

ISSN: 2616-0935

Vol.4, Vol.5

June & December 2021



AL-HIKMAH UNIVERSITY

جامعة الحكمة، إلورن - نيجيريا

JOURNAL OF ISLAMIC LAW (HUJIL)



Published by:
DEPARTMENT OF ISLAMIC LAW
FACULTY OF LAW, AL-HIKMAH UNIVERSITY,
ILORIN, NIGERIA

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CONTENTS

A CRITICAL APPRAISAL OF ISLAMIC LAW PERSPECTIVE ON THE AWARD OF DAMAGES IN INCORPOREAL INJURIES

Mansur Isa Yelwa (PH.D)

1

AN APPRAISAL OF THE RIGHT TO EDUCATION UNDER THE SHARIAH

Folorunsho Ahmad Hussein Ph.D

28

CONSTITUTIONAL IMPEDIMENTS TO THE APPLICATION OF ISLAMIC CRIMINAL LAW IN NIGERIA

YAHAYA IBRAHIM ABIKAN Ph.D

44

OVERVIEW OF *IMAM MALIKI* MARITAL JURISPRUDENCE IN KADHI'S COURTS KWARA STATE OF NIGERIA

Issa Babatunde Oba Ph.D, Alfa Ahmad Shuaib Ph.D

70

UTILIZATION OF ISLAMIC *WAQF* INSTRUMENT IN THE SOCIO-ECONOMIC DEVELOPMENTS OF MUSLIM COMMUNITIES IN NIGERIA

Jumah Habeeblai Abiodun

90

AN APPRAISAL OF THE CONCEPT OF CORPORATE PERSONALITY AS TO DISTINGUISH THE SHARIKAH FROM ITS MEMBERS

Dr. Adeyemo Wale Lateef Ph.D, Maisuna Mustaspha Yahya Ph.D

113

TANGLE OF LINEAGE IN ADOPTION PRACTICE: BETWEEN SHARIAH AND NIGERIAN LAW

Abdulrazaq Owolabi Abdulkadir, (PhD), Abdulraheem Taofeeq Abolaji, PhD
Sulyman Waliyah

130

**AN EXAMINATION OF THE ROLE OF THE UNITED
NATIONS SECURITY COUNCIL AND ISLAMIC INTERNATIONAL
LAW IN RELATION TO THE ISRAELI-PALESTINIAN CONFLICT**

Samiah Shitta-Bey Omolaju

142

**UNDERSTANDING THE JURISPRUDENTIAL THOUGHTS
BEHIND THE LEGAL REASONING OF THE MALIKI
AND HANAFI SCHOOLS**

Imam-Tamim, M. K., Adeyemi, K. O.

163

CIVIL DISOBEDIENCE IN ISLAM: THE #END SARS CAMPAIGN

Mohammed Bashir Badr, Oloyede Oyediran

191

**RE-ASSESSMENT OF THE CONCEPT OF GLOBALISATION:
AN ISLAMIC PERSPECTIVE**

Azeez R.O Ph.D, Oniye, Olayinka Ibrahim

212

**SHARIA'H ANALYSIS OF CURATIVE AND PLASTIC
SURGERY IN SOUTH-WESTERN NIGERIAN HOSPITALS**

DOSUNMU Adam Jamiu, Dr. Abdulwahab Muhammad Jamiu Elesin

229

Dr. Muhammad Alhasan Yunus

AN APPRAISAL OF THE RIGHT TO EDUCATION UNDER THE SHARIAH

Folorunsho Ahmad Hussein¹

ABSTRACT

Islam as a culture is the first to recognize, guarantee and institutionalize the concept of Human rights. Education as a concept is also enshrined in the basic tenets of Islam to the effect that without proper and appropriate knowledge the practice of Islam will become impossible. It is on this note that the right to Education is considered the next most important fundamental Human Right after the right to life. Unlike in the Western Culture, Islam considered the right to education as fundamental, in-alienable and justiciable. It is in view of the above that this work aims to examine the position of the right to education under the Islamic law; it goes further to analyze the concept of human rights in Islam, looked into importance attached to women and Children education. The work finds that educational right is a fundamental right divinely granted mankind among other rights, it therefore concludes that, it is a right well protected and a justiciable on as far as Islamic Law is concerned.

