DOMESTICATION OF THE CHILD'S RIGHTS ACT, 2003 IN KADUNA STATE: CHALLENGES AND PROSPECTS

BY

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DECLARATION

I declare that the work in this dissertation titled DOMESTICATION OF THE CHILD'S RIGHTS ACT, 2003 IN KADUNA STATE: CHALLENGES AND PROSPECTS has been carried out by me in the department of Public Law, Faculty of Law, Ahmadu Bello University, Zaria. The information accessed from the literature are duly acknowledged in the text and provided in the list of reference. No part of this dissertation was previously presented for another degree at this or any other institution.

Dwelling Moiwa NICODEMUS **Date**

CERTIFICATION

This dissertation titled "DOMESTICATION OF THE CHILD'S RIGHTS ACT 2003 IN KADUNA STATE: CHALLENGES AND PROSPECTS"by Dwelling Moiwa NICODEMUS meets the regulations governing the award of the Master of Laws Degree of Ahmadu Bello University Zaria and is approved for its contribution to academic knowledge and literary presentation.

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Prof. Jummai A. M. Audi **Member Supervisory Committee**	**Signature/Date**
Prof. A. I. Bappa **HOD Public Law**	**Signature/Date**
Prof. Sadiq Z. Abubakar **Dean, School of Postgraduate Studies**	**Signature/Date**

DEDICATION

This work is dedicated to my late elder brother Iliya Nicodemus Moiwa and late younger brother Reuben Nicodemus Moiwa.

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ABSTRACT

The Child's Rights Act 2003 (CRA) is a product of International and Regional legal frameworks on the rights of the child as treaties. It was enacted into law as required by the Constitution Federal Republic of Nigeria to have force of law in the country subject to ratification by states of the Federation and adoption by individualStates for the promotion and protection of the rights of the child. Kaduna State among few other states has not yet adopted or domesticated the CRA. There are currently some child's rights related laws operational in Kaduna State which are either holistic or partial such as the Constitution, Children and Young Person's Law of Kaduna State, Kaduna State Infant Edict, Kaduna State Legitimacy Law, the Penal Code, ShariaPenal Code, Labour Act and Matrimonial Cause Act. The operational Laws are characterized with some deficiencies hence, the need for CRA in Kaduna State. The research is associated with problems such as Constitutional, Religious, Socio-Cultural, Economic, Administrative, awareness and non-implementation and enforcement. The domestication of CRA is faced with some challenges flowing from the above stated problems such as non-compliance with the requirement of the constitution and inconsistencies of some provisions of the CRA with the Constitution, controversial provisions of the CRA in relation to religions, poor economic standard of the people of Kaduna, poor administrative synergy between concerned stakeholders, lack of awareness and non-implementation and enforcement of CRA in other states of the federation. There are prospects for the domestication of CRA in Kaduna State amidst the challenges if the government and stakeholders can amend or modify some provisions of the CRA, warrant friendly economic standard, educate or give orientation on some socio-cultural practices, implement existing laws appropriately. The research made some findings among others viz: violation of Constitutional provisions in the enactment of CRA, other laws in Kaduna contemplate people's interests, only Muslims contest against the CRA, economic situation in Kaduna State is not favourable and failure of government to observe its responsibilities. Based on the said findings, the following are recommended: consideration of supremacy of the Constitution, interest of the people, there should be collective protest against controversial provisions of the law and finally the government should live up to its responsibilities. The research embarked on doctrinal and empirical research methodology to source materials and facts to make the research a success.

ABBREVIATIONS

CILS	-	Centre for Islamic Legal Studies
LRN	-	Law Report of Nigeria
NIV	-	New International Version
NWLR	-	Nigerian Weekly Law Report
SCA	-	Sharia Court of Appeal
SLR	-	Sharia Law Report

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 BACKGROUND OF THE STUDY

The promotion and protection of respect for and observation of general human rights and fundamental freedom globally have been the perpetual concern of many societies and international organizations for centuries. The concern for human rights gave rise to concern for the rights of specific individuals in terms of sex, age, minority, incapacity etc.Children among the aforementioned individuals are given special attention and priority due to theirphysical and mental immaturity. The weakness of the child calls for the needs to safeguard the child parentally, governmentally and legally from harm right from conception to after birth. For the child to be protected legally there was need for legal instruments on ground. This lead to the United Nations Declaration on the Rightsof the Child of 1989 as Convention on the Rights of the Child herein after referred to as UN Convention at International Level and the Declaration of the Rights and Welfare of the Child of 1990 as Organisation of African Union (OAU) now African Union (AU) Charter on the Rights and Welfare of the Child herein after referred to as AU Charter at the regional level.

The above legal instruments gave rise to the Child's Rights Act, 2003 herein after referred to as CRA at domestic level in compliance with the provisions of the Constitution of Federal Republic of Nigeria[1] 1999 (as amended) herein after referred to as CFRN. The Legislation on Child's Rights, being in the concurrent list, is to be

[1] Section 12(i) CFRN

adopted or domesticated by states of the federation for it to get legal effect[2]. While some states have adopted the CRA, others have not, among which Kaduna State is one.

Kaduna State, like other Statesthat have not yet domesticated the CRA is faced with some challenges that militate against the domestication of the CRA. This challenges range from constitutional challenges where there are non-compliance with constitutional provisions regarding the enactment of the CRA and some provisions that are inconsistent with the provisions of the CFRN. This was responsible for the failure of the Bill on Child's Rights Lawat the Kaduna State House of Assembly when it was first presented. This was because the argument in support of the Bill was weak[3].Religious challenges are the most fundamental where some provisions of the CRA are in conflict with religious provisions most especially Islamic religion. There is also socio-cultural challenges which affect all cultures in Kaduna state. Other challenges are: economic challenges administrative challenges, awareness challenges and the challenge of non-implementation of CRA in other States. The question therefore is whether the domestication of the CRA is feasible in Kaduna State amidst the prevailing challenges.

Despite the aforementioned challenges militating against the domestication of CRA in Kaduna state, there are prospects for the feasibility of domestication of the CRA in Kaduna state. This is because there are solutions to the challenges which are to be proffered in the subsequent chapters.

[2] Section 4, Ibid
[3] According to the Director of Legal Drafting Unit of Kaduna State House of Assembly.

1.2 **STATEMENT OF THE PROBLEM**

Children who are the focus of this research, are faced with diverse societal problems due to their vulnerability. These problems range from lack of parental care, child abuses such as child labour, child trafficking, street begging, street hawking, and child marriage,lack of access to education and healthcare among others. It was in attempt to protect the child from these problems that several legal frame works on the rights of the child were enacted. However, in the attempt to deal with the said problems through legal instruments, other problems are identified which serve as hindrance to, not only the domestication of the legal instruments but also the enforcement of the rights of the child.

Notwithstanding state laws seeking to protect children, the children's rights in Kaduna State as in the case of other states in Nigeria are always being violated. The Nigerian government at federal level had made all efforts to reform child's rights laws together in line with international standard including signing and ratification of international legal instruments on the rights of the child which resulted in the enactment of the CRA 2003 with the view to protecting children's rights. However, legislation on children under Nigerian constitution is under concurrent list. Hence, states do have role to play. Since 2003, many states[4] in Nigeria have struggled to adopt the CRA as states Child's Rights Laws (CRL) but Kaduna State is among one third 1/3 of the states that are yet to adopt the CRA. The question then is why and what are the challenges militating against the adoption of the CRA and how to overcome the challenges leading to the adoption of the CRA in Kaduna State. The

[4] Abia, Akwa-Ibom, Anambra, Bayelsa, Benue, Cross-River, Delta, Ebonyi, Edo, Ekiti, Imo, Jigawa, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Taraba

fundamental problem of this research is the problem of non-domestication of the Child's Rights Act 2003 in Kaduna State. The CRA which is the domestic legal instrument on the rights of the child in Nigeria is characterized with somechallenges which make its adoption or domestication by Kaduna State among other states mostly in Northern Nigeria difficult. Some of the challenges are as follows:

(i) Constitutional problem: The CRA being a product of two treaties, i.e. International and regional, is by law supposed to be assented to by the majority of States Assembly of Nigeria before having the force of law. However, this requirement was not followed.

(ii) Religious Problem: Religion, being the most sensitive, has been the key problem responsible for non-recognition and domestication of the Child's Rights Act in Kaduna State like other Northern States of Nigeria. This is as a result of some contradictory provisions of the CRA Vis-à-vis Islamic provisions. Some of the contradictory provisions are: The prohibition of Child marriage[5] and betrothal[6] legitimacy of a child,[7] lawfulness of adoption etc.

(iii) Socio-cultural Problem: Some Nigerian Culture such as child marriage, child labour, child discipline, discriminatory inheritance, skin marks[8] among others are prohibited under the CRA. Some of the above cultures and traditions are not seen as harmful to the child by the society. These cultures and traditions are spread among the people of Nigeria, Kaduna inclusive. These traditions are so deep to the extent of contributing negatively against the domestication of the CRA in Kaduna State.

[5] Section 21 CRA
[6] Section 22 Ibid
[7] Section 63 Ibid
[8] Section 21, 28, 10 and 24 Ibid

(iv). Economic Problem: Going by the current economic situation in Nigeria as a developing Country, some provisions of the CRA such as prohibition of being employed as domestic help outside family environment[9], and hawking of goods or services on main streets[10] are not justifiable, hence cannot be adhered to by the poor who are not the priority of the government contrary to the provision of the CFRN.[11]

(v) Administratively, there is lack of mutual cooperation between or amongst government ministries that are responsible for the promotion and protection of the rights of the child and also between the ministries and civil society organizations. This makes the realization of the goal of child's right promotion difficult.

(vi) Awareness problem

Awareness which could be knowledge of something is fundamental and gives direction and focus of the subject matter or problem and how to get solution or achieve a goal. Lack of awareness of the existence of the CRA and its contents constitute a challenge against domestication of CRA in Kaduna State. This awareness goes with acceptance without which it will be of less or no effect.

(vii) Non Implementation and enforcement problem

Many states have adopted the CRA for some years. However, implementation and enforcement are problems that weaken other states that have not yet domesticated or adopted the CRA.

The essence of enacting law is to achieve an aim, the CRA was enacted to promote and protect the rights of the child in Nigeria. States of the Federation are to adopt laws enacted by the National Assembly for enforcement in their various states.

[9] Section 28 (d) Ibid
[10] Section 30 (c) Ibid
[11] Section 14 (2) (c) CFRN

Kaduna State is among those states that have not adopted or domesticated the CRA due to the aforementioned problems among others which need to be addressed.

The research questions therefore are:

a. What are the challenges militating against the domestication of CRA in Kaduna State
b. Are there laws in Kaduna State that deal with child related matters?
c. What are the deficiencies of the child's rights related laws in Kaduna State
d. Why the need for CRA in Kaduna State.
e. Are there prospects for the domestication of CRA in Kaduna State?
f. What are the efforts so far made to domesticate CRA in Kaduna State?

1.3 AIM AND OBJECTIVES OF THE RESEARCH

This research aims at finding out reasons behind non-domestication of CRA in Kaduna State through unveiling the challenges militating against the domestication of CRA in Kaduna State.

Upon finding out the various challenges responsible for non-domestication of CRA in Kaduna State, the following are the objectives of the research:

(i) To proffer prospective remedies to the challenges militating against the domestication of CRA in Kaduna State.

(ii) To ensure the domestication of CRA in Kaduna State which is free of contradiction for the benefit of the child?

1.4 JUSTIFICATION

Promotion and protection of the rights of the child are aimed at procuring the welfare of the child. The best interest of the child which is fundamental is also the concern of every reasonable parents. However, a child in Kaduna State is deprived of comprehensive provision of rights and protection as a result of deficiencies of some child related laws in Kaduna State. It is as a result of those deficiencies that the CRA was enacted. However, the CRA contains some controversial provisions making its acceptance and domestication difficult in some states. It is these controversial provisions and problems associated with the CRA and its lack of domestication that this research seeks to address in order for a child in Kaduna State to enjoy the rights and protection provided under the CRA. Hence, the justification of this research.

1.5 SCOPE OF THE RESEARCH

This research is basically concerned with the Child's Rights Act 2003 as a legal instrument on the rights of the child its general appraisal and highlight of area of conflicts that pose challenges to its domestication or adoption. The two parts of Kaduna State i.e. the North and South and their challenges either peculiar or general.Finally the research where necessary, touches other parts of the Country or people in making reference.

1.6 RESEARCH METHODOLOGY

Based on the research topic, the research is that which requires both doctrinal and empirical methodology. There is therefore the need to consult books written on

the rights of the child, religious books, most especially Islamic books, statutes, articles, newspapers etc toelicit vital information to enrich the researchand also embarking on the interview of indigenous people of Kaduna on some cultural practices, religious leaders, parents, Kaduna State legislators, child street hawkers, Beggarsetc to get empirical facts that would be useful in the research.

1.7 LITERATURE REVIEW

The Child's Rights Act 2003 has attracted attention due to its controversial provisions which even delayed its passage at the National Assembly of the Federal Republic of Nigeria. The controversial nature of the CRA raised concern which led to different writings on the CRA. Some of the examined writings are thus:

Ladan[12] wrote on the general overview of the CRA, its rationale, structure and prevailing challenges of its adoption. He emphasized on the challenges of adoption of the CRA among which are: reflecting local peculiaritiessuch as prohibition of child trafficking, street hawking, child and forced marriages, child begging etc, in the process of the passage of the Bill,the omission of the jurisdiction of a State Sharia Court of Appeal thereby vesting the family court with unlimited jurisdiction, lack of political will to promote and protect the best interest and welfare of the child.

Babaji[13] wrote among others on some constitutional inconsistencies of the CRA with emphasis that the constitutional provision that requires majority of Houses of Assembly in the Federation to rectify a Bill for an Act of the National Assembly

[12]Ladan M.T, The Child's Rights Act, 2003 and the Challenges of its Adoption by State Governments in the 19 Northern States. A paper presented at a One-Day Interactive Forum for Sokoto State House of Assembly Legislators. Organized by Sokoto State Ministry of Women Affairs and UNICEF on 23rd July, 2007.

[13]Babaji B. (2005) Harmonizing The Child's Rights Act, 2003 with Cultural and Religious Values in Nigeria: A Muslim Perspective. *Centre for Islamic Legal Studies Journal*, Vol. 24.

before been passed[14] was not followed. He emphasized also on some specific areas of the CRA in conflict with Islamic Law among which is non-deprivation by reason of circumstances of child's birth.

Alkali [15] wrote on child marriage and betrothal and legitimacy. He laid emphasis on theunwillingness of the states that have adopted the CRA to enforce it. Citing the rape cases of *Upahar vs State*[16] *and Ogunbayo vs State*[17] where the accused persons were charged for the rape of 12 years and 13 years old girls respectively under Section 357 of the Criminal Code with lesser punishment instead of the CRA with severe punishment.

Ogunniran[18] wrote among others on divergence of CRA and Sharia Law on Child's Marriage and betrothal, adoption, custody rights, custody between unmarried parents, child justice etc. He laid emphasis on reintegrativeversus retributive mode of punishment, categories of crimes under Sharia Penal Code, response of some sharia implementing states in the punishment of children in hudud crimes, age of criminal responsibility, diversionary measures and reformatory homes and flogging as corporal punishment.

