v The State*²⁴ is an example of a delayed execution. In this case the appellant had been on death row for eight years. The court frowned upon delay in executing prisoners on death row. In *Ogugu v The State*²⁵, the Supreme Court held that the executive and judicial authorities must accept responsibility of ensuring that execution follows as swiftly as practicable after sentence, allowing reasonable time to appeal and consideration of reprieve.

The practice of capital punishment has attracted a barrage of global condemnation. This is because the older methods of execution which include shooting, hanging, beheading and crucifixion inflict excruciating pains on the dying offenders, contrary to the prescriptions of the various international instruments. Thus, some developed *retentionist* nations²⁶ invented and adopted the use of some modern methods (for example the use of gas chamber, and lethal injection). These modern methods were perceived by the inventing nations to have the advantage of killing swiftly and inflicting minimum pain.²⁷ Furthermore, the fact that the death penalty is irreversible means that the death penalty would cause injustice where such execution was hastily carried out, or influenced by corruption and bribery. In effect, an erroneous judgment can lead to the execution of an innocent person.²⁸ This was the case in *Nafiu Bello v Attorney General Oyo State*²⁹ where the appellant was erroneously executed while his appeal was still pending in court. Opponents of the death penalty also

²² *Moratorium* is an official suspension of death sentence.

²³ P. Hudson, ‘Does Death Row Phenomenon Violate a Prisoner’s Rights under International Law?’, (11) European Journal of International Law 817 (2000).

²⁴ (1990) SC 303.

²⁵ (1994) 9 NWLR (pt. 366) 1 47.

²⁶ Retentionist nations is a term used to describe nations which retained the death penalty.

²⁷ E.O. Akingbehin *International Law Approach to Modern Methods of Executing Condemned Prisoners: Elixir to Painful Killings* (2017) (14) (1), U.S – CHINA Law Review, David Publishing Company <http://www.davidpublisher.org/Public/uploads/Contribute/58c64e048b3c8.pdf> accessed on 4th October 2021.

²⁸ J.O. Anwo and C.A. Arowolo *Critical Analyses of Abolition of Death Penalty in International Law: An analysis of death penalty under the United States and Nigerian Laws* <www.ajol.info/index.php/nauij/article/download/82408/72563> accessed on 5th October 2021.

²⁹ (1986) 5 NWLR (pt. 45) 828

contend that the irreversibility of the death penalty contradicts the idea that criminals can be rehabilitated.³⁰

Those who support the abolition of the death penalty also contend that the evolution of international law tends towards the abolition of the death penalty.³¹ Although death penalty is still implemented in Nigeria, it has however been abolished in Australia, Canada, South Africa, United Kingdom, Switzerland, Italy, Germany, and France.³² The UN second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) aimed at the abolition of the death penalty (to which Nigeria is not a signatory).

However, the proponents of death penalty had reacted by stating that these cited international treaties and conventions are not legally binding on Nigeria and cannot be elevated to the status of law in Nigeria except their details are enacted into law by Nigeria's valid legislative authorities.³³ Thus, even if Nigeria entered into a treaty to that effect, such treaty will possess no force of law until domesticated and passed into law in accordance with section 12 of the 1999 Constitution (as amended).³⁴

1.7 Offences that attract Death Penalty under the common and Islamic law

Under the Common law, offences that attract death penalty are: murder,³⁵ treachery,³⁶ treason,³⁷ armed robbery,³⁸ mutiny,³⁹ and directing and controlling or presiding at an unlawful trial by ordeal leading to the death of another.⁴⁰ Recently, in Nigeria, the offence of kidnapping was made a capital offence by some states with death as penalty on conviction. Islamic law classified, capital offences as follows: fabrication of evidence leading to the conviction and execution of an innocent person, abatement of suicide by a person under 18 years of age or by an insane or intoxicated person, sodomy,

³⁰N. E. Abangwu, *Death Penalty in Nigeria: To Be Or Not To Be: The Controversy Continues* Arabian Journal of Business and Management Review <[http://arabianjbm.com/pdfs/OM_VOL_3_\(3\)/3.pdf](http://arabianjbm.com/pdfs/OM_VOL_3_(3)/3.pdf)> accessed on 5th October 2021.

³¹Ibid.

³²Amnesty International, *The Death Penalty Worldwide* <<https://www.infoplease.com/world/political-statistics/death-penalty-worldwide>> accessed on 5th October 2021

³³Ibid.