Key words: Education, Culture, Human Right, Shari'ah

INTRODUCTION

The concept of education is greatly embellished in Islam just as seeking knowledge is considered as a willy-nilly endeavor for all and sundry. Under the Shari'ah, there is indeed right to education for all and sundry. Education is the way knowledge and values are passed to

¹LL.B, B.L, LL.M, PhD. Senior Lecturer, Department of Islamic Law, Faculty of Law, University of Ilorin. He is also a Solicitor and Advocate of the Supreme Court of Nigeria. alhamaweey01@gmail.com, folorunsho.ah@unilorin.edu.ng, +2348055835613,

succeeding generations. Islam lays utmost value on seeking knowledge. It is significant to note that the first five verses² revealed to the noble Prophet Muhammad {S.A.W} commanded him to read. It is also instructive that knowledge was the singular criterion by which Allah elevated Prophet Adam above all the angels who were ordered to prostrate before him.³ Education is an indispensable tool. It is the key to development in any society and human personality.⁴ It lightens the way and shows direction to human development just as it liberates the intellect and shields the mind from darkness. Its importance can never be over emphasized. It is the real essence of man for without it, man may never know who he is or why he is who he is.⁵ Education has been such as both a human right in itself and a means for realizing and promoting other human rights.⁶ Education as it relates to human life therefore must be made available at all cost for further advancement of the desire of man. Education is intrinsically valuable as humankind's most effective tool for personal empowerment. Education takes on the status of a human right because it is integral to and enhances human dignity through its fruits of knowledge, wisdom and understanding.⁷ Hence, the right to education is one the fundamental human rights either at Islamic or other laws. The right to education is legally guaranteed for all without any discrimination, states have the obligation to protect, respect, and fulfil the right to education.⁸ From the foregoing, every human being by virtue of being human, has the right to education. Education is more than just a fundamental right: it helps pave the way to a successful and productive future. The right to education is paramount and part of the inherent dignity of all humans:

² Al-Quran Chapter 96 {AL-LLAQ} verse 1-5.

³ Al-Quran Chapter 2 {Al-Baqarah} verse 30-34.

⁴ Syed M.N.A., "The Concept of Education in Islam, The Keynote Address delivered at the first World Conference on Muslim Education, Makkatul Mu'azzamah, (1977), p. 64

⁵ James A., *The Mind is the Master* [Penguin Books, New York, (2010), pp.16-17.

⁶ Article 26 of The Universal Declaration on Human Rights UDHR

⁷ Claude R.P 'The Right to Education and Human Rights Education'. Sur. Revista Internacional de Direitos Humanos online version ISSN 1983-3342.

⁸ Right to education initiative understanding education as a right accessed at <http://www.right-to-education.org/page/understanding-education-right>. accessed on 24 August, 2021

it is a tool to facilitate communication and bring cooperation among societies and by extension, a means of bringing peace, stability and more mutual understanding between communities and nations.

This work, shall succinctly discuss the Islamic conception of human rights. It also shall examine the place of right to education as a fundamental human right under Islamic law. It intends to discuss same utilizing the sources of Islamic law as a foundation. Through that process, the positions of the classical schools of Islamic law on the discourse will be analyzed.