Abubakar[19] wrote on proof of Zina and rape under Islamic law and the CRA. The proof under Islamic law is conventional such as confessions, witnesses and

[14] Section 12 CFRN

[15] Alkali U. An X-Ray of the Conflicts Between the Child's Rights Act, 2003 and Islamic Law on Child Marriage and Legitimacy. *Faculty of Law University of Maiduguri*.

[16] (2003) 6 NWLR (pt 816)

[17] (2007) 8 NWLR (pt 1035)

[18] Ogunniran I. Child's Rights Act Versus Sharia Law in Nigeria: Challenges and Way Forward. *Faculty of Law University of Lagos.*

[19] Abubakar M.S. Regular and Scientific Proof of Zina and Rape Under Islamic Law and the Child's Rights Act, 2003. A paper presented at the National Conference on the Rights of Women and Children Under the Sharia. Organized by CILS, Institute of Administration ABU Zaria on 16th and 17th June, 2008 at Arewa House Conference Hall, Kaduna.

pregnancy, while under the CRA is scientific. He laid emphasis on the difference of age of consent which under Islamic law is below 15 whereas under the CRA is below 18.

Uthman[20] wrote on the cultural legitimacy of International Human Rights Instruments and enforceability of International Human Rights Instruments in Nigeria. He emphasized on poor representation of developing Countries in the process of enacting the International Human Rights Instruments who are of diverse cultures and traditions.

Dije[21] wrote on the incompatibility of the Child's Rights Act, 2003 with the Islamic Legal regime in Nigeria. Some areas of inconsistencies or incompatibilities were emphasized viz: extent of powers and limits of parents, definition of relatives and definition of family, the provision of CRA that specifically provides that the provisions of the Act supersede the provision of all enactments relating to children and related issues, the distinction between Islamic Law and Customary Law according to the Constitution, legal capacity of a child among others.

Danladi[22] wrote on the Islamic Law mechanism for the protection of children rights with emphases on the inaccuracy of the definition of human right vis-à-vis the definition of human right under Islamic Law and the human source of right under the International and domestic laws vis-à-vis the Islamic right which is from God the creator which are deprive rights and some specific rights of the child under Islamic

[20]Uthman M. The Rights of Women and Children: Issues and Challenges From Human Rights and Islamic Law Perspective. A paper presented at a Conference on the Rights of Women Children Under Sharia. Organized by the CILS, ABU Zaria on 16th and 17th June, 2008.Holding at Arewa House Kaduna.

[21] Dije M. 2016, *An Evaluation of the Incompatibility of the Child's Rights Act, 2006 with Islamic Legal Regime in Nigeria.Centre for Islamic Legal Studies Journal*. Vol. 31.

[22] Danladi K.M. 2006, Islamic Law Mechanism for the protection of Women and Children Rights *"A Unique Approach" Centre for Islamic Legal Studies Journal Vol. 27,* P. 114.

law such as right to paternity and legitimacy, right to socialization and value orientation, right of consent to marriage.

Idris[23] wrote on comparative Analysis of the provision of legitimacy and paternity under the Child's Rights Act and Islamic Law in Nigeria. He emphasized that for the Child's Rights Act to be subjected to the test of validity when it is to be applied to Muslims, it must either be subjected the test of validity when it is to be applied to Muslim parties. It means where there is conflict between both laws, Islamic law is to provide. Alternatively, as a compromise, the CRA may be allowed to remain as it is but with limited application to non-Muslim, as to Muslims, Islamic law provisions apply.

In the review of the aforementioned literature, it is obvious that emphases were laid more on the religious aspect in terms of conflict and mostly on Islamic religion. This is as a result of concern by Muslims mostly during the debate on the bill regarding some of its provisions that are contrary to Islamic teachings and practices.This writer intends to further make research and know whether the provisions of the CRA are controversial only to Islamic religion. The researcher is concerned also with the cultural and traditional aspect which writers are brief about. The issues of marriage, child discipline among the people of Kaduna State are observed to further know how to reconcile the conflict of interest in the promotion and protection of child's rights. For instance child discipline and labour which is part of the people of not only Kaduna and the age of marriage among the people of Kaduna and the implications of early marriage before now if there were. This further research is

[23] Idris S.A. (2006 – 2007)A Comparative Analysis of the Provisions of Legitimacy and Maternity under the Child's Rights Act and Islamic Law in Nigeria*. ABU Law Journal*, Vol. 25 – 26.

thereforeaimed atpointing out other challenges that are of serious implications which are supposed to be put into consideration and not only the religious challenge so as to get the CRA not only domesticated but implemented and enforced in Kaduna State particularly and other States that have not domesticated the CRA.

1.8 ORGANIZATIONAL LAYOUT

This research work is divided into six chapters. Chapter one is the introductory chapter which deals with background of the study, statement of the problem, aim and objectives of the research, justification, scope of the research, research methodology, literature review and organizational layout. Chapter two clarifies some terms and concept used in the research such as child, best interest of the child, rights, child abuse, juvenile justice, legitimacy, deoxyribonucleic Acid test, the Almajiri system of Education and culture. Chapter three is an appraisal of the Child's Rights Act, 2003, stating the rationale of the Act, its structure and contents. Chapter fourexamines some child's rights related laws in Kaduna State such as the Constitution, Children and Young Persons Law, Kaduna State Infant Edict, Kaduna State Legitimacy Law, The Penal Code, Sharia Penal Code, The Labour Act and the Matrimonial Cause Act. Chapter five discusses the challenges and prospects for the domestication of Child's Rights Act, 2003 in Kaduna State and data analysis. The chapter examines challenges such as constitutional, religious, socio-cultural, economic, administrative, awareness and implementation. It also examines the prospects of domestication of the Child's Rights Act in Kaduna State by proffering remedies to the prevailing challenges.It also contains data analysis of empirical research conducted. Chapter

six which is the concluding chapter contains summary of preceding chapters, findings,observations,recommendations,bibliographyand appendix of empirical research sample questions.

CHAPTER TWO

CONCEPTUAL CLARIFICATIONS

In this chapter, some keywords or terms that are used in this research are clarified. It is imperative to know the meaning and origin of some words, terms or concepts through definition and explanation in order to proffer proper understanding of the entire contents of this research.

The following words or concepts used in this research worth clarification: child, best interest of the child, rights, child abuse, juvenile justice, legitimacy, deoxyribonucleic acid test, Almajiri system of education and culture.

2.1 The Meaning of Child

The word child literally means a young human who is not yet an adult[1]. An adult is defined as a fully grown person who is legally responsible for their actions[2]. Furthermore, a child is legally defined as a person under the age of majority and at common law, a person who has not reached the age of 14. Age of majority is defined to mean the age usually defined by statute as 18 years, at which a person attains full legal rights[3].

The concept of a child is statutorily defined in different ways in terms of age by different statutes, some of which are:

The UN Convention defines a child as “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier[4].

[1] Oxford Advanced Learner’s Dictionary Op. Cit.
[2] Ibid
[3] Black’s Law Dictionary Op. Cit.
[4] Article I UN Convention

The AU Charter defines a child as 'every human being below the age of 18[5]. The Kaduna State Children and Young Person's Law defines a child as any person who has not yet attained the age of fourteen years and young person as a person who has attained the age of fourteen years but who has not attained the age of eighteen years[6]. The Labour Act defines a child as a "young person under the age of twelve years[7]. The Child's Rights Act, 2003 as a product of the two international legal frameworks i.e. UN Convention and AU Charter defines a child as "a person under the age of 18years[8]". The Jigawa State Child's Rights Law, a modified product of CRA defines a child as a person below 18 subject to the provision of section 15[9]. Section 15 states that "for the purpose of this section and section 16 and section 17 of this Law, "child" means a person below the age of puberty". Section 16 and 17 of the said Law prohibit child betrothal and child marriage respectively.

In this research, the definition of child under the CRA is adopted in the course of discourse unless where specifically stated otherwise.

2.2 Best Interest of the Child

The concept of best interest of a child is emphasized or intended by all laws relating to a child. The CRA emphasizes best interest of the child as one of the principles upon which the CRA is predicated. The CRA states that the best interest of the child shall be primary consideration in all actions concerning a child[10]. This

[5] Article II AU Charter
[6] Section 2 Kaduna State CYPL
[7] Section 58(1) Labour Act
[8] Section 277 CRA
[9] Section 2(1) JSCRL
[10] Section 1 CRA

means the best interest of the child is cardinal and therefore aught to be protected by all individuals concerned when dealing with a child to avoid child abuse.

2.3 The Concept of Right

Right is literally defined inter alia as a moral or legal claim to have or get something or to behave in a particular way[11]. On the other hand, right is legally defined as a legally enforceable claim that another will do or not do a given act, a recognized and protected interest the violation of which is wrong[12]. Child Rights therefore are those recognized and protected interests of the child which when violated, a wrong or crime is said to have been committed. The rights of the child could be civil and political such as right to life, privacy, fair trial, freedom of expression, religion, freedom from torture and equality before the law. It could also be social and cultural such as social security, adequate standard of living including adequate food, clothing and housing, protection of the family, the highest attainable standard of physical and mental health education and participation in cultural life[13].

2.4 The Concept of child abuse

The concept of child abuse is devoid of generally accepted definition due to perceptional differences of what is generally acceptable as abuse or not.

The World Health Organization (WHO) defines Child abuse and child maltreatment as “all forms of physical and/or emotional ill-treatment. Sexual abuse,

[11] Oxford Advanced Learner’s Dictionary Op. Cit.
[12] Black’s Law Dictionary Op. Cit.
[13] Ladan M. T. Materials and Cases on International Law, Ahmadu Bello University Press Limited, Zaria 2008, Kaduna State, Nigeria.

neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power[14].

Child abuse is classified into four forms they are:

2.4.1 **Physical Abuse**

This is an intentional use of physical force against the child that results in or has a high likelihood of resulting in harm for the child's health, survival, development or dignity. It includes hitting, beating, kicking, shaking, biting, strangling, scolding, burning, poisoning and suffocating.[15]

2.4.2 **Sexual Abuse**

This is a form of child abuse in which an adult or older adolescent abuses a child for sexual stimulation. It refers to the participation of a child in a sexual act aimed towards the physical gratification or the financial profit of the person committing the act. This could be by asking or pressuring a child to engage in sexual activities (regardless of the outcome).[16]

2.4.3 **Emotional Abuse**

This is also known as verbal abuse, mental abuse or psychological maltreatment. It is defined as "acts or omissions by the parents or other care givers

[14] http//www.en.m.wikipedia.org accessed on the 10/5/2015
[15] National Clearing House on Child Abuse and Neglect Information (2006) available at http//www.vawnet.org accessed on the 11/5/2015.
[16] Ibid

that have caused or could cause serious behavioural cognitive, emotional or mental disorders[17]".

2.4.4 **Neglect**

Child neglect is defined as the failure of a parent or other person with responsibility for the child to provide needed food, clothing, shelter, medical care, or supervision to the degree that the child's health, safety or well-being may be threatened with harm. It is also lack of attention from people surrounding a child and the non-provision of the relevant and adequate necessities for the child's survival, which would be a lacking in attention, love and nurture. Child neglect is accompanied with signs of been absent in school, begging or stealing food or money, lacking medical and dental care, being dirty or lacking sufficient clothing. Neglectual acts can be divided into: supervisory, physical, medical, emotional, educational and abandonment[18].

Child neglect is also associated with some adverse effects or implications such as health and mental implication, educational deprivation, behavioural instability and social implication.

2.4.5 **Child Exploitation**

This can be defined as the act of using a minor child for profit, labour, power, status, sexual gratification, or some other personal or financial advantages. It often results in cruel or harmful treatment of the child, as the activities he or she may be

[17] Ibid
[18] http//www.en.m.wikipedia.org accessed on the 10/5/2015.

found to take part in can cause emotional, physical and social problems. The two fundamental child exploitation are sexual and economic exploitation.[19]

2.5 Juvenile Justice

The concept of juvenile justice in the administration of justice came up in 1943 when the Children and Young Person's Act was enacted. The word juvenile literary means young person who is not and adult.[20] Legally, it means a person who has not reached the age of 18[21], 9th editions. Juvenile justice is aimed at avoiding criminal justice process or criminal sanction.[22] Juvenile justice protects the child against the harsh nature of the normal court in the administration of justice as a result of the immaturity of the child to understand his crime.

2.6 Legitimacy

The concept of legitimacy is paramount in this research having been contained in several laws discussed in the research. Legitimacy literally means the states of a child born by parties that are legally married to each other.[23] Legally, it means the status of a person who is born within a lawful marriage or who acquires that status by later actions of the parents.[24]

[19] Ibid
[20] Oxford Advanced Learner's Dictionary 7th Edition
[21] Black's Law Dictionary 9th Edition
[22] Section 204 CRA
[23] Oxford Advanced Learner's Dictionary Op. Cit.
[24] Black's Law Dictionary Op. Cit.

2.7 The Concept of Deoxyribonucleic Acid (DNA) Test

DNA is a chemical in the cells of animals and plants that carries genetic information.[25] The DNA test is conducted to determine the paternity of an individual under the CRA where there is question of paternity of a child, the test is been resorted to in order to ascertain the real fathers or mother of a child. Under Islamic Law, the proof of paternity is through marriage.

2.8 The Concept of Almajiri System of Education

The word Almajiri is a derivative of Arabic word “Almuhajirum” meaning an emigrant. It usually refers to a person who migrates from the luxury of his home to other places or to a popular teacher in the quest for Islamic knowledge. It is hinged on the Islamic concept of migration which is widely practised especially when acquisition of knowledge at home is either inconvenient or insufficient. Imam Shafi’i, being the greatest proponent of migration, likened it to a precious stone which he said is nothing unless it is mined and transported away from its soil. He summarized everything in 2 verses:

“Emigrate from your home in quest of excellence, and travel, for in travel, there are five benefits: relief from sorrow and earning a livelihood, then the knowledge, good manner and friendship with the famous”

He was born in Gaza and travelled almost the entire middle East and settled finally in Egypt in quest for knowledge. Dan fodio of Sokoto was said to have travelled to Niger to learn from Sheikh Jibril. Students from distant places such as

[25] Oxford Advanced Learner’s Dictionary Op. Cit.

Mali, Cameroun, Chad, central Africa etc still come to Mallams (teachers) in Zaria to acquire Islamic knowledge.

The Almajiri system of education was established as Tsangayaunder the KanemBorno before the colonial period. It was an organized and comprehensive system of education for learning Islamic principles, values jurisprudence and theology; financed by state treasury and state Zakka (tithes) funds under the control of the Emir of the traditional government system existing before the coming of the British Colonialists. The system was also supported by the community, in return of which, the Almajirisrendered some services to the people. They complemented the state by acquiring vocational skills in between their lessons through which many became traders in the commercial cities of the NorthernNigeria such as Kano, Zaria, Sokoto, Borno etc.

Many of theAlmajiris were reoriented by the British after colonization as miners in Jos city. The system also produced judges, clerks, teachers etc and laid elaborate system of administration in Nigeria. According to Fafunwa, there were 6000 Almajiris schools in Northern Nigeria through which writing came to the North first before any other region in Nigeria.