³⁴Section 12 (1) of the 1999 Constitution (as amended) provides that "No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

³⁵Section 316, 319(1) Criminal Code Act, Section 221 Penal Code.

³⁶Section 49A Criminal Code.

³⁷Section 37 (1) Criminal Code, Section 411 Penal Code.

³⁸Section 402 Criminal Code, Section 1(2) Robbery and Firearms (Special Provisions) 1984 Act.

³⁹Section 52(1)(b) Nigerian Armed Forces Act, Cap A20 LFN 2004.

⁴⁰Section 208 Criminal Code.

adultery (zira), apostasy (ridda), rebellion (bag'yi) and hiraba, translated as 'highway robbery'.⁴¹

1.9 Persons exempted from death penalty under the common and Islamic law.

Categories of offenders who are exempted from death penalty include: juvenile offenders, pregnant women and judicially insane or mentally ill persons. Discussing these offenders in seriatim,

- i. Juvenile offenders: In relation to juvenile offenders, the supreme court in *Modupe v State*⁴² stated thus: 'if at the time the offence was committed, an accused charged with a capital offence has not attained the age of 17 years, it will be wrong for any court to sentence him to death, or even pronounce or record such sentence'.⁴³ Same is the position under the Islamic law. The only difference between that of the Islamic law and Common law is age. In Islam, maturity is not always determined by age. It is sometimes determined by the offender's biological features or signs. In a tradition of the Noble Prophet (peace be upon him), pen is lifted upon a child till he attains puberty⁴⁴.
- ii. Pregnant woman: the exemption of a pregnant woman from death penalty under Islamic law is a temporary one. However, the Administration of Criminal Justice Act 2015 merely suspends the execution of the sentence of death on a pregnant woman till the child is delivered and weaned. Both under the repealed criminal procedure code, the exemption of a pregnant woman from death penalty is consistent with the jurisprudence that the forbearance of a sentence of death on her is for the benefit of the unborn child. According to section 368(2) of the Criminal Procedure Act, pregnant women cannot be sentenced to death and their sentences should be commuted to life imprisonment instead. Section 300(3) of the Criminal Procedure Code, which is relevant in the Northern part of Nigeria, also includes a similar provision. The Administration of Criminal Justice Act 2015 merely suspends the execution of the sentence of death on a pregnant woman till the child is delivered and weaned. The later position under the administration of criminal justice Act is the Same as the position under Islamic law.⁴⁵
- iii. Insane: In relation to judicially adjudged insane or mentally ill persons, the provisions of the Nigeria Criminal Code exempt insane offenders including capital offenders from criminal liability as a result of the negation of their mental guilt. This is clearly stated in Section 28 of the Criminal Code. This insanity however must be proved for

⁴¹ N. E. Abangwu, *supra*.

⁴² (1988) 4 NWLR (pt. 87) 130, (1988) 9 SC.1

⁴³ Section 368(3) of the Criminal Procedure Act Cap C.41, LFN 2004

⁴⁴ <https://www.abuaminaelias.com/dailyhadithonline/2019/05/07/pen-lifted-from-three/> accessed on 5th October 2021.

⁴⁵ <https://cdn.penalreform.org/wp-content/uploads/2015/07/Sharia-law-and-the-death-penalty.pdf> accessed on 5th October 2021.

this defence to apply. Same is the position under Islamic law. The noble prophet is reported to have said, pen is lifted upon an insane till he regain sense⁴⁶.

1.10 Conclusion

This article appraised the concept of Right to life under Islamic law and the nuances of section 33 of the constitution of the Federal Republic of Nigeria 1999(as amended). It concluded that there is nothing in Islamic law that prevents human rights and if there is, it is due to misunderstandings and wrong interpretations of the law. Therefore, the conceptual differences on rights to life in Islamic law and rights to life under the constitutional law may not be beyond harmonisation.

1.11 Observation and Recommendations

It is the observation of this article that there is nothing in Islamic law that prevents human rights and if there is, it is due to misunderstandings and wrong interpretations of the law.

In line with the above observations made, this article hereby recommends that both Islamic law and constitutional law jurists and scholars should adopt an accommodative and complementary approach to achieve the noble objective of enhancing human dignity, fostering an ideal human community, ensuring justice, peace and the general well being of all human beings, which are common aims of both the Shari `ah and international human rights law.

⁴⁶<https://www.abuaminaelias.com/dailyhadithonline/2019/05/07/pen-lifted-from-three/> accessed on 5th October 2021.