ISLAMIC PERSPECTIVES ON HUMAN RIGHTS

Islam is not only a religion but also a complete course of life.⁹ It constitutes law concepts, political structures, ethics, social, economy, logic, behaviors and attitudes.¹⁰ Islam is the first religion in the history which represents the complete and comprehensive idea of human rights.¹¹ Its concept of human rights is based on the idea of human dignity and equality of mankind. Allah says in the noble Qur'an;

'indeed we have honored the children of Adam, and we have carried them on land and sea, and have provided them with At-Toyyibat [lawful good things], and have preferred them above many of those whom we have created with a marked difference.'¹²

The Almighty Allah made human being crown of this earth and confers numerous rights on mankind in religious, moral, legal, economic, social, and political fields of life¹³. In reality, Allah, the Almighty, has

⁹ MamounA., 'Islamic perspectives on education' Islamic relief worldwide, united kingdom, (2009).p.27

¹⁰ Tuck R., 'Natural Rights Theories: their Origin and Development' Cambridge University Press, UK,(1997),p.32

¹¹ Ibid.

¹² Al-Quran (Suratullsrail) verse 70

¹³ Al -Quran Chapter 17 Sura Al-Isra verse 70.

granted the charter of human rights in the form of Quran. In this connection Allah says,

'This [the Quran] is a plain statement for mankind, a guidance and instruction to those who are Al-Muttaqoon [the pious].'¹⁴

The Farewell Sermon [Khutbah Hijja-tul-Wada] of the Holy Prophet also unveils the Islamic conception of human rights as it features ideals which are laced with the principles of fundamental Human Rights. It also in the same vein offers guidance for an ideal human life. In this farewell sermon the prophet was reported to have said;

"O people, listen to my word...there is no superiority for an Arab over a non-Arab and for a non-Arab over an Arab nor for the white over the black nor for the black over the white except in God-consciousness. O people, your lives and your property shall be inviolable... whoever of you is keeping a trust of someone else shall return it to him...you shall not conflict nor suffer injustice...every right to avenge homicide in the Pre-Islamic days is henceforth abolished...you have certain rights over your wives and they have certain rights' over you...I am living with you what if you hold fast to, you will never go astray. The book of god and the Sunnah of his Prophet...O people think well about my words and understand them well. You know no doubt that every Muslim is a brother unto every other Muslim and that Muslims are indeed one brotherhood. Nothing is lawful for him, of his brother save he himself gives willingly. Do not, therefore, do injustice to yourselves. O lord, have I conveyed your message?"¹⁵

Thus, in Islam, rights are conferred by Allah, the law giver himself and the state has a limited role to play in granting of rights. Human rights are conceived in Islamic law as of divine origin, a divine dictate; just as

¹⁴ Al-Quran (surah Al-Imran) verse 138.

¹⁵ Mubeenur. A.B 'The Farewell Sermon of the Holy Prophet Muhammad [s.a.w] [international Islamic university press, Islamabad, (1996), p.44

the whole legal corpus of the Islamic law itself.¹⁶ Their scope and components are as spelt out by the Divine-law Giver [Allah] as may be derived from the sanctioned sources. The notion of rights under Islam is much broader than Western human rights contemplate. Thus, the right analogous to human rights concept in the West will, under Islam, fall into three distinct categories of rights: the right of Allah the creator, over man his slaves: the rights of other living creatures [Zul al-kabad, every possessor of liver]: and the right of one over oneself. While Islam does not accept the separation of human dignity from human right as both form part of the same concept of doing justice to all, there is great difference in the couching of rights between Islamic and western approach.¹⁷ The western approach is declaratory whereas Islamic law protects rights by couching rights in form of duties incumbent of someone.¹⁸ More so, rights are contextual under Islamic law, rather than being general or nebulous statements adopted by western approach which ambits are never predictable.¹⁹ Islam puts the rights and duties within the context of human relationship, in this way, rights do not become unruly horses that take one to anywhere they want as they tend to become in the west.

Furthermore, Islamic law does not divide human rights and rights generally into positive and moral rights as the western philosophy of categorization suggests. All rights are of great significance in Islamic law and very well categorized and enforceable though in various ways. In a nutshell, while emphasis is on the individual in the matter of Human Rights' in the West, the Islamic law combines and strikes a just balance between the interest of individual and collective interest of the state in the matter of human rights protection, enjoyment and enforcement.²⁰

¹⁶ Ishola A.S., "International Human Rights System and the Call for Abolition of Death Penalty: Why Islamic Law is not in Support?", A Paper Presented at the 4th International Conference on Human Rights Education, Taiwan December, 2013.