The fall of this system of education came as a result of the invasion of the British in 1904 when they took over the control of the Northern territory. The treasury was taken over, Emirs killed and deposed as a result of their refusal to subject to foreign rule. Those who were subjugated lost control of their territories and accepted their new roles as mere traditional rulers used for indirect rule. The Almajiri education

was denied recognition hence, the abolition of the state funding. Boko which means Western education replaced the system and funded instead. The Arabically learned people of the North were considered illiterates and dispensed with.

With the loss of support from the government and the helpless Emirs, the Almajiri system of education suffered sponsorship which led to its collapse. The responsibility was then taken over by the local scholars who considered it a moral and religious obligation to educate these pupils for the sake of Allah.

Begging, as a norm, did not come up despitelack of fund and increase of pupils in number until later on when poverty increased in level and the care of the pupils became burdensome for the mallam who had no choice but to send the Almajiris out to beg. In order to make ends meet, some of the Mallams began to impose on the Almajiris what is called “kudinSati”, meaning weekly fees for the lessons acquired.

The Almagiris were reassured begging is better than stealing. This makes them enter everywhere to beg and constitute nuisance to the society contrary to the initial practice. An octogenarian who ran over 300 Qur’anicmemories and schools across various states in Nigeria said the Tsangaya system as it is currently run is a corruption of the original[26].

From the above examination of the Almajiri system of education. It is clear that the system has deviated from its initial position as a result of colonial negative interference and poverty. The act of begging by the Almajiri is a practice

[26]http//www.naijainfoman.wordpress.com accessed on the 10/8/2017

occasionedby circumstance and not an Islamic practice or culture as perceived and misconceived by some people.

2.7 The Concept of Culture

Culture which is part of human beings plays a vital role. Hence, the need to put it into consideration when dealing with people in a given society. It is a concept that is of utmost importance in this research.

A new born child lacks behaviour pattern necessary for living in human society. Such a child relies primarily on certain biological drives such as hunger and the charity of its elders to satisfythose drives. In order to survive, the infant has to learn a way of life which is sociologically known as culture[27].

According to Ralph Linton “The culture of a society is the way of life of its members the collection of ideas and habits which they learn, share and transmit from generation to generation.

According to Clyde Kluckhohn, “culture is a design for living held by members of a particular society”. Since man has no instinct to direct his actions, his behaviour must be based on guidelines which are learned. In order for a society to operate effectively, this guidelines must be shared by its members. Without a shared culture, members of society would be unable to communicate and cooperate, and confusion

[27] Haralambos, M. Heald R.M., *Sociology, Themes and Perspectives*, University Tutorial Press Limited, Slough. Great Britain 1980 p 2-3.

and disorder would result. Culture therefore has two essential qualities: firstly, it is learned; secondly it is shared; without culture, there would be no human society[28].

From the above definition, it is obvious that culture is learnt first before any other thing in the life of an individual apart from the innate tendencies which are not learnt. Culture therefore is part and parcel of an individual in a given society which can hardly be done away with. In dealing with human beings therefore, a careful consideration and respect of their culture is imperative without which there is ample possibility of having conflicts.

[28] Ibid

CHAPTERTHREE

AN APPRAISAL OF THE CHILD'S RIGHTS ACT, 2003

The Child's Rights Act,2003 is an outcome of effort made domestically by Nigerian Government to comply with the International and Regional Legal Instruments for the promotion and protection of Child's Rights that is the UN Convention and AUCharter.

The need for the CRA was as a result of some deficiencies inherent in the child's rights related laws in Kaduna State which range from non-coverage of all children in terms of religion and culture, non-specific provisions of rights of the child, non-specification of responsibilities, inadequate protection of the rights and non-availability of bodies or institutions responsible for the promotion and protection of the rights of the child.

The effort to domesticate these legal instruments was first made by the Nigerian chapter of the African Network for the prevention and protection against Child Abuse and Neglect[1] which organized three conferences with the Ministries of Justice, Health and Social Welfare in conjunction with the United Nations Children's Emergency Fund (UNICEF) to produce new draft laws on protecting children in Nigeria which led to the National effort on the domestication of the CRA.[2]

The Nigerian Government signed the United NationsConvention on the Rights of the Child on the 26th day of January,1990 and ratified it on the 19th day of April,

[1] An organization with offices in 22 countries, with Headquarters in Navarra Kenya aimed at protecting children in Africa. Available at http//www.childfinaceinternation.org accessed on 10/8/17

[2] Dankadai L.B. The Legal protection of children against exploitative child labour (2010) BUJPL Vol. 2 No.1 P.111.

1991[3]. At the regional level, Nigeria ratified the African Union Charter on the Rights and Welfare of the Child on the 23rd day of July, 2001[4]. Although the aforementioned legal instruments have a lot of similarities, the African Union Charter on the Rights and Welfare of the Child recognizes cultural heritage historical background and the values of the African Civilization which should inspire and characterize the concept of the rights and Welfare of the Child[5].State parties to the International and Regional Legal Instruments on the rights of the Child are enjoined to implement their various provisions within their respective jurisdictions nationally[6]. Nigeria, being a signatory to these two legal instruments on the rights of the child, is bound to comply with the provisions of the instruments in promoting and protecting the rights of the child.

By virtue of section 12 of the 1999 constitution of the Federal Republic of Nigeria (as amended), for a treaty to get force of law in Nigeria, such a treaty must be enacted into law by the National Assembly of Nigeria.In complying with the constitutional provision therefore, the Nigerian Government took a remarkable step to domesticate these International Instruments as national legislation by setting up of committees to review and modify existing obsolete laws on the rights of the child, to formulate a national frame work for the implementation of the goals of the said international instruments on the rights of the child, to organize various workshops and seminars to sensitize media executive and stakeholders on the rights of the child, to

[3]Ladan M. T, Babaji B. An Appraisal of the Child's Rights Act, 2003 Provisions. A Paper Presented at a Two-Day Consultative/Strategy Meeting on Domestication of the Child's Rights Act, 2003 in Yobe State. Organized by the Yobe State Ministry of Youth and Social Development in Collaboration with UNICEF. Held on 16th-19th December, 2004 at Destination Hotel, Bauchi. (unpublished).
[4] Ibid
[5] Ibid
[6] Ibid

prepare and submit periodic reports on the state of implementation of the provisions of the two international instruments to the federal government[7].

The Bill on the Child's Rights became a subject of National debate at diverse levels with strong media pressure which triggered the positive response from the House of Representatives to consider its representation and revisit the controversial areas such as section 21 – 23 and 31 bothering on the prohibition of child marriage, child betrothal, punishment for violations and prohibition of child hawking which led to the throwing out of the Bill previously.Notwithstanding the controversies, the House of Representatives and the senate passed the Bill into law which came into force after the president assented to the Bill on the 31st day of July, 2003 two weeks subsequent to the date of its submission to him by the clerk of the National Assembly who certified the true copy on the 16th day of July, 2003[8].

3.1 **The Rationale of the CRA.**

Besides the need for compliance by Nigeria as a signatory to the two international legal instruments on the rights of the child, two fundamental considerations, which may be described as the rationale for the Child's Rights Act 2003 were thus identified. The provision of the Fundamental Human Rights under chapter four[9] and Fundamental objectives and directive principles of state policy under chapter two[10] of the Constitution Federal Republic of Nigeria (as amended) are general provisions, hence are not specific rights of the child. Secondly, the various

[7] Babaji B. (2005) Harmonizing The Child's Rights Act, 2003 with Cultural and Religious Values in Nigeria: A Muslim Perspective. *CILS Journal*, Vol. 24, p.16
[8] Ibid at P 17
[9] Section 33-46 CFRN
[10] Section 13-24 Ibid

state Children and Young Persons Laws (or Act (1943) at Federal Level) are emphatic on Juvenile Justice Administration and not child's rights and responsibilities as well as not being in tandem with the two international instruments on the rights of the child in terms of modern conception and principles of Juvenile Justice Administration. Furthermore, similar legislation such as the Labour Act (1974) protects the child from exploitative labour and abuse without adequately covering other forms of exploitation and harmful traditional or cultural practices such as sexual exploitation, female genital mutilation (FGM) and skin marks and tattoo.

From the above, it is glaringly clear that as a result of deficiencies of other laws on the rights of the child in terms of in exhaustive coverage and different age as yardstick of defining a child, there was need to have an all encompassing legislation that would provide for the rights of the child and responsibilities as well as protect the rights with a system of child justice administration adequately because of the vulnerability of the child for better future[11].

3.2 **Structure of the CRA**

The Child's Rights Act 2003 is structurally segmented into 24 parts ranging from best interest of the child to miscellaneous, 11 schedules ranging from financial provision for children to forms in relation to part VI, XX and XXI of the CRA and 278 sections ranging from best interest of a child to be of paramount consideration in all actions to citation.

The provisions of the CRA cover the broad themes of the two international legal instruments on the rights of the child viz, the rights of the Nigerian Child to

[11]Ladan M.T, The Child's Rights Act, 2003 and the Challenges of its Adoption by State Governments in the 19 Northern States. A paper presented at a One-Day Interactive Forum for Sokoto State House of Assembly Legislators. Organized by Sokoto State Ministry of Women Affairs and UNICEF on 23rd July, 2007. p. 6

Survival, Development, protection and participation. The CRA gives support to various legislations that deal with individual aspects of child protection which include the prohibition of street hawking, street begging, child labour and trafficking and other exploitative practices, harmful traditional practices, child marriage and withdrawal of children from schools for commercial purposes or marriage[12].

3.3 Contents of the Child's Rights Act 2003

The CRA contains various provisions aimed at promoting and protecting the rights of the child. Some of the fundamental provisions are examined thus.

3.3.1 The Best Interest of the Child

The Child's Rights Act provisions are predicated on two basic principles under which the CRA operates. These principles are provided under part I of the CRA. The first principle is the Best interest of a child to be of paramount consideration in all actions. The CRA provides: "In every action concerning achild, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority, the best interest of the child shall be primary consideration"[13]. The phrasal expression "the best interest of the child shall be primary consideration" though differently formulated, has the same meaning with the provision of the Matrimonial Cause Act (MCA)[14] which state "shall regard the interest of the children as the paramount consideration" which was interpreted in the case of *Williams vs Williams*[15]. However, the English Children Act of 1989 adopted a different approach, that in deciding what is in the child's interest, the court is directed

[12] Part III of the CRA
[13] Section 1 Ibid
[14] Section 71 (1) MCA
[15] (1987) 2 NWLR (Pt 54) 66

to a check list of factors in subsection (3) intended to structure its decision. But it also includes a so-called 'no order' presumption. This approach is most acceptable because of its consistency in the law. This shows that the concept "best interest of the child is pervasive in all aspect of the application of the CRA.[16] The second principle borders on a Child to be given protection and care necessary for his well-being. The CRA provides:"A child shall be given such protection and care as is necessary for the well-being of the child, taking into account the rights and duties of the child's parents, legal guardians, or other individuals, institutions, services, agencies, organizations, or bodies legally responsible for the child. Every person, institution, service, agency, organization and body responsible for the care or protection of children shall conform with the standards established by the appropriate authorities, particularly in the areas of safety, health, welfare, number and suitability of their staff and competent supervision"[17].

The CRA defines appropriate authority as the state government or any other body having responsibility for the welfare of children looked after by the state government.[18] In terms of implementation, subsection (1) is readily suitable. Whereas subsection (2) which provides for conformity with set standards by the state may have problem where the authorities fail to set best practice standard. It was suggested that best practice standard not tied to any institution and that changes from time to time be adopted[19].

[16] Nwogugu E. I. (*2004). Family Law in Nigeria, Third Edition*. *HEBN Publishers PLC, Ibadan, Nigeria.* P 349
[17] Section 2 (1) (2) CRA
[18] Section 277 Ibid
[19] Nwogugu E. I. OP Cit at P 350

The above guiding principles are laid for smooth and proper implementation and enforcement of the child's rights by all individuals and bodies concerned with any matter regarding the interest of the child. Such as courts in making decisions, administrative authorities, schools, homes, civil societies etc[20].

3.3.2 **Rights of the Child**

The main purpose of enacting the CRA was to statutorily outline those recognized interests of the child in order to promote and protect them. The CRA therefore provides for certain rights of the child which are the most fundamental of all the provisions. The other provisions of the CRA are intended to help promote and protect the enshrined rights. The rights of the child provided under the CRA are examined thus:

(i) Application of Chapter IV of the CFRN. The CRA provides:"The provisions in chapter IV of the Constitution of the Federal Republic of Nigeria 1999, or any successive constitutional provision relating to Fundamental Rights shall apply as if those provisions are expressly stated in this Act[21]. This means the child enjoys the Fundamental Rights guaranteed under the Constitution apart from the specific rights guaranteed under the CRA. The CRA provides specific rights of the child thus: "in addition to the right guaranteed under chapter IV of the Constitution of Federal Republic of Nigeria 1999, or under any successive constitutional provisions, every

[20] Federal Ministry of Women Affairs FMWA: Nigeria's Initial and First Country Periodic Report on Implementation of the African Union (AU) Charter on the Rights and Welfare of the Child, FMWA Child Development , Abuja (2006) P 1.
[21] Section 3 CRA

child has the rights set out in this part of the Act[22]. The additional or specific rights under the CRA, though some are repetitions of those in the Constitution[23] are thus.

(ii) Right to survival and Development

The CRA provides for the right of the child to survival and development thus:

"Every child has a right to survival and development"[24]. This means the child has right to life as under the Constitution. The taking of the child's life is therefore an offence punishable.

(iii) Right to Name

The child is entitled to be given name under the CRA which states:

(1) Every child has a right to a name and accordingly, shall be given a name on his birth or on such other date as dictated by the culture of his parents or guardian.

(2) The birth of every child shall be registered in accordance with the provisions of the birth, death, etc. (Compulsory Registration) Act, 1992[25].

The right to name is simply aimed at giving a child a name with which he or she is to be addressed.

(iv) Freedom of Association and peaceful assembly

The CRA provides the child with freedom of association and assembly by stating:

[22] Section 3 (2) Ibid
[23] Seven out of fifteen of the Rights are repetitions of the Rights under the Constitution.
[24] Section 4 CRA
[25] Section 5 Ibid.

"Every child has a right to freedom of association and peaceful assembly in conformity with the law and in accordance with the necessary guidance and directions of his parents or guardians"[26].

This gives the child right to associate and peaceful assembly which means the association and assembly of the child should not be that which is capable of violating law and order or peace of the society. Being mentally and physically vulnerable, the freedom should be guided and directed by parents or guardians.

(v) Freedom of Thought, Conscience and Religion

The CRA provides:

"Every child has a right to freedom of thought, conscience and religion" under this provision, parents and legal guardians are to guide and direct the exercise of this right[27].

Here the child is allowed to practice religion under the guide and directive of parents and legal guardians. By implication, the religion of the parents or Legal guardian are supposed to be the religion of the child for them to be able to guide and direct the child religiously pending when the child attains majority to decide for himself which religion he/she likes without been guided and directed.