¹⁷ Ibid.

¹⁸ Sadia R., 'Origin and Development of Human Rights in Islam and the West: A Comparative study' U.K (1997), p.8

¹⁹ Bielefeldt, H., 'Muslim voices in the Human Rights Debate' in Human Rights Quarterly, Ohio (1995), p.587.

²⁰ Ibid.

As earlier posited, education is crucial for mankind and it is gained in order to perfect all aspect of human life.²¹ It helps in the effective formulation of producing the complete growth of individual with integrated, balanced, and harmonious personality.²² It is the birth right of every Muslim as Islam laid considerable emphasis on acquisition of knowledge by its adherents.²³ One of the prime task of education is to nurture personal growth.²⁴ It is through this nurture of the individual and the preservation and transmission of culture that both the individual and society attain a quality of life.²⁵ A review of the Quran and the Hadith of the Prophet [S.A.W] will reveal the characteristic Islamic attitude to education and learning.²⁶ Apart from the affirmative advice and incentive to learning that the Quran and the Sunnah provides, they advocate holistic view of knowledge.²⁷

WOMEN AND CHILDREN'S RIGHT TO EDUCATION UNDER THE SHARIAH.

Education as posited earlier in Islam is considered a need for all and sundry. However so, against the notion that no attention is paid to women and children in Islam, indeed Islam considers them as a part and parcel of the society. The Shariah has nonetheless attributed, provided and protected their rights. In the prophetic last Sermon [supra], the rights of individual are not to be fettered.

²¹ James .A., 'The mind is the master', Penguin Books, New York (2010),p.16.

²² Muhammad H.K.M., "The philosophy and objectives of Education in Islam" irep.iium.edu.my/1167/1/proceeding_philosophy_and_objective_of_edu_in_Islam.
p.2 accessed on 4/2/2014

²³ Ibid.

²⁴ Asma .A., 'The Philosophy of Islamic Education: Classical View' and perspective' FethulanGulan'sM.
<http://fethulangulanconference.org/houston/php?p=philosophyislamiceducationclassicalviewsfethulan-gulen-perspective> accessed on 2/2/2020

²⁵ Ibid.

²⁶ Abdullah A. R., 'Educational Theory: A Quranic Outlook' Umm al-Qura University press, Saudi Arabia.(1982),p.5

²⁷ Mohammad H.K., 'The Right to Education, Work, and Welfare in Islam', Islamic Text society, Cambridge, (2010), p.19.

WOMEN'S RIGHT TO EDUCATION.

While envisaging the continuity of human race, women are very material to the development of the society. Women have also been described as the salt of life that makes it rosy. Islam never considered women a mere shadow²⁸ rather women are seen as an important part of creation.²⁹ Accordingly, Islam entrenches their rights, frowns at their discrimination and honors them as a creation, wives, daughters, mothers and above all, members of the society.³⁰ By divine design, women must always be under the care of people that will be responsible for their wellbeing. Islam has not for any moment left the female folks to be on their own. In the beginning, she is under the watch of her father;

'And do not kill your children for the fear of poverty. We provide for them and for you. Indeed, their killing is ever a great sin'.³¹

Upon marriage, the husband takes charge, Men are in charge of the women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth...³² and at old age, the children must be dutiful to them.

'....and your lord has decreed that you not worship except him and to parents, good treatment. Whether one or both of them reach the old age [while] with you, say not to them [so much as] 'uff' [an expression of disapproval or irritation]and do not repel them but speak to them a noble word'.³³

²⁸Fathi A.M 'Muslim Women: The Family and the Society'. Ibn Al-KhattabFoundation. (2008), p. 55

²⁹ Surah 4[An-Nisa]verse1

³⁰ Ibid.

³¹ Quran Chapter 17 [Al Isra']: verse 31

³² Quran Chapter 4[An Nisaa]: 34

³³ Quran Chapter 17 [Al Isra']: 23

Islam came and replaced all practices that hitherto degraded the female gender with radical reforms in many aspects of her life. For instance, *Khul'u* [repudiation of marriage by the wife] is an example of marital reforms that guaranteed matrimonial rights at the instance of the wife. Also, females can inherit their deceased relatives.³⁴

The women's right to education nonetheless has been greatly guaranteed under the Shariah. According to the teachings of Islam, education is very important.³⁵ The first revealed word of the Quran commanded the believers to "Read!" this command did not distinguish between male and female believers. The first wife of the Prophet Muhammad, *Khadeejah*, was a successful businesswoman in her own right. The Prophet Muhammad praised the women of *Madinah* for their pursuit of knowledge thus;

'How splendid were the women of the Ansar; shame did not prevent them from becoming learned in the faith'.³⁶

At various other times, the Prophet Muhammad told his followers that acquisition of knowledge is binding on all Muslims, male and female that they should seek knowledge, from the cradle to the grave. In the same vein, it is required that one should acquire knowledge, even if one is to go to China for it.³⁷ Similarly, it has been said that the person who goes forth in search of knowledge is striving hard in the way of Allah, until his/her return.³⁸ According to a paper by Islamic Relief, a charity organization which supports education programs throughout the Muslim world; Girls' education in particular has been shown to have substantive economic and social benefits. Studies have shown

³⁴ Quran 4:7.

³⁵ Mohammad H.K., 'The Right to Education, Work, and Welfare in Islam' Malaysia (1992), p.19

³⁶ Amina W., 'Quran and Women: Rereading the sacred text from a Woman's perspective' Oxford University Press, USA, (1999), p.99.

³⁷ Ibid.

³⁸ Ibid.

that communities with a high proportion of educated mothers have less health problems.³⁹

It is against this backdrop that it is posited that in modern times, those who disapprove of girls' education are not speaking from a sound religious perspective. There is nothing in Islam which prevents the education of girls; quite the contrary as we have seen.⁴⁰ There may be discussion and debate over the content of secular education, or the separation of boys and girls in school.⁴¹ However, these are issues which are possible to resolve and do not justify a blanket prohibition against girls' education.⁴² On this note, it is impossible to be a Muslim, to live according to the requirements of Islam, and at the same time live in a state of ignorance.⁴³

Education, which is *FardKifaya* that must be learnt by some people in the community, includes knowledge of medicine, arithmetic, nursing, surgery and knowledge that is fundamentally useful to the society. Once some members of the society acquire them, then the others are exonerated from liability.⁴⁴ The education of a woman is invaluable as that of a man. The prophet [S.A.W] has expressly said that:

'If a person has a slave girl, then he educates her liberally and trains her in the best manner and culture, then sets her free and marries her, he has a double reward from his lord'⁴⁵

That is even in the case of a slave girl, how much more a free born. Islam does not differentiate between the sexes with respect to

³⁹ Mamoun A., 'Islamic Perspective on Education' [Islamic Review Worldwide, UK, (2009), p.2]

⁴⁰ Ibid.

⁴¹ Khalid E., "The Islamic Response to the Secular Educational System", U.K, (2008), p.4

⁴² Ibid.

⁴³ Ibrahim B.S., 'Islamic Education of Children', UK, (2006), p.5

⁴⁴ Al-Hashim, Muhammad Ali 'The Ideal Muslimah, The True Islamic Personality of the Muslim Woman as Defined in the Quran and Sunnah', (1998). Translated by Nasiru-Deen Al-khattab, Riyadh, Saudi Arabia: International Islamic Publishing House. p 62

⁴⁵ Sahih Al-Bukhari.

education. It emphasizes that the broad aim of her education is the one which makes her become a true Muslim, good wife, mother and housekeeper. There is no way a woman can fully and effectively discharge her duties as the builder of the society without having adequate education.