(vi) Right to private and family life:

This right is provided under the CRA thus:

[26] Section 6 Ibid.
[27] Section 7 Ibid.

"Every child is entitled to his privacy, family life, home, correspondence, telephone conversation and telegraphic communication, except as provided in subsection (3) of this section. The said subsection (3) guarantees the parents or legal guardian to supervise and control the conduct of the child in the exercise of this right[28].

This right is actually not supposed to be for a child, this is because the meaning of privacy, family life and home here are ambiguous and would be more attributed to an adult and the control over correspondence, telephone etc is more or less difficult to have.

(vii) Right to freedom of movement

The CRA states:

"Every child is entitled to freedom of movement subject to parental control which is not harmful to the child".

Sub-section (2) of this section gives the parents or guardians the right to control the movement of the child[29].

There is no Specification of a movement which is harmful or not, the harmfulness of some movements cannot be foreseen, parents may restrict a movement that may seem not harmful to the child and there might be a denial of the child's right to movement. Parents and guardians naturally monitor the movement of their children or wards to avoid obvious harms or likely harms.

(viii) Right to freedom from discrimination:

[28] Section 8 Ibid.
[29] Section 9 Ibid.

A child is not to be discriminated against on any basis under this provision of the CRA. It States:

(1) A child shall not be subjected to any form of discrimination merely by reason of his belonging to a particular community or ethnic group or by reason of his place of origin, sex, religion or political opinion.

(2) No child shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth[30].

Under this provisions, a male and female child as well as illegitimate child and legitimate child have the same right and irrespective of their religions among others.

(ix) Right to dignity of the child

The CRA provides:-

"Every child is entitled to respect for the dignity of his person, and accordingly, no child shall be:-

(a) Subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse;

(b) Subjected to torture, inhumane or degrading treatment or punishment;

(c) Subjected to attacks upon his honour or reputation; or

(d) Held in slavery or servitude, while in the care of parent, legal guardian or school authority or any other person or authority having the care of the child[31].

This right covers all forms of child abuses.

[30] Section 10 Ibid.
[31] Section 11 Ibid.

(x) Right to Leisure, recreation and cultural activities:

The CRA states:

"Every child is entitled to rest and leisure and to engage in play, sport and recreational activities appropriate to his age".

The child under subsection (2) and (3) of this section is entitled to cultural participation and allowed by parents, government, agencies etc to enjoy these rights[32].This right is without the control of parents or guardians and its limit is only to that of age without other situations that may prevail over the leisure of the child.

(xi) Right to health and health services

The CRA provides:

"Every child is entitled to enjoy the best attainable state of physical, mental and spiritual health".

The government is responsible for the provision of this health service under subsection (3), parent also have role to play in ensuring the enjoyment of this right by the child under subsection (4) and (5). Failure by parents to observe their roles attracts penalty by the court under subsection (6)[33].

[32] Section 12 Ibid.
[33] Section 13 Ibid.

(xii) Right to Parental care, protection and maintenance

This right is provided under the CRA thus:

Every child has a right to parental care and protection, and accordingly, no child shall be separated from his parents against the wish of the child.

The said right is guaranteed with exception in case of educational purpose and individual process. The child also has right to maintenance by his parents or guardian according to their means. The child in appropriate circumstances can inforce his right in the family court[34].

This right is natural because parents are responsible for the care, protection and maintenance of their children with or without law regarding to that should there be means.

(xiii) Right of the child to free, compulsory and universal primary education, etc.

The CRA provides:

Every child has the right to free, compulsory and universal basic education and it shall be the duty of the Government in Nigeria to provide such education.

Parents are enjoined to ensure completion of primary education and junior secondary education and sending the child to senior secondary school or encouraged to learn trade etc[35].

(xix) Right of a child in need of special protection measure:

[34] Section 14 Ibid.
[35] Section 15 Ibid.

The CRA provides:

> Every child who is in need of special protection measures has the right to such measure of protection as is appropriate to his physical, social, economical, emotional and mental needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the affairs of the community.

Other persons, authority, body or institutions with responsibility for the care of child are enjoined to provide such assistance for the education, training, preparation for employment etc for the development of the child[36].

Such children are said to be more vulnerable due to lack of parental care which might be due to death of the parents or irresponsible nature of the parents.

(xx) Right of Unborn Child to protection against harm, etc.

The unborn child is provided with protection against harm under the CRA thus:

> A child may bring an action for damages against a person for harm or injury caused to the child willfully, recklessly, negligently or through neglect before, during or after the birth of the child. The child is entitled to the estate of deceased father or mother if the child was conceived during the life time of the father or the mother dies before the delivery of the child[37].

Action against such harms must be aided by parents who know what might have happened to the unborn child and the person responsible if different from the parents.

[36] Section 16 Ibid.
[37] Section 17 Ibid.

(xxi) Contractual Right of a child

In the case of contract, the CRA provides:

“No child shall enter into a contract, except as provided in this section”.

A contract interred into by a child except that of necessaries, such a contract is void and no action shall be brought against the child after attaining majority.Same goes for contract for loan which is void despite his agreement to pay so far it relates to money payable in respect of the loan[38].

Section 4 of the CRA provides for right to survival and development thus “Every child has right to survival and development”. The right to survival and development provided under the CRA is similar to right to life provided under the Constitution which prohibits the taking of life of an individual unless under due process of the law in exceptional cases of and adult offender[39].

The right to survival and development of a child cannot be enjoyed without two significant rights of health and health services and free, compulsory and universal education. The CRA provides thus: “Every child is entitled to enjoy the best attainable state of physical, mental and spiritual health”. The government and other constituents of a child are to provide for the child the best attainable health[40]. The government is further enjoined to ensure reduction of infant and child mortality rate, provision of necessary medical assistance and health care services, provision of adequate nutrition and safe drinking water, good environmental hygiene, combat

[38] Section 18 Ibid.
[39] Section 33 CFRN
[40] Section 13 (3)(4)(5) CRA

diseases and malnutrition, appropriate health care for expectant and nursing mother, support the mobilization of resources technically or financially in the development of primary health care for children. Parent or custodian of a child under the age of two years should ensure the immunization of the child. Failure to observe the imposed duty is an offence and attracts punishments. The right to health and health services is very essential because without health there is risk of survival and proper development of the child physically and even mentally.The right of the child to free, compulsory and universal primary education etc is very essential in terms of educational and economic development of the child. The CRA provides thus: "Every child has the right to free, compulsory and universal basic education and it shall be the duty of the government in Nigeria to provide such education[41]. Parent or guardian is enjoined to ensure that his child or ward attends and completes his primary school education and Junior Secondary School education and shall further endeavour to send the child to senior secondary school or encouraged to learn an appropriate trade. Failure of a parent, or custodian of a child to observe the imposed duty is an offence and upon conviction attracts punishment[42]. The twin rights to health and health services and free, compulsory and universal primary education are fundamental in the early development of the child. When the said rights are denied, other rights would be rendered in effective, hence the bulk of the responsibilities to promote these rights is on the government.

[41] Section 15 (1) (2) (3) Ibid
[42] Section 16 (6) Ibid

For every right there is corresponding responsibility. The CRA provides for responsibilities to be shouldered by the child as well as the parents of the child for the actualization of the promotion and protection of the child's rights thus:

3.3.3 **Responsibilities of the Child**

The CRA provides "Every child has responsibilities towards his family and society, the Federal Republic of Nigeria and other legally recognized communities, nationally and internationally". The CRA further provides that

> a child, subject to his age and ability and such other limitations as may be contained in this Act and any other law, to work towards the cohesion of his family and community, respect his parents, superior and elders at all times and assist them in case of need, serve the Federal Republic of Nigeria by planning his physical and intellectual abilities at his service, contribute to the moral well-being of society, preserve and strengthen the independence and integrity humaneness, honesty and justice for all persons; relate with other member of the society, with different cultural values, in the spirit of tolerance, dialogue and consultation; contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of Nigeria, Africa and World Unity; and contribute to the best of his abilities, at all times and at all levels, to the solidarity of the African people and human race.[43]

The responsibilities of the child enumerated under this section cannot be easily observed by the child without a sanction attached to those responsibilities as a discipline in case of failure by the child to observe the responsibilities. The child is left free to decide whether to observe those responsibilities or not and the likelihood of choosing not to observe is high.

[43] Section 19 (1) (2) Ibid

3.3.4 **Responsibilities of the Parent**

The parent being the closest to the child right from birth and other custodians of the child are saddled with some responsibilities with respect to child's rights. The CRA provides:

> Every parent, guardian, institution, person and authority responsible for the care, maintenance, up-bringing, education, training, socialization, employment and rehabilitation of child has the duty to provide the necessary guidance, discipline, education and training for the child in his or its care such as will equip the child to secure his assimilation, appreciation and observance of the responsibilities set out in this part of the Act[44].

It could be seen that apart from the responsibilities of the parents provided along with that of the child, parent and other bodies responsible for the care of a child have duties to perform most especially on the provision of health and health services and education for the child, failure of which attracts punishment. However, in the case of the child, there is no sanction or punishment prescribed in case of failure to observe his responsibilities. The CRA enjoins the parent or bodies responsible for the care of the child to, as a duty, provide the necessary guidance, discipline, education and training for the child in his or its care but on the other hand prohibits corporal punishment of the child[45] without prescribing any form of punishment. Discipline can hardly be effective without punishment most especially in terms of moral behaviours.

The bulk of responsibilities rest on the government at all levels[46] apart from that of the child and the parent or other bodies responsible for the care of the child in

[44] Section 20 Ibid
[45] Section 11 Ibid

promoting and protecting the rights of the child. It is the duty of the government to provide health and health services for the child, free, compulsory and universal education which are key to the survival and development of the child, setting up of implementation committees at various levels, bodies and agencies for the implementation and enforcement of child's rights, establishment of Family Court and financial support for the promotion and protection of the rights of the childthrough various bodies and agencies. It is obvious that part II of the CRA is fundamental; this is because it has created a sort of synergy in terms of duties and responsibilities to ensure the promotion and protection of the rights of the children between parents, bodies and government at all times; parents, bodies and Non-Governmental Organizations such as child minding and daycare centre and government at all levels etc[47].

3.3.5 **Protection of the Rights of the Child.**

While the CRA provides for the Rights of the Child, it goes further toprovide for the protection of the said rights in order for the child to fully enjoy the guaranteed rights. The most controversial of these protections is the prohibition of child marriage and child betrothal which the CRA provides: "No person under the age of 18 years is capable of contracting a valid marriage, and accordingly, a marriage so contracted is null and void of no effect whatsoever". As regards betrothal the CRA provides: "No parent, guardian or any other person shall betroth a child to any person. A betrothal in contravention of subsection (i) of this section is null and void". The CRA prescribes

[46] Ladan M. T. and Babaji B. Op. Cit. P.8
[47] Ibid

punishment for child marriage and betrothal thus: “A person who marries a child; or to whom a child is betrothed; or who promotes the marriage of a child; or who betroths a child, commits an offence and is liable on conviction to a fine of N500,000.00 or imprisonment for a term of five years or both such fine and imprisonment. Other protections with various punishments of fine and imprisonments are the prohibitions of: tattoos and skin marks, exposure to use, production and trafficking of narcotic drugs, etc, use of children in other criminal activities; abduction, removal and transfer from lawful custody; exploitative labour; buying, selling, hawking or otherwise dealing in children for the purpose of hawking or begging for alms or prostitution, etc, unlawful sexual intercourse with a child etc; other forms of sexual abuse and exploitation; recruitment into armed forces and harmful publication[48].

Part IV of the CRA provides for additional child protection through civil and welfare proceedings in which the appropriate courts are vested with powers upon application to it by government or any authority for the assessment of the child’s condition regarding the state of his rights, this includes power to make emergency protection orders, for the protection of the child. Other issues to be considered under the emergency protection order are: duration of emergency protection orders etc, children taken into police protection in case of emergency, duty of state government to investigate in order to take action to safeguard or promote the welfare of the child found to be subject of an emergency protection order. Other protections are to adopted children in care, etc and children at risk of harm.[49]

[48] Section 21-36 Ibid
[49] Section 41-48 Ibid

Protection of rights of the child under the CRA is the most controversial provision with some conflicting areas such as the prohibition of child marriage, child betrothal, tattoo and skin marks, hawking or begging. These areas of conflict contribute to the challenges militating against the acceptance and domestication of the CRA among others which are examined in the subsequent chapter under challenges.

3.3.6 Children in Need of Care and Protection

Under part V[50] of the CRA, certain category of people such as a child development officer, a police officer or any other person authorized by the Ministry saddled with responsibility for matters relating to children to bring a child before the Family Court if he has reasonable grounds for believing that the child: is an orphan or is deserted by his relative; has been neglected,ill-treated or battered by the person having care and custody of the child; has a parent or guardian who does not exercise proper guidance and control over the child; if found destitute, has both parents or his surviving parent, undergoing imprisonment or mentally disordered or otherwise severely incapacitated; is under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child; is the daughter of a father who has been convicted of the offence of defilement or indecent treatment of any of his daughters; is found wandering or has no home or settled place of abode, is on the street or other public place, or has no visible means of subsistence is found begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise is found in any street, premises or place for the purpose of so begging or receiving alms; accompanies any person

[50] Section 50-52 Ibid

when that person is begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise; frequents the company of reputed thief or common or reputed prostitute; is lodging or residing in a house or the part of a house used by a prostitute for the purpose of prostitution, or is otherwise living in circumstances calculated to cause, encourage or favour the seduction or prostitution of the child; is a child in relation to whom an offence against morality has been committed or attempted; is otherwise exposed to moral or physical danger; is otherwise in need of care, protection or control; or is beyond the control of his parents or guardians[51].

Regarding the frequenting of a reputed prostitute by the child, if the prostitute is the mother of the child and it is proved that the mother exercises proper guidance and due care to protect the child from moral danger such a child does not fall in the category of children in need of care and protection. As regards exposure to moral danger, the fact that a child found destitute or wandering, without any settled place of abode and without visible means of subsistence; begging or receiving alms by any means; loitering for the purpose of begging or receiving alms; hawking or street trading or living in the street, under bridges in market places, in motor parks or in other public places is considered exposed to moral danger[52].

The circumstances in which a child is found must be that which amount to a child being in need of care. The provision of Section 33(1) of the Children and Young Persons Law of Western Nigeria which is similar to Section 51 of the CRA was considered in the case of the *Federal Military Governmentvsthe*

[51] Section 50 (1) Ibid
[52] Section 50 (4) (5) Ibid

ProbationOfficer&Others, Exparte Ijahe[53] where the probation officer brought a motion under Section 33(1) for an order to commit to the care of a fit person the six children of the second defendant, Mrs. Agnes Ijahe and the husband. The complaint by the wife was that after she gave birth to the fifth female child, her husband deserted her for another woman and also neglected to maintain the family. BeghoCJ, held that no evidence was adduced to prove that the children were in fact in need of care and protection because they had and were under the care of their mother. It was held that to initiate proceeding under Section 33(1), the probation officer must show by affidavit the circumstance in which he found the children which gave him reasonable grounds to believe that they were in need of care and protection as a result of the failure of the parent or guardian to exercise proper guardianship. It was held in the case of the *Head of the Federal Military Government vs Warri Juvenile Court, Exparte Sake*[54] the law applies to all children irrespective of type of marriage and circumstances of birth. If the court is satisfied that the child needs care and protection, it can take a step by making order or orders for the care of the child by parents, guardian or institution[55].