Educating a woman is like educating a nation. This is because a woman is at the center of nation building. As a wife, she has ceaseless roles in counseling her husband who might be a political office holder. As a mother too, she is the first teacher of the children of the nucleus and extended family. Her roles have significant impact to make the society by guiding and producing good leaders and children. Hence, it could be argued that the level of a woman's education will determine how effective she will be in achieving this.⁴⁶

CHILD'S RIGHT TO EDUCATION

In Islam, Muslim children are considered to be precious gifts from Allah [subhanahuwa Ta'ala] just as they are to be loved immensely by their parents.⁴⁷ Nonetheless, children also have certain responsibilities to their parents.⁴⁸ There are many verses in the Holy Quran which acknowledges the debt that an individual owes to his or her parents and vice versa.⁴⁹ One responsibility of a parent is to make sure the child gets educated including knowledge about Islam irrespective of the child's gender.⁵⁰

Within the two- parent Muslim family, there are, by definition, there are two educators for the child: the father and the mother. A father's role is not limited to paying the bills and engaging in a little consultation every now and then. The Muslim father is also

⁴⁶ Abdullah, Ummulkhayr 'Dignity of Womanhood in Islam' Ibadan Nigeria: Iksan Islamic publishers. (1992), 25

⁴⁷ Mohammad H.K., 'The Right to Education, Work and Welfare in Islam', Malaysia (2004), p.20.

⁴⁸ Al Quran Chapter 17 [Sura Al-Isra] verse 23.

⁴⁹ Ibid Quran 17 [Surah Al-Isra] verses 23-30.

⁵⁰ Ibrahim B.S., 'Islamic Education of Children', Islamic Research Foundation International, U.S.A, (2012), p.3

responsible for his child's training and education.⁵¹ Concerning this, it is the position of the prophet [S.A.W] that the best a father gives his child is god education.

There is a wealth of material in Quran and hadith encouraging learning and acquisition of knowledge in general.⁵² Although, mothers are not addressed specifically, they are often the major force in carrying out this obligation.⁵³ In the first Muslim community, both men and women learnt their religion directly from the Prophet.⁵⁴ In cases in which men were addressed, they were responsible for conveying the information to their wives and children.⁵⁵ Women were almost exclusively in charge of early childhood education.⁵⁶ Men were responsible for seeing that their children learnt their religion and its ways of life and behaved according to its teachings.⁵⁷ The child, Imam Al-Gazali described ... is a trust [placed by God] in the hands of his parents, and his innocent heart is a precious element capable of taking impressions.⁵⁸ This means that if the parents, and perhaps the teachers, brought him up in righteousness he would live happily in this world and the next and they would be rewarded by God for their good deeds.⁵⁹ But if they neglected the child's upbringing and education, he would lead a life of unhappiness in both worlds and they would bear the burden of the sin of neglect.⁶⁰

The prophet himself took the education of his people as his personal responsibility by giving frequent sermons to both men and women so much so that he made himself a reference point to

⁵¹ Ibid

⁵² Tirmidhi. Op.cit

⁵³ Ibrahim B.S., Islamic Education of Children, Op.cit p.5

⁵⁴ Ibid.

⁵⁵ Latefah A., 'The Prophet Muhammad as an Educator' U.K (2008), p.14

⁵⁶ Ibid.

⁵⁷ Ibrahim B.S., Islamic Education of Children, Op.cit p.5

⁵⁸ Ibid.

⁵⁹ Behardin B., "Ghazali and Educational

philosophy/<http://www.fountainmagazine.com/issue/detail/Gazali-and-Educational-Philosophy/> accessed on 2/5/2014.

⁶⁰ Ibid.

answering question put to him by his companions.⁶¹ The Prophet [S.A.W] also employed women teachers to teach basic literacy as well as intermediate education to his wives, and also employ teachers to teach basic literacy to Muslim children.⁶²

There is also a need to reflect on one of such persons apart from the parents, upon whom the right to education of a child is anchored on; the teacher or instructor. He, who undertakes the instructions of the young, as pointed out by Al-Gazali⁶³, undertakes great responsibility; He must therefore be as tender to his pupils as if they were his own children. He must correct moral lapses through hinting, above all, he himself must set an example so that his action accords with his precepts.⁶⁴

He must adapt his teachings to pupils capacity and ability, and not to overburden the pupil's capacity, nor give him fright.⁶⁵ He must respect the less gifted pupil, who might if lost: leave safe foundations for standards he would never reach.⁶⁶ After school, Al-Gazali insists, the pupil must be allowed to have recreation.⁶⁷ Even more on this matter, in *ihya Ulumi d-din*, the teacher, Al-Gazali holds carries eight duties.⁶⁸ First and foremost, He is a father for his pupils; He must teach for the sake of God; He would advise the students with prudence, fight the excessive urge to learn too quickly, and to overtake his peers; He would reprimand with moderation, in private, discretely, not in public; To blame too much is to make the pupil too stubborn in his way of seeing and doing things; And one other duty of the teacher is to make

⁶¹ Lateefah A., 'The Prophet Muhammad as an educator' <http://lateefah.net/article/the/prophet/Muhammad/as/an/educator.doc/> p.8 accessed on 3/5/2014.

⁶² Ibid

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Tobias M., 'Al-Gazali's Letter to a Disciple'. P.2

⁶⁷ Ibid.

⁶⁸ Fazlul K., '*IhyaUlumi-D-din*' DarulIshaat, Pakistan, (1993), p.12

sure that what he teaches he pursues in his life, and that his own acts do not contradict what he is trying to inculcate.⁶⁹

JUSTICIABILITY OF THE RIGHT TO EDUCATION UNDER THE ISLAMIC LAW

The judicial system in Islam is a system for deciding between people in litigation with the aim of settling their disputes in accordance with the injunctions of the Divine Law, injunctions that are taken from Quran and Sunnah.⁷⁰ Prophet Muhammad [S.A.W], who came with the final and eternal message, was ordered to spread the word of God and call people to Islam.⁷¹ The fact that a judge should judge among men with justice and fairness is resonantly mentioned in the Quran in a number of places. Allah says, for instance:

So judge [O Muhammad] between them by what God has revealed and do not follow their vain desires, but beware of them lest they turn away from some of what God has sent down to you.⁷²
Allah also says:

And if you judge [O Muhammad], judge between them with justice. Verily, God loves those who act justly.⁷³

The sunnah of the prophet [S.A.W] also provides legal basis of the Islamic judicial system. It was narrated by Abdullahi that Allah's Messenger [PBUH] said:

"You should not wish to be like other people, except in two cases: a man who God has given wealth and he spends it on Truth and another

⁶⁹ Ibid.

⁷⁰ Al-Quran Chapter 57 [Al-Hadid] verse 25

⁷¹ Al-Quran Chapter 16 [An-Nahl] verse 43

⁷² Al-Quran Chapter 5 [Al-Maeda] verse 49.

⁷³ Al-Quran Chapter 5 [Al-Maeda] verse 42.

who God has granted wisdom and he gives verdicts on its basis and teaches others".⁷⁴