Although the categories of the children mentioned in this part of the CRA as children in need of care and protection could be found anywhere in Nigeria they are more significantly found in the Northern States among which Kaduna is one. While in the North some of those categories could be found among different tribes and religions, the most affected children are those of Hausa/Fulani by tribes and the Muslims by religion. This provision therefore has serious socio-cultural and religious

[53] (1978) 3 ECSLR 887
[54] (1973) 3 LRN 208
[55] Section 50 (3) CRA

consequences on Nigerian Muslims particularly due to prevalence of children virtually in all streets and public places in Northern States known and called 'Almajirai' meaning disciples or scholars of Islamic religion, who on their own or accompanying adult or elderly person and or destitute. It has been suggested that for this provision to be effective the socio-economic inbalances in the country must be addressed by the government and also the creation of sustainable rehabilitation centres for those destitute, for them to be adequately taken care of.[56]

3.3.7 Care and Supervision of Children

The CRA under part VI sets up a mechanism for the Care and Supervision of Children.The CRA provides that a Family Court may on the application of a State Government, or the appropriate authority or any authorized persons, make a care order or supervision order placing a child below 18 years of age in the care or supervision of designated person if it is satisfied that the care given or likely to be given to him is not what a parent would reasonably be expected to give to the child or he is beyond parental control[57]. Application for care or supervision order may be made on its own or in any other family proceedings and can be made by the court discretionarily. Appropriate State Government is to be consulted before making application for care supervision order[58].Application for order under this part must be disposed of by the Court without delay

Effects of care order are providedalso authorizing State Government or appropriate authority to receive the child into its care, the government is vested with parental responsibility, conferred with power to determine the extent to which a

[56]Ladan M. T, Babaji B. OP cit at P 9
[57] Section 53 (1) (2) CRA
[58] Section 53 (4) (5) (6) Ibid

parent or guardian may meet his parental responsibility for the child among others.The court may also make financial relief order in favour of the child, parental contact with the children in care[59], education supervision order of the child has also been given priority due to significance of education in the development of the child, general power of the court in respect of care and supervision orders, interim careand supervision order, discharge and variation of care order and supervision orderand orders pending appeal in cases relating to care or supervision orders[60].

3.3.8 **Provisions for Use of Scientific Test in Determining Paternity or Maternity of a Child.**

Part VIII of the CRA is concerned with the use of scientific test in determining the paternity and or maternity of the child.This provision affects the judicial and evidential system operating in Nigeria.[61]It provides that

> in any civil proceedings in which the paternity or maternity of a person falls to be determined by the court hearing the proceedings, the court may, on an application by party to the proceedings, give a direction for:-
>
> (a) The use of scientific test, including blood test and Deoxyribonucleic Acid Test, to ascertain whether the tests show that a party to the proceedings is or is not the father or mother of that person; and
>
> (b) for the taking within a period to be specified in the direction, of blood or other samples from that person, the mother of that person, the father of that person and any other party alleged to be the father or mother of that person or from any two of those persons.

[59] Section 54-56 Ibid
[60] Section 58-62 Ibid
[61] Ladan M.T. and Babaji B. Op. Cit. P.10

The CRA empowers the court to discretionarily revoke or vary a direction previously given by it under subsection (1) of this section[62]. The person to carry out the tests must be specified where application is made. The court shall also specify the person who is to carry out the test, however with exception where necessary and the person carrying out the test shall state the result of the tests and indicate whether or not the person is the father or mother of the child in question and the report shall be received by the court as evidence. The consent of the person whose sample is to be taken shall be given before taking the sample, the consent of a 16 years child is valid in the case of taking his sample but under 16 years child must be consented by the custodian of the child and in case the child is mentally unfit. The Minister is empowered to provide for manner of giving effect to direction for use of scientific tests. In case of failure to comply with the directions of scientific tests, the court may adjourn the hearing for such period as it thinks fit to enable the party comply. If the party fails at the end of the period given, his claim for relief will be dismissed notwithstanding the absence of evidence to rebut the presumption. Impersonation for the purpose of providing scientific sample is sanctioned with a fine not exceeding ten thousand Naira N10,000.00 or imprisonment for a term not exceeding one year or to both such fine and imprisonment[63].

The use of scientific test in determining paternity or maternity of a child is another area of conflict with Islamic law which is discussed in detail in the subsequence chapter under challenges. Therefore the implication to Muslims is negative, because in Islam, there are ways of determining paternity which is through

[62] Section 63(1) (2) Ibid
[63] Section 63-67 Ibid

marriage unless in special circumstances, otherwise other means cannot be accepted as can be seen in further discussion.

3.3.9 Possession and Custody, Guardianship,Fostering of Children and Adoption

Under part VIII of the CRA, provisions are made for Possession and Custody of Children. Matters provided under this part are also provided under Islamic Law.[64] It essentially deals with acquisition of parental responsibilities and also the role of the court in making order as regards the custody of the child based on the principle of best interest of the child. The provisions of this part of CRA recognize the family of a child whether married or not as the primary unit responsible for the protection of the child. The CRA provides:

> Where the father and mother of a child were not married to each other at the time of the birth of the child:-
> (a) The Family Court established under Section 153 of this Act may:-
> (i) On the application of the father, order that he shall have parental responsibilities for the child; or
> (ii) On the application of the mother, order that she shall have parental responsibilitiesfor the child; or
> (iii) The father and mother by agreement have joint parental responsibilities for the child.

Agreement is to conform with the regulation of the Chief Justice of Nigeria for it to be effective and may only be brought to an end by the court on an application by person with parental responsibility or the child if the child has sufficient understanding to make the application[65]. The court is empowered to make order in respect to custody or rights of access to child having regard to the welfare of the child and conduct of the parent and the wishes of the both parents, alter, vary or discharge an

[64] Ladan M.T. and Babaji B. Op. Cit.
[65] Section 68 (1)(2) (3) (4) Ibid

order after the death of the father or mother of the child[66]. The court in making order, shall have regard to conduct of the parent and also has power to consult child wishes, child religious education.[67] Acquisition of custody, etc; of child for the purpose of dealing in the child is prohibited and sanctioned[68].

The CRA provides for the guardianship of the child under part IX[70]. Under this part, the person appointed as a guardian shall have parental responsibility with exception as provided under Section 69 of the CRA that is the power of the court to alter, vary or discharge an order for custody and under Section 90 which is also on application for variation or discharge of order for custody[69]. Both parents are to be guardian of the child, in case of death of a parent, the other is to be the guardian. Where both parents are unfit, a family member can apply to be a guardian jointly or severally. A surviving parent or single parent mayby deed appoint a guardian for the child in case of death. The court may make order for guardianship taking into consideration the status of the child with the consent of the person to be appointed as guardian and may also revoke guardianship where the natural parent appears. A guardian has power over the estate of the child[70]. The court may appoint a guardian ad litem in accordance with the rules of the court, in case of absence of guardian ad litem, a legal practitioner can be appointed to represent the child, parents of the person to be appointed guardian ad litem may be established by the Minister with regard to constitution, administration and procedures of the parents etc. The guardian ad litem has access to record held by the government with respect to the

[66] Section 69 Ibid
[67] Section 73-76 Ibid
[68] Section 80 and 81 Ibid
[69] Section 82 (1) (2) Ibid
[70] Section 83-87 Ibid

child concerned. The order and jurisdiction of the court regarding custody of the child are saved[71].

Under part X of the CRA, provisions for wardship of the child are made vesting the court with jurisdiction to make a child a ward of the court through application for an order to make a child a ward who may cease to be a ward of court either through application or decision of the court. As regards the maintenance of the ward of court, the court may make an order requiring either parent of the ward to pay to the order parent or both parents to pay to any other person having the care of the ward such periodic maintenance sum based on the means of the person making the payment. The care of the ward may be committed to an appropriate authority by the court should the present of the ward with either of his parents or any other person be impracticable and the court may also order for proper proceedings to be taken in the court at High Court Level for making the child a ward of court in case of matrimonial matter. Where application for wardship is inconsistent with the court process as contained in the Third Schedule of the CRA, the application shall be dismissed instantly[72].

Part XI of the CRA deals with the fostering of a child. It provides that a person may foster child by making application to the court with jurisdiction according to prescribed rules[73]. The categories of child to be fostered are: child abandoned by parents, an orphan who is deserted by relatives or voluntarily prevented by his relatives for that purpose, or voluntarily presents himself for fostering, where no relatives can be found, abused, neglected or ill-treated by the person to care for him,

[71] Section 89-92 Ibid
[72] Section 93-98 Ibid
[73] Section 100 (1) (2) Ibid

has a parent or guardian who takes proper guidance over the child, found destitute, found wandering has no home or settled place of abode. On the street or public place or has no visible means of subsistence or voluntarily presented by parents.The court may make an order for fostering of a child upon application being made by a person or husband and wife jointly to foster children not exceeding three unless exceptional circumstances are shown. As to restrictions on making of fostering order, the court shall not make order unless the applicant or applicants in case of joint application is not less than twenty-five years and at least twenty-one years older than the child to be fostered, the applicant and the child are in the same state, the applicant is a citizen of Nigeria, has the means of maintaining the child, is a person of unquestionable integrity; and certified by a medical officer to be fit physically and mentally. As to sole applicant, the person must be thirty-five years and of the same sex with the child.

The consent of other spouse in case of married applicant in writing is compulsory and also the consent of other person apart from parents or relatives with rights and obligation under an order of court, agreement or customary law is also compulsory. However, such consent may be dispensed with where the person whose consent is required is irresponsible, incapacitated or unreasonably withholding the consent[74]. The interim order to be made by court in case of child fostering among others are; the child shall be under the supervision of an officer, not to be taken out of state without court's consent. The rules of court are to be made by Chief Justice of Nigeria such as holding of proceedings in camera, restricting jurisdiction of other courts, admission of documentary evidence etc. Appeal in respect of fostering of child

[74] Section 101-105 Ibid

lie to the court at High Court Level from the court at the Magistrate Level. As to rights and duties of foster parents, the fostered child is in the position of a child born by the foster parents in terms of custody, maintenance and education. Fostering order can be revoked where foster parents has abandoned, neglected or ill-treated the child.

Person is prohibited from; receiving money or reward as inducement to foster a child, taking sending fostered child out of state or Nigeria, withdrawal of a child from the care of the applicant marrying a fostered child. A child can be fostered privately when his welfare is ensured by the government. The government through the Minister can disqualify a person from fostering a child privately and also the government has power to prohibit private fostering. Offences such as failure to give notice and information within specified time,refusing a child fostered privately to visit, obstruction of another person to exercisepower etc are punishable with fines and prison terms[75].

Adoption of children is another fundamental area of the CRA. Part XII of the CRA provides for the regulation of adoption of children and other related issues of adoption. The CRA provides for establishment of adoption services, etc where it states:

> Every State Government shall, for the purpose of adoption, establish and maintain within the state and, in the case of Federal Government within the Federal Capital Territory, Abuja, a service designated to meet the needs of:-
> (a) a child who has been or may be adopted;
> (b) parents and guardians of the child specified in paragraph (a) of this subsection;
> (c). Persons who have adopted or who may adopt a child, and for this purpose, every government shall provide the requisite facilities or ensure that the

[75] Section 107-124 Ibid

> facilities are provided by approved adoption services as may be prescribed by theappropriate authority[76].

The CRA provides how an application for adoption of child shall be made which is to be in such form as may be prescribed which shall be accompanied with some specified documents and other requirements by the court. The court, upon application being made, goes into investigation on the suitability of the applicant for the purpose of safeguarding the interest of the child to be adopted and also his religious upbringing.

As to who may be adopted, the CRA provides that the parents or guardian of the child must have consented to the adoption or the child is abandoned, neglected or persistently abused or ill-treated, and there are compelling reasons in the interest of the child why he should be adopted. The person who may adopt under the CRA are: a married couple of age of twenty-five authorized to jointly adopt a child, a married person with the consent of the other spouse, a single person of thirty-five years and of the same sex with the child to be adopted. The above mentioned must be suitable, the court is empowered to make an adoption order if satisfied with the requirements such as age, residence, citizenship of Nigeria etc and required consent of appropriate persons and imposition of terms and conditions. The court also has exclusive jurisdiction to deal with application for adoption and also make rules for adoption of a child[77].

On the effect of adoption, the CRA provides:

> There shall vest in, and exercisable by and enforceable against the adopter all rights, duties

[76] Section 125 Ibid
[77] Section 126 (1)-136 Ibid

> obligations and liabilities in respect of the future custody, maintenance, supervision and education of the child, and all rights to appoint a guardian and to consent to give notice of dissent to marriage of the child, as would vest in the adopter as if the child were a natural child of the adopter, and in respect of those matters, the child shall stand to the adopter in the relationship of a child born to the adopter.

The status of the adopter on an adoption order being made by the court replaces that of the parents or guardians of the child. As regards property on the intestacy of the adopter, the CRA provides "For the purpose of the devolution of the property on the intestacy of the adopter, an adopted child shall be treated as a child born to the adopter". In respect of reference made in disposition of property made after the date of an adoption order to child or children of the adopter, the adopted child is inclusive except there is contrary intention[78]. The adopted parent is prohibited from marrying the adopted child[79].

Based on the provision of the CRA, upon adoption, the adopted child assumes the right of naturally born child of the adopter including inheritance of property of the adopter in case of death unlike fostering of the child which is restricted to custody, maintenance and education.

Adoption is not allowed in Islam the provision for adoption under the CRA has generated negative response from stakeholders most especially the Muslims. This is because Islam has prohibited adoption. The provision is further analysed in the subsequent chapter under challenges.

[78] Section 141 (1) (3) (4) Ibid
[79] Section 147 Ibid

3.3.10 Establishment of Family Court, Other Institutions and Homes for Child care

The rights of the child cannot be promoted and protected effectively without enforcement. Hence, the establishment of Family Court by the CRA as a judicial enforcement mechanismof child's rights so as to provide judicial remedy for the child in case of any violation of the guaranteed rights of the child. The proceedings in the Court must be conducive in the best interest of the child.[80]

The CRA under part XIII provides establishment of Family Court thus: "There shall be established for each state of the federation and the Federal Capital Territory Abuja, a court to be known as the Family Court (in this Act referred to as "the Court") for the purpose of hearing and determining matters relating to children. The court shall have two levels, viz the court as a division of the High Court at the High Court level and the court as a Magistrate Court at the Magistrate level. As to the jurisdiction of the court, the CRA provides;

> The Family Court shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim in respect of a child is in issue and any criminal proceeding involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, againsta child or against the interest of the child[81]

The court is further provided with exclusive jurisdiction in any matter relating to children[82].