The affairs of the people will not be correct and upright without a pure judicial system.⁷⁵ On the basis of this, it is established beyond doubts that strong judicial system exists in Islam and judges have obligations of dispensing justice according to the dictates of the Shari'ah without fear or favor.⁷⁶ Hence, it is both a social religious and administrative as well as spiritual duties to dispense justice according to the established set of rules of the shariah.⁷⁷ However, unlike the conventional or mundane English System of adjudication where the procedures of dispensing justice are riddled with technicalities, there is no stumbling block the wheel of justice under Islamic law, hence right to education is not only viable, it is also justiciable.⁷⁸ Furthermore, in one of his letters to Abu Musa Al-Ashari when the latter was appointed a judge in kuffa, Caliph Umar [R.A] wrote, instructing him concerning the Islamic ideal of judicial system and enforcement of rights.⁷⁹ The letter laid down the foundation for deriving rulings under Islamic judicial system. One of the ideals recognized in the letter is the doctrine of judicial activism [ijtihad].⁸⁰ This implies that a judge is expected to think out of the box in novel issues such as the one which presently constitutes barricades to the enforcement or justiciability of right to education, which is a socio-economic right; justiciable in English law is judicial activism.⁸¹ Judicial activism is what English constitutional actors have

⁷⁴ Narrated by Abdullah, in Translation of Sahih Bukhari, Book of Judgment [Ahkaam], Vol.9, Al-Sadaawi Publication, Alexandria, Book 89, Number 255.

⁷⁵ Muhammad H., 'The Judicial System of Islam Special Contribution of Muslims' Malaysia, (2005), p.1

⁷⁶ Al-Quran Chapter 4 [Surah An-Nisa] verse 135.

⁷⁷ Ibid.

⁷⁸ Behnke A., Across the Barricades: Documenting the voices of the Enemy'.p.7<http://citation.allacademic.com//meta/p_mla_apa_research_citation/2/5/2/4/5/pages252450/p252450-16.php/ accessed on 2/6/2014.

⁷⁹ Ali, M.M, 'The Biography of Umar Ibn Al-Khattab' Global Leaders Books, Darussalam, (2010), p.105.

⁸⁰ Ibid, para 4.

⁸¹ This is in tandem with the British approach towards the judiciary. In Britain, the judges' oath gives the judges the leadway to do justice outside the ambit of law. In fact, in England, judges in an attempt to do justice can fill the necessary gaps in the law. See Promisory Act, 1868.

been clamoring for particularly in the area of justifiability of socio-economic rights.⁸² It is clear from the face of caliph Umar's letter that judges are permitted to use judicial activism even when rulings are not found in the primary sources not to talk of when the right sought to be enforced is enshrined in the law but only being hindered by technicality.⁸³ The letter declares-

"If you cannot find a ruling in either the book or the Sunnah, the most crucial thing that you must have is a sound understanding of things then look for similar cases and make an analogy, and see what conclusion is most likely to be acceptable to Allah and is most likely to be sound."

Considering the above therefore, that dispensation of justice in Islam is not riddled with technicalities. As there is no stumbling block to the wheel of justice and enforceability of any degree of right in Islam whether social or socio-economic such as right to education or otherwise, right to education is not only viable, but it is also justiciable in Islam.

CONCLUSION

This work, has examined the right to education under the Shariah, in doing this, it has chronicled the Islamic perspectives on human rights. It was also interrogated whether or not there is a right to education in Islam and under the shariah. The women and children's right to education as obtained under the shariah was also discussed. In the same vein, the work looked at the justiciability of right to education under the shariah with a view to clarifying the ambiguity created by the Western classification of rights which consequently rendered some fundamental rights, educational right inclusive not justiciable. It is therefore concluded that under the Islamic law, right to education is fundamental and justiciable because, protection of all divinely guaranteed right is the major objective of Shai'ah i.e *Maqasidus Shar'iyyah* – (the objectives of shari'ah). Consequent upon the above,

⁸²Ibrahim I., 'Rethinking Judicial Activism Ideology: the Nigerian Experience of the Extent and Limits of Legislative-Judicial Interactions' in International Journal of African and Asian Studies, Kenya], Vol.4, [2014pp.101-105.

⁸³Ali ,M.M, 'The Biography of Umar Ibn Al-Khattab',U.K (2005), p.105.

the Islamic law position on the guarantee, protection and justiciability of the right to education is certain and worthy of adoption for the sustainability of the features of the right to education.