[80] Ladan M.T. and Babaji B. Op. CIt. P.12
[81] Section 149-151 (1) Ibid
[82] Section 162 Ibid

The unlimited jurisdiction of the family court is a serious constitutional problem, because the provision is inconsistent with the provision of the Constitution vesting the Sharia court of Appeal with jurisdiction on Islamic personal law. This is another area of conflict in the CRA that generates controversy and opposition from Muslims. Lawyers and Judges respond to the issue of unlimited and exclusive jurisdiction of the Family Court in different ways as discussed in subsequent chapter under challenges and analyzed in tables under appendix.

As regards composition of the court, such number of judges and assessors who shall be officers not below the rank of Chief Child Development Officer at the High Court of states and Federal Capital Territory for effective performance, to be appointed by Chief Judge of the state and Federal Capital Territory respectively. The court is duly constituted with a Judge and two assessors, one with knowledge in child psychology education with the power to deal with matters relating to enforcement of child's rights, offence punishable with death or imprisonment for a term of ten years and a claim of fifty thousand and above, divorce and custody of the child, and appeals from Magistrate level[83]. At the Magistrate level, such number of Magistrate and assessors not below the rank of Senior Child Development Officer appointed by Chief Judge of the state and Federal Capital Territory. The court is duly constituted with a Magistrate and two assessors, one, a woman and the other, preferably in the area of child psychology education, with power to try offences and all matters not specifically assigned to the court at the High Court level. The exclusive jurisdiction of the court does not affect the jurisdiction of normal Criminal Court in case of adult

[83] Section 152 (1) (2) (3) (4) (5) Ibid

offenders[84] .Other features of the Family Court include professionalization and training of Court Personnel, right of the child to counsel, exclusion of person from attending court, prohibition of publication of child's name etc, proceeding to be in the interest of the child, attendance of parents, guardians of child at the hearing in the court etc[85].Care must be taken in dealing with case relating to children by the court established under the CRA in order to avoid conflicts of jurisdiction with some existing constitutionally established and recongnized court vested with similar jurisdiction to deal with child related matters. For instance, the Shariah Court of Appeal jurisdiction under section 277 of the Constitution.[86]

Other institutions and homes for child's care and management are dealt with under part XIV--IX of the CRA such as: Child minding and daycare of young children which provides for registration, etc of child minding and daycare centres by state governments, conditions to be complied with by child minders such as registration of child minders, proper maintenance of premises, records of persons assisting in looking after the child among others; Condition to be complied with by persons providing daycare, cancelation of registration of a child minder, protection of children in emergency cases of cancelation of registration etc, power of State Government to inspect premises etc, giving of application notice by the state government of intended actions[87]. State Government support for children through provision of services for children in need etc, daycare for pre-school children, review of provisions for

[84] Section 153(1) (2) (3) (4) Ibid
[85] Section 154-161 Ibid
[86] Ladan M.T. and Babaji B. Op. Cit. P.12
[87] Section 163-169 Ibid

daycare, child minding, etc, provision of accommodation for children generally and those in police protection, detention or remand etc, among others[88]

Voluntary homes and organizations are provided under the CRA which provides accommodation for children, such homes are registered and the organizations have specified duties such as safeguarding the welfare of the child along with the duties of the State Government among which is to arrange for children accommodated within its state to be visited. Children homes are to be registered and the welfare of the children in such homes must be ensured. A person disqualified from fostering a child is disqualified from managing or being employed in children's homes unless fact of disqualification has been disclosed to the responsible authority or written consent obtained from the authority[89].

The Minister has supervisory functions and responsibilities by causing the inspection of children's homes and premises by authorized persons, enquiring of the functions of the supervisory inspection service in the state, he may direct inquiry to be had in camera and provide financial support, conduct research and returns of information and also has power to declare State Government to be in default[90].

3.3.11 Administration of Justice

Administration of Justice in the enforcement of child's rights which comprises both criminal and civil processes is a concept developed out of the understanding of

[88] Section 171-190 Ibid
[89] Section 191-197 Ibid
[90] Section 198-203 Ibid

the difference between children and adult in relation to the harsh nature of normal court process which the child is to be protected against.[91]

In Nigeria, the concept of juvenile justice got recognition in 1943 when the children and Young Persons Act was promulgated. The CRA which supersedes any law relating to children in Nigeria, provides for Child Justice Administration based on Child Justice System under part XX thus: "No child shall be subjected to the criminal justice process or criminal sanction, but a child alleged to have committed an act which will constitute a criminal offence if he were an adult shall be subjected only to the Child Justice System and processes set out in this Act"[92]. The prohibition of use of corporal punishment in the administration of justice under the CRA in a novel provision, because such prohibition is absent in the old children and young persons legislation. [93] Other processes of Child Justice Administration are: Protection of privacy, professional education and training of court officers and police, specialization within the Nigerian Police Force, use of direction, disposal of case without resort to formal trial, report of the legal status and rights of the child etc[94]

Part XXI of the CRA deals with supervision and appointment of Supervision Officer of Children by the Commissioner. The Commissioner also may appoint supervision inspector and make order where supervision service fails. The supervision officer has duties to visit or receive report from the child as specified or

[91] Usua I. N. Juvenile Justice and jurisdiction of Family Court. A paper presented at the 2009 All Nigerian Judges Conference, Abuja 16th – 20th November
[92] Section 204 CRA
[93] Ladan M.T. and Babji B. Op. Cit. P.13
[94] Section 205-238 Ibid

as he thinks fit at such reasonable intervals, to see that the child observes the condition of his recognizance etc[95].

Part XXII provides for approval institutions and post-release supervision, etc through establishment of approved institution by the Minister in any part of the Federation or State such as a child attendance centre; a child centre, a children residential centre etc. federal and State Directors are responsible for child development in their respective Ministries. A child released from correctional centre is to be supervised until the expiration of four years and the child to comply with such requirements as may be so specified etc[96]. Part XXIII provides for establishment and membership of Child's Rights Implementation Committees at National, State and Local Government Levels comprising of Permanent Secretary of Federal Ministry of Women Affairs and that of State and Local Government Secretary and representatives from Federal Ministries, State Ministries and Local Government Departments respectively who are saddled with the responsibilities of initiating actions that shall ensure the observance and popularization of the rights and welfare of a child as provided for in the CRA and other international legal instruments on the rights of the child, continually keep under review, the state of implementation of the rights of a child among other functions[97]. Part XXIV provides for miscellaneous which covers punishment of bodies corporate in case of offence being committed, service of documents, suspension and inconsistency of all other enactment relating to children,

[95] Section 239-246 Ibid
[96] Section 247-259 Ibid
[97] Section 260-271 Ibid

which means the CRA supersedes all other laws relating to children, delegation of power by Minister, forms for specified matters, and finally the interpretation section[98].

The foregoing is a briefappraisal of the Child's Rights Act 2003. The Act indeed contains numerous provisions aimed at promoting and protecting the rights of the child. However, some provisions are controversial in nature in terms of cultural and religious practices of the people of Nigeria in general and the people of Kaduna State which serve as impediment to the effective adoption andimplementation of the CRA in Kaduna State and other states of Nigeria especially the Northernstates.

[98] Section 272-277 Ibid

CHAPTER FOUR

EXAMINATION OF CHILD'S RIGHTS RELATED LAWS IN KADUNA STATE

Before the enactment of the Child's Rights Act by the National Assembly, there are laws on the rights of the child for protection of the child which maybe general or peculiar to children or even in part in order to protect the interest of the child due to the child's vulnerability both at Federal and State levels. Some of these laws that are applicable in Kaduna State areexamined below.

4.1 The Constitution Federal Republic of Nigeria 1999 (as amended).

The constitution which is cited as Constitution of the Federal Republic of Nigeria (promulgation)Decree 1999 [1] is an enactment of the Federal Military Government of the Federal Republic of Nigeria in compliance with the Transitionto Civil Rule (political programme) Decree 1998 under the Military Administration of General AbubakarAbdulsalam as Decree No. 24 which came to force on the 5th day of May 1999. It is retention of the 1979 Constitution of the Federal Republic of Nigeria, however with some amendments.

The Constitution is structured into chapters, parts, sections and schedules with numerous contents. Most fundamental among the contents of the constitution in this research is chapter (IV).

Chapter IV particularly provides for Fundamental Rights of the peoplesuch as right to life, dignity of human person, personal liberty, fair hearing, private and family life, freedom of thought, conscience and religion, freedom of expression and the press, peaceful assembly and association, freedom of movement, freedom from

[1] Section 319 CFRN

discrimination, acquire and own immovable property anywhere in Nigeria.Compulsory acquisition of property, restriction on and derogations from fundamental rights, special jurisdiction of High Court and legal aid[2].The Constitution generally applies to all individual.

In examining laws on the rights of the child, the Constitution cannot be dispensed with; this is because the child, who is the concern of this research, is an individual irrespective of age and since the rights provided under the Constitution have no limit in terms of age, children are also entitled to the guaranteed rights. The Constitution is therefore a law that provides for the rights of the child though not as specific provision of the Constitution. Hence, the consideration of chapter IV by the CRA to be applied preceding other additional rights under the CRA.

Another chapter next to chapter IV is chapter II of the Constitution which deals with fundamental objectives and directive principles of state policy such as obligations of the government, the government and the people. Chapter II states that "it shall be the duty and responsibility of all organs of government and of all authorities and persons, exercising legislative, executive or judicial power, to confirm to, observe and apply the provisions of this chapter of the Constitution.

Significant to this issue of child rights among the provisions of the cited chapter are the provision of economic objectives of the government, social objectives, educational objectives, environmental objectives, directive on Nigerian cultures, and National ethics[3].

[2] Section 33-46 Ibid
[3] Section 16-23 Ibid

From the above cited provision of the Constitution, it is an obligation of the government to ensure the achievement of the said objectives for the betterment of all citizens including a child. Obligation always goes with right, where there is obligation, there is always corresponding right. It is therefore the right of the people to enjoy most especially economically, socially and educationally. The above two chapters of the constitution are vital when it comes to child's rights matter, hence the essence of the Constitution in the promotion and protection of the rights of the child.

4.2 **Kaduna State Children and Young Persons Law:**

The law on Children and Young Persons was first promulgated as an Ordinance in 1943 and subsequently amended through several legislations such as Ordinance 44 of 1945; 27 of 1947; 16 of 1950 as well as the laws of Nigeria 131 of 1954; 47 of 1955 and Order in Council 22 of 1946 as National Law Cap 32 Laws of the Federation of Nigeria and Lagos in 1958. They were adopted as Regional Laws and subsequently as State Laws. In the East and West, by Order-in Council No. 22 of 1946 and in the North as Children and Young Persons Law Cap 21 of the Laws of Northern Nigeria 1963[4]. The law as promulgated by the British Council government to provide for the welfare of the young persons and treatment of young offenders and the establishment of Juvenile Courts.

Kaduna State adopted the law as Children and Young Persons Law Cap 26 KDSLN 5 of 1982,now Cap 26 of 1991 which is the law currently in use in relation to welfare of Children and Young Persons and treatment of young offenders.

[4]Usua I. N. Juvenile Justice and jurisdiction of Family Court. A paper presented at the 2009 All Nigerian Judges Conference, Abuja 16th – 20th November

4.2.1 **The Rationale of the Children and Young Persons Law ofKaduna State:**

Every law is enacted or adopted for the purpose of achieving a particular objective or goal for the betterment of particular individuals or group of individuals in a particular setting. The rationale behind the enactment and subsequent adoption of the Children and Young Persons Law is to ensure the welfare of the young personsand treatment of young offenders and theestablishment of JuvenileCourt[5].The establishment of Juvenile Court was aimed at ensuring juvenile justice which distinguishes young persons or children both known as juvenile from the adult in terms of punishment to be meted when charged with offence to avoid the harsh nature of the normal court[6]. For instance, in Europe, during the middle age, children were punished as adult when they committed crime and could participate in activities such as farming, hunting etc as adult. This justice system was brought to an end by the French educational and religious revolution of 16th Century based on the fact of the inability of the children to know the consequence of their actions[7].

4.2.2 **Contents of the Children and Young Persons Law of Kaduna State:**

The law, for the purpose of clarity and easy understanding, is structured into 9 parts, each dealing with a particular matter in 38 sections, subsections and sub-subsections and one schedule at the end.

In terms of contents, part I of the law which is the preliminary part deals with the short title of the law which is Children and Young Persons Law and the interpretation of some key words in the law. Part II deals withjuvenile offenders in

[5] Part II KSCYPL
[6] Section 2 Ibid
[7] Usua I. N. Op. Cit.

terms of bail of arrested juvenile, protection of juveniles involved in court proceedings, determination of age, method of dealing with juvenile charged with offences, restriction on punishment, places of detention among others[8]. Part III provides for approved institutions which means institutions established, and any place or institution declared to be an approved institution under Section 14[9] of the Law, mandates and formation of court in relation thereto, powers of commissioner in relation to mandates and destination of copies of mandate, limitation of age, duties of managers of an approved institution, sufficient authority to person acting thereon, authority for retention of juvenile, legal custody, power to vary mandate etc[10].

Part IV makes provision for juveniles in need of care and attention providing for power to bring juvenile before a court in certain cases, interference with working of mandate, issue of mandate where parent or guardian can be able to exercise control[11].

Part V is on contribution by parent or guardian towards maintenance of juveniles which is by empowering the court to order contributions.

Part VI provides for possession and custody of juveniles with prohibition against dealing in juveniles.

Part VII is on neglect of children, it prohibits ill-treatment and neglect of children.

Part VIII emphasizes on prohibition of political activities of juveniles by prohibiting participation by juveniles in political activities, definition of political

[8] Section 3-14 KSCYPL
[9] Or any suitable place or in the care and custody of such person as the police officer or court may think proper.
[10] Section 15-27 KSCYPL
[11] Section 28-30 Ibid

activities prohibition against admission of juveniles to political parties, penalties for offenders under part VIII[12].

The final part which is Part IX deals with regulations which may be made by the governor for the carrying into effect of this law. The schedule which is the end, is the form of mandate to be filled[13].

From the above brief examination of the Children and Young Persons Law of Kaduna State, it could be seen that the law is not a law providing for specific rights of the child in a special way but rather it is more of protection of the child who is charged with offences and under custody of approved institutions or persons. Whereas, the CRA provides specific rights for the child as well as protection of the guaranteed rights for all children irrespective of being charged with an offence.The protection that are related to those under the CRA range from that of administration of justice in case of juveniles offenders[14], juveniles in need of care and attention, such as power to bring juvenile before a court in certain cases[15], prohibition against dealing in juveniles and protection of neglected and ill-treated children[16].

4.3 **Kaduna State Infant Edict**

Kaduna State Infant Edict (KSIE) is an Edict relating to the capacity of liability of infants and to their guardianship and custodyKDS9 of 1989 with 1/10/1987 as commencement date which is now Cap 75 Laws of Kaduna State. The law contains 28 Sections divided into 5 parts.Part I of the law protects the infant who is defined as

[12] Section 31-37 Ibid
[13] Section 38 Ibid
[14] Section 6 Ibid
[15] Section 28 Ibid
[16] Section 32-33 Ibid

a person under the age of eighteen years but for the purpose of part II and III[17] does not include a person who is or has been married, from contractual obligations except the contract is that of necessities and action brought on ratification of such contracts cannot be entertained, payment of loan contracted during infancy shall be avoided and certain contract binding on an infant to remain binding unless repudiated such as contract which an interest is acquired in a subject matter of a permanent nature with continuing or running obligation attached to such interest. Part II deals with marriage settlement by infants. It provides for lawfulness of valid and binding settlement in contemplation of the infants marriage, any part of his or her property whether real or personal as if the person were of age with the sanction of the court. Part III is on guardianship and custody of children which shall not apply to children who are subject to Islamic laws or issues of marriage under customary law only. Under this part, rights of surviving parents as to guardianship are guaranteed[18], power of father and mother to appoint testamentary guardianship after death, power of guardian over the person and estate, equal rights of either parent to apply to court in respect of any matter, the making of order by court as to custody upon application by father or mother regarding custody and access of the child to their parent, power to remove guardian by the court and appoint another for the welfare of the child, settlement of dispute between joint guardian through direction of the court, invalidation of separation deed giving custody to mother, the power of the court not to grant custody where it is satisfied that the applicant has abandoned the child, where the child was brought up by another, the court is empowered to order repayment of cost of bringing

[17] Relate to child marriage settlement and exemption of children of Muslim marriage and customary marriage.
[18] Section 3-10 Ibid

up of the child upon granting custody to the parent with regard been had to the conduct of the parent, where a child was brought up by a different person, the parent's wish as to the religion of the child may be granted by the court, subject to wish of the child[19].

Part IV deals with miscellaneous provisions such as enforcement orders, principles on which questions relating to custody, upbringing etc are to be decided[20], saving of jurisdiction of the court and Islamic law and customary law stating that "nothing in this Edict shall restrict or affect the jurisdiction of the court to appoint or remove guardian by virtue of the High Court law or any other written law and nothing in this Edict shall apply to transactions governed by Islamic law or customary law[21].

S. 9 and 28 exempt children who are subject to Islamic laws or issues of marriage under Customary law and nothing in the Edict shall apply to transactions governed by Islamic law or Custom.

There are rules governing guardianship and custody under both Islamic and customary law. For instance, under Islamic law young children are under the custody of their divorced mother if she is fit to take care of the children. Notwithstanding the fact that the custody of children is with the mother, the full responsibility of their care in terms of housing, clothing and food is on the father. Where the mother responds to some needs of the children, she is entitled to compensation from the father. The sole responsibility of the father has negative implication as well as positive implication. It

[19] Section 11-22 Ibid
[20] Section 26 Ibid
[21] Section 28 Ibid

might be a cause for litigation or a cause for reconciliation between the wife and the husband[22].

4.4 Other Relevant Laws

Besides the laws examined above, there are other laws that in one aspect or the other recognize the vulnerability of a child hence provide some rights or protection for the child which are applicable in Kaduna State as state laws or federal laws. Some of these laws are briefly examined below:

4.4.1. Kaduna State Legitimacy Law

Kaduna State Legitimacy Law (KSLL) is a law with commencement date 17th October, 1929 as NN, 1963 Cap 63, KDSLN 5 of 1982 and now Cap 87 Laws of Kaduna State, a law to amend the law relating to children born out of wedlock. It is applicable only to Christian marriage[23]. The law does not define a child in term of age, that notwithstanding, it contemplates both under 18 and above 18. A child born out of wedlock is provided with rights to legitimacy under this law by virtue of subsequent marriage of parents if the father is domiciled in Nigeria at the date of the marriage from the commencement of this law[24] with various rights such as right of legitimated persons and others to take interest in property of an inherent,[25]personal rights and obligations of legitimated persons as if born legitimate[26],right of illegitimate child and mother of illegitimate child to succeed on intestacy of the other and

[22]Abd al Ati H. (1977).*The Family structure in Islam,* American Trust Publication. P 246
[23] Section 2 KSLL
[24] Section 3 Ibid
[25] Section 5 Ibid
[26] Section 8 Ibid

succession under customary law when the mother of the illegitimate child is a Nigerian.[27]

The law exempts children of other types of marriages such as Islamic marriage and customary marriage; this is a significant contemplation because under Islamic law, paternity is based on marriage only and subsequent birth of a child. Subsequent marriage of the parents of a child born out of wedlock cannot legitimize a child. Such a child remains illegitimate forever and can only have maternity right but that of paternity is permanently denied. The consequence of that act of fornication (Zina) is punishment of hundred lashes for both the man and the woman[28]. Similarly, under some cultures and tradition, an illegitimate child has no right to inherit his father.

4.4.2. **The Penal Code**

The Penal Code with commencement date 30th September, 1960 is a federal law that relates to crimes and punishment in the Northern states of Nigeria. In contemplation of the vulnerability of the child, the penal code provides protection for a child by stating No act is an offence which is done.

(a) By a child under seven years of age; or

(b) By a child above seven years of age butundertwelve years of age who has not attained sufficient maturity of understanding to judge the nature and consequence of such act[29]. The Penal Code also provides protection for children by prohibiting causing of miscarriage, injuries to unborn children, exposure of infant, cruelty to

[27] Section 10 (1) (3)
[28] Qur'an 24:2. Translated by Abdullah Yusuf Ali.
[29] Section 50 Penal Code

children and concealment of births[30]. Protection of children under the age of eighteen is further provided by the penal code to prevent a minor of under eighteen from forced or seduced illicit intercourse with another person, the offence which attracts upto ten years imprisonment with fine[31] and from buying or selling minor for immoral purpose[32]**.**

4.4.3 The Sharia Penal Code and Rights of the Child under Sharia

The Sharia Penal Code is a law relating to criminal offences applicable to Muslims and enforced by Sharia Courts of Northern States of Nigeria. In Kaduna State, the Sharia Penal Code is applicable in the Northern part of the State. The Sharia Penal Code like the Penal Code is not a law that peculiarly deals with children's rights and or protection. However, the Sharia Penal Code like the Penal Code, also contemplates the protection of children having put into consideration the vulnerable nature of children. Hence, provides some protection for children in terms of criminal liability and some acts that cause harm to children. In protecting the child against criminal liabilities, the Sharia Penal Code provides:

No act is an offence which is done :-

(a) by a child under seven years; or

(b) in case of hudud, by a child below the age of taklif[33].

The Sharia Penal Code makes special provisions for juvenile offenders where it provides:

[30] Section 232-239 Ibid
[31] Section 275 Ibid
[32] Section 278 Ibid
[33] Section 75 Sharia Penal Code.Hudud means crimes with fixed punishment and taklif means obligation.

"When an accused person who has completed his seventeenth but not completed his eighteenth year of age is convicted by a court, of any offence, the court may instead of passing the sentence prescribed under this code, subject the convict to ta'azir punishment"[34].

Protection of unborn children is contemplated under the Sharia Penal Code by criminalizing causing of miscarriage[35], injuries to unburn children and concealment of birth[36] as well as exposure of infants[37] and cruelty to children[38]. The above offences are sanctioned with various punishments such as payment of ghurrah, ta'azir, qisas and diyya[39]. It also provides protection for minor girls from being seduced to have illicit sexual intercourse[40].

With the above provisions of the Sharia Penal Code, it is right to say that the Sharia law is conscious of the vulnerability of children. Hence, the protective provisions for the best interest of the child as provided under other laws.

It is of prime importance to consider some rights under the Islamic Law and even under culture to appreciate the concern for the care of the child religiously and culturally. Islamic religion, with which the CRA conflicts most, is not unmindful of child's care or rights. It is generally full of exhortations to parents and the community

[34] Section 98 Ibid. Ta'azir means discretionary punishment.
[35] Section 200-202 Ibid
[36] Section 207 Ibid
[37] Section 205 Ibid
[38] Section 206 Ibid
[39] Ghurah means blood money paid for causing miscarriage or abortion to a present woman, qisas means retaliation, diyya means blood money.
[40] Section 226

to treat their children with love, mercy, kindness, affection, gentleness and understanding.[41]

The principle of best interest of the child is cardinal under Islamic Law and also under most cultures. The prophet (SAW) was reported to have said, "fear Allah and treat your children with equality and justice"[42]

Some religious and cultural practices may be misconceived by the child or a third party as being inimical or discriminative to the child but the truth is that no true religion or responsible parents will work against a child by doing that which is not in the best interest of the child.

Some of the rights guaranteed to a child under Islamic Law for the best interest of the child are examined and analysed thus:

(i) **Right to Life:**

Life of a child is considered sacred by the Holy Qur'an as that of an adult and therefore should not be taken as prohibited among other things and considered a great sin.[43] The life of the child is meant to be enjoyed with attendant support and care by the parents for the development of the child. The said right to life is guaranteed to a child to avoid the pre Islamic practice of infanticide which was economically based and the killing of female child which was considered to be of less importance. The Qur'an hence makes it clear that all lives irrespective of age and sex are sacred.

[41] Idris S. and Babaji, B. (2002-2003). The Role of the Shariah Courts in the protection of the Child. *Ahmadu Bello University Journal of Islamic Law*. (ABUJIL), vol. 111 pg. 118
[42] Ibid.
[43] Qur'an 17:31

(ii) Right to Legitimacy:

Legitimacy is an inalienable right of the child. Under Islamic Law, it is obtained only through marriage. This is aimed at availing the child with an identity and sense of belonging to a family. It is restricted to marriage in order to avoid unchasity. A child born outside marriage is considered illegitimate and permanently denied the rights available to a legitimate child. Such a child remains illegitimate and there is no mechanism whatsoever through which such a child would be legitimized.[44] A woman or man who misplaces a child's legitimacy or denies his responsibility for the conception of the child will be denied the bliss of eternity and has offended God and inflicted upon himself universal disgrace respectively.[45]

(iii) **Right to Good Name:**

A child under Islamic Law has a right to a good name.The Prophet was reported to have said "whoever has got a child born for him, let him give him (the child) a good name and good manners".[46]This right is slightly different from the right to name guaranteed under the CRA. Under Islamic Law, the name which is a right must be a good name.Here it means every child could have a name; what makes the Islamic provision significant is the emphasis on good and nice name.Giving good name to a child is an act of praying and wishing the child good in life.

[44] Idris S. A., (2006-2007) A Comparative Analysis of the provisions of Legitimacy and Paternity under the Child's Rights Act and Islamic Law in Nigeria. *ABU Law Journal*, *vol. 25-26*.
[45]Abd al Ati H op. cit. p. 190
[46] Al-Marzoug I.A. (2001). *Human Rights in Islamic Law, Abu Dhabi*, 2nd edition p. 58

(iv) **Right to Inherit Parents:**

A child, whether male or female is entitled under the ground of blood tie to inherit deceased parents unless the child is responsible for the death of the parent through murder[47] or becomes a non-Muslim. The reason could be to stop a desperate child from killing his parent in order to inherit him or her and to discourage apostasy.

Under Islamic Law, a male child inherits a portion equal to that of two female children[48]. This division may seem discriminatory in nature but the wisdom behind the unequal portion is that, the male child has more responsibilities compared to the female child whether she is married or not. Irrespective of what a female child has, it is the responsibility of the male child to cater for her needs and if she is married, it is the responsibility of the husband to cater for her needs should there be means in both cases.

(v) **Right to Freedom of Religion:**

Upon attainment of puberty, a child is free to decide what is best for himself under Islamic Law. Imposition of Islam as a religion is not permitted. Good examples are to be shown by parents or guardians to attract the child to Islam. It is Qur'anically stated that "let there be no compulsion in religion"[49]. To protect this right of the child, a father is not absolved from observing his obligation of child maintenance on the ground of religious difference. Both the CRA and Islamic Law are silent on the right to change religion under the right to freedom of religion.

[47] Ladan MT op. cit. at pp 264
[48] Qur'an 4:14
[49] Ibid 2:256, 18:29, 14.46

However, both laws are of the support that a child will have the right to change religion when majority is attained. This is because a child or minor is incapable of making such decision due to mental deficiency.

Religious accountability is personal, hence the individual freedom. All the parent or guidance can do is to show good examples and teachings to attract a child to embrace religion.

(vi) **Right to consent to marriage and to exercise option of puberty:**

Free consent is a prerequisite without which a marriage contract between two people is not completed. This is the position of all other schools of Islamic jurisprudence with the exception of Hanafi School. To the Hanafi, compulsion is allowed. Despite being divergent, theHanafi view should not be seen as an outright usurpation of the child's interest because the compulsion cannot be intended to harm the child. The father or father's father has the power of Ijbar i.e. to compel a minor who is incapable of protecting his or her interest to marry without the consent of the minor female. However where she is given an option to choose who to marry, the power of Ijbar is deemed waived.[50] A minor who was compelled to marry can decide to continue or discontinue the marriage on attaining age of majority.[51]

(vii) **Right to maintenance and general care:**

Every child is entitled under Islamic law to maintenance by his father in terms of food, clothing, shelter, health and recreation. However, parents are enjoined to keep a just measure between their ability and the needs of their children. This has

[50] Ladan M.T. *Introduction to jurisprudence* op. cit. P. 262 – 263.
[51] Ibid p 263

a religious backing by the Qur'an which states: "Make not thy hand tied (like a niggard's) to the neck, nor stretch to its utmost reach, so that thou become blame worthy and destitute".[52]

(viii) **Right to socialization and value orientation**

A child under Islamic law has the right to child rearing and personality development which denotes socialization. This is a process whereby belief, values, norms and other related aspects of Islamic culture are transmitted to a child in a Muslim society. This includes, raising children in the best spiritual, physical and educational environment aimed at inculcating knowledge, manners to bring them close to God for spiritual upliftment[53].

(ix) **Right to own and dispose of property**

Under Islamic law a child has the right to own legal property which could be through gifts, donation bequest and inheritance; the child equally has right to dispose of the property. The Qur'an provides: "And in no wise covet these things in which God has bestowed these gifts more freely on some of you than on others: to men is allotted what they earn: but ask God of his bounty. For God has had knowledge of all things".[54]

The above, amongst other child's rights under Islamic Law clearly show that the interest of the child is of utmost importance as contemplated under the CRA. It could be seen that there are some similarities between the provision of the CRA and those under Islamic Law. The conflicting provisions are the reasons behind the deviation by the Jigawa State Government which is the only sharia

[52] Qur'an 58:22
[53] Ladan M.T. Op. Cit. p. 262
[54] Qur'an 4:32

implementing state that has adopted the CRA with modification based on the principles of Islamic Law.

Some of the rights that the Jigawa State Child Rights Laws deviated from or omitted are Right to freedom of association, freedom of thought, conscience and religion, right to private and family life, freedom of movement, freedom from discrimination and contractual right of the child.

The most fundamental amongst the modification is the definition of a child in case of child betrothal and marriage where a child is defined as person under the age of puberty.

Culturally, children are naturally guaranteed some rights that are not statutory such as right to life, right to parental care right to parental training and discipline and right to inheritance. The right to inheritance among most culture in Nigeria and Kaduna in particular is discriminatory in nature in terms of sex and being a first son or not. Among the cultures of people of Kaduna especially the South, female children don't inherit while in the North which is dominantly Muslim, female children can inherit based on Islamic law provision because of their adherence to Islam which prevails over their culture. The reason for the exemption of female child from inheriting under the culture of Southern Kaduna people is the fact that female are under the care of the male children.

4.4.4 **The Labour Act**

The Labour Act, with commencement date 1st August, 1971 now Cap L is an Act to repealand replace the Labour Code Act and consolidate the law relating to

labour. In dealing with matters relating to labour relations, the Act recognizes the weaknesses of the child, hence provides protection for the child.

Young persons are specially given protection against employment to work outside family apart from on daily wage, day-to-day basis and such a child returns home each night[55]. A child is also protected against working underground, on machine, on a public holiday and injurious work among others as well as night work and shipping work[56] with some exceptions[57]. Maternity protection under the Act also aimed at protecting the unborn child apart from the mother[58].

4.4.5 **The Matrimonial Cause Act**

The Matrimonial Cause Act (MCA) with commencement date 17th March 1970 is an Act to make provisions for matrimonial cause with 115 Sections divided into ten parts. The Act however, does not apply to marriage entered into according to Muslim rites or other customary law[59] but only marriage under the Act which is known as statutory marriage. Though the Act borders on matrimonial causes, children as product of marriage are being contemplated in terms of maintenance and custody under the Act. this shows that the protection of children is paramount under the Act.The Act provides protection for child who may be adopted, legitimate or illegitimate [60] under the age of twenty-one [61] under special circumstances by empowering the court to order for maintenance of children of the marriage as it thinks proper, having regards to the means, earnings capacity and conduct of the

[55] Section 59 Labour Act
[56] Section 60 and 61 Ibid
[57] Accept the vessel is a school or training vessel or only members of the young person's family are employed.
[58] Section 54 Ibid
[59] Section 69 MCA
[60] Section 70 Ibid
[61] Section 70(4)

parties to the marriage and all other relevant circumstances[62]. As to custody and other proceedings, such as guardianship, welfare, advancement or education, the court shall regard the interest of those children as the paramount consideration. Hence the custody of the children could either be in the parents or person other than the parent, with right of the party to the marriage to have access to the child[63].

The essence of the above examination of laws related to the rights or protection of children is to be acquainted with various legislative attempts to provide the child with certain rights and protection in Kaduna State and the country Nigeria and to find out why are those laws acceptable in Kaduna State.As regards the applicability of the above laws in Kaduna State, the Constitution being the supreme law of the country covers the entire Country and each state of the federation is required to comply with its provisions. Furthermore, the Constitution, among other guaranteed rights, has guaranteed rights to religion. This allows every citizen to practice his or her religion without unnecessary restriction. The right to religion gives room for general acceptance of the Constitution because of sensitive nature of religious matters. The Labour Act and Matrimonial Cause Act operate in Kaduna because labour and matrimonial causes relating to statutory marriage are in the exclusive list of the Constitution.The Children and Young Persons Law is applicable in Kaduna through adoption simply because the law contemplates the religion and custom of the people where in some instances some provisions are not applicable to particular group of persons as a result of their custom or religion[64].The Kaduna State infant Edict like the Children and Young Persons Law also contemplates the custom

[62] Section 7 (1)
[63] Section 71 (1) (3) and (4)
[64] Section 12 (2) KSCYPL

and religion of the people of Kaduna State by making some provisions not applicable to some children in terms of custody on the ground of their religion and custom[65].Other laws examined which are not strictly on children but in one way or the other have contemplated religion, jurisdiction of courts, region etc. For instance, the legitimacy law applies only to Christian marriage, Penal Code and Sharia Penal Code Contemplate Jurisdiction of Courts and the region where they are applicable based on religion and custom of the people respectively.

From the foregoing, it is obvious that the examined laws are particularly deficient in many ways, thereby creating gaps that need to be bridged. The rights provided under the Constitution are not specific rights for the child and are without specified protection to give the child full rights to enjoy. The children and Young Persons Law was to provide for the welfare of young persons and treatment of young offenders and to ensure justice through juvenile courts. The law does not provide rights of the child that are to be protected. The Kaduna State Infant Edict emphasizes capacity of liability of infants and to their guardianship and custody. It is also devoid of provision of rights for children. The Kaduna State Legitimacy Law relates only to the right of legitimacy of illegitimate child after subsequent marriage of the parents and it applies only to Christian marriage. The penal code and sharia penal code provide for protection of a child as to liability in criminal offence and harm without provision of rights of the child. The Labour Act provides protection for child by prohibiting certain works and maternity protection. The matrimonial course act which applies only to children of statutory marriage also lacks specification of child's rights

[65] Section 9 KSIE

but rather provides for maintenance and custody of children who may be adopted legitimate or illegitimate.

It was as a result of the deficiencies and gaps that the examined laws are characterized with that the need for a comprehensive law arose in order for the child irrespective of his religion or culture to have exhaustive rights specified and protected.Hence, the enactment of Child's Rights Act, 2003 by the National Assembly of the Federal Republic of Nigeria, though with its own accompanying challenges.

CHAPTER FIVE

CHALLENGES AND PROSPECTS FOR THE DOMESTICATION OF CHILD'S RIGHTS ACT, 2003 IN KADUNA STATE AND DATA ANALYSIS

The insufficiencies or deficiencies of the child's rights related laws in Kaduna State which occasioned some gaps thereby denying the child some basic rights and protection as previously observed, actually led to serious need for an all-encompassing law such as the CRA which is however not yet domesticated in Kaduna State due to some challenges.

Kaduna State like many other Northern States of Nigeria has not yet domesticated the CRA which has been signed into law for the past thirteen years by the National Assembly. The non-domestication or adoption of the CRA by the Kaduna State Government is attributed to some challenges like other states that have not domesticated the CRA. These challenges are thus examined.

5.1 Constitutional Challenges

The CRA 2003 is an enactment of the National Assembly to be applied in all the 36 states of the Federation upon adoption and the Federal Capital Territory (FCT) Abuja. The National Assembly has legislative powers under Section 4 and 12 of the Constitution Federal Republic of Nigeria (CFRN) 1999 (as amended) to make laws and implements treaties respectively. The question is whether the National Assembly enacted the CRA pursuant to the said legislative powers[1]. The Constitution provides: "The National Assembly shall have power to make laws for the peace, order and good governance of the Federation or any part thereof with respect to any matter

[1]Babaji B. (2005) Harmonizing the Child's Rights Act, 2003 with Cultural and Religious Values in Nigeria: A Muslim Perspective. *Centre for Islamic Legal StudiesJournal*, Vol. 24. P27

included in the exclusive legislative list set out in part I of the second schedule to this Constitution"[2]. The National Assembly in addition to the above legislative power, may legislate on other matters prescribed in the concurrent legislative list of the Constitution and other matters it is empowered to legislate on in accordance with the provision of the Constitution[3]

The Constitution provides on the other hand that for a treaty to have a force of law in Nigeria, such a treaty must be enacted into law by the National Assembly. And for the purpose of implementing a treaty, the National Assembly is empowered to make laws for other part of the federation even with respect to matters not included in the exclusive legislative list[4]. The Constitution requires ratification of such a Bill for an Act of the National Assembly by the majority of all the Houses of Assembly in the Federation.[5] The CRA being a product of two international treaties on the rights of the child, requires such ratification as required by the Constitution before acquiring the force of law in the Nigerian Courts. This provision was judicially supported in the case of *Fawehinmi vs Abacha*[6] where the Court of Appeal stated thus: "Where there is no enactment to give effect to the spirit of a treaty, notwithstanding its adoption, recognition and due regards by sovereign government, it cannot be justifiable in municipal court.

It is therefore obvious that the non-compliance with the provision of Section 4 and 12 and some provisions on the jurisdiction of the Sharia Court of Appeal of a state under Section 277 of the Constitution, renders the CRA unconstitutional and

[2] Section 4 (2) CFRN
[3] Section 4 (4) Ibid
[4] Section 12 Ibid
[5] Section 12 (3) Ibid
[6] (1996) NWLR Pt 475 P 710 at 722

inapplicable in all the 36 states of the federation but only in the Federal Capital Territory Abuja.[7]

Apart from the issue of constitutionality of the enactment of the CRA, some provisions of the CRA are inconsistent with the provision of the Constitution as examined bellow:

(a). Right of the Child to Freedom of Thought, Conscience and Religion:

The Constitution has guaranteed a child freedom of religion, among which to change religion, manifest and propagate his religion in worship, teaching, practice and observance.[8] Here it is obvious that he has right to practice his religion among other religious rights guaranteed by the Constitution. For instance, the primary sources of Islamic Law are the Qur'an and the Sunnah of the prophet (SAW) which means the tradition of the prophet, that is the deeds and sayings of the prophet.

Muslims are free to practise the traditions of the Prophet though not mandated to observe all the practices of the prophet. For instance, child marriage is not a command but rather allowed with conditions attached, based on the fact that the prophet married Aisha at the age of 9 years.

The CRA prohibits some practices that are religious practices or injunctions such as child marriage and betrothal, discrimination on certain bases such as sex, religion and circumstance of birth; and corporal punishment. Child marriage and betrothal are practices that are allowed but not mandatory, where as discrimination in terms of sucession between male and female child is aninjunction from the Qur'an

[7] Babaji B Op cit P 28
[8] Section 38 (1) CFRN

and likewise the corporal punishment of lashes in the crimes of fornication and slander.

For the CRA to prohibit that which is religiously allowed or mandatory with severe sanction, it is denying the constitutionally guaranteed rights of the child.Here there is inconsistency between the CRA and the Constitution and where there is inconsistency with the Constitution, the Constitution prevails thereby rendering the provision of any other law null and void.[9]

(b). Jurisdiction of the Sharia Court of Appeal.

The Constitution has provided the Sharia Court of Appeal with appellate and supervisory jurisdiction in civil proceedings involving question of Islamic Personal Law such as issue of marriage, succession, guardianship of infant etc.[10] Contrary to this Constitutional provision, the CRA vests the Family Court with unlimited jurisdiction to determine both civil and criminal proceedings involving a child.[11] The CRA further excludes other Courts except the Family Court from exercising jurisdiction in any matter relating to children[12].

From the above provision, there is clear conflict between the CRA and the Constitution and the provision of the Constitution giving the Sharia Court of Appeal jurisdiction in Islamic Personal Law shall ideally prevail over the provision of the CRA vesting the Family Court with exclusive jurisdiction over other courts.

On whether there is conflict between the constitutional provision and that of CRA on the jurisdiction of the family court, 83% of the lawyers and judges

[9] Section 1 (3) Ibid
[10] Section 262 (1) (2) Ibid
[11] Section 151 (1) CRA
[12] Section 162 (1) Ibid

interviewed are of the view that there is conflict. 90% are of the view that domestication of the CRA amidst the conflict is feasible. This is because the domestication is determined by the votes of the members of the State House of Assembly of Kaduna and not by the people of the state. As to whether there would be maximum compliance, 93% answered in the negative[13].

5.1.1 Prospects for Constitutional challenges

On the prospects for resolving constitutional challenge, there is way out. It is possible to review the CRA and correct its inconsistent provisions in order for the CRA to be consistent with the constitution in areas of conflict.

5.2 Religious Challenge

Among other challenges, religion is at the fore front in the hindrance of domestication of the CRA in Kaduna State. Kaduna State is one of the 19 states of Northern Nigeria, located in the Northwest where Islamic religion is very strong. The provisions of the CRA in some issues are contrary to the provisions of the Qur'an and Sunnah of prophet Mohammed (SAW), hence the controversies between the CRA and Islamic provisions and practices. Below are some of the conflicts between some provisions of the CRA and Islamic provisions.

5.2.1 Right to Freedom from Discrimination

In providing for the right of the child to freedom from discrimination, the CRA states:

> A child shall not be subjected to any form of discrimination merely by reason of his belonging to a particular community or ethnic group or by reason of

[13] See Subsequent Analysis

> his place of origin, sex religion or political opinion.No child shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth[14].

In the above cited section of the CRA, sub-section (1) identifies two reasons based on which a child shall not be discriminated against among others which are grounds of sex and religion. Under subsection (2) the CRA emphasizes on the ground of circumstance of birth. In Islamic Law, children are entitled on the ground of blood to inherit their deceased parents unless the child is responsible for the death of the parent through murder[15]. In inheriting deceased parents, the sex of the child determines what the child gets. The male child inherits a portion equal to that of two female children[16]. This division may seem discriminatory in nature based on the provision of the CRA but the wisdom behind the unequal portion is that, the male child has more responsibilities compared to the female child whether she is married or not. This is because irrespective of what a female child has, it is the responsibility of the male child to cater for her needs and if she is married, it is the responsibility of the husband to cater for her needs should there be means in both cases.On the issue of religion, under the Islamic law, a non-Muslim cannot inherit a Muslim[17]. This shows that a child who is not a Muslim cannot inherit his deceased father which under the CRA is discriminatory on the ground of religion. Islam has reasons for this prohibition one of which is to discourage apostasy. On the issue of child's circumstances of birth under subsection (2), which mostly has to do with the legitimacy of the child, is another controversial provision. This is because under

[14] Section 10 (1) (2) Ibid
[15] Abd al Ati H Op cit P255
[16] Qur'an 4:11 – Translated by Abdullah Yusuf Ali (Dar Al-Shabaa)
[17] Abd al Ati H Op cit P256

Islamic Law, an illegitimate child remains illegitimate hence has no recognition of paternity[18]talkless of inheriting his father. For a child to inherit his father, he must be a legitimate child of the deceased father. This is because in Islam, a child conceived out of wedlock derives descent from the mother only, the father who is an adulterer, will be denied paternity and be given hundred lashes as a punishment for his misconduct if not married or be stoned to death if married.As for the illegitimate child who is innocent, his rights to security and full community membership are guaranteed re-affirming the basic principle that every Muslim individual has equal access to whatever is of value for Muslim society[19]. No one may claim the credit of another, nor is anyone responsible for or penalized by the actions of anyone else[20].

5.2.2 **Prohibition of Child Marriage and Betrothal**

Under the CRA, a child is prohibited from contracting a marriage and marriage so contracted is null and void[21]; and a child shall not be betrothed by parent, guardian or any other person to any person. Betrothal in contravention of subsection (1) is null and void[22]. Violation of the above provision by any person who marries a child, to whom a child is betrothed, who promotes the marriage of a child or who betroths a child is an offence that attracts a fine of N500,000.00 or imprisonment for a term of five years or both such fine and imprisonment[23].

[18] Ibid P191
[19] Ibid.
[20] Q. 35:18
[21] Section 21 CRA
[22] Section 22 (1) (2) Ibid
[23] Section 23 Ibid

The conflict here is that of age of marriage under the CRA which is 18 years and above and the age of marriage under Islamic Law. The issue of age of marriage under Islamic Law has been settled by Islamic Jurists based on the provision of the Holy Qur'an[24]. According to the Jurists, the expression "and experiencing wet dream" as stated in the Qur'an in relation to age of marriage means the age of maturity. They further explained this to mean either by having wet dreams or experiencing monthly course among others clocking the age as it is well known in the books of Islamic Jurisprudence[25]. However, the wet dreams by male and experiencing monthly course which is menstruation by female are not attained at any particular age of one's life. Its determination is by a combination of factors such as environment, climate, physical growth, heredity etc[26].

Child marriage might be said to have been allowed or permitted but not an injunction based on the contemplation of those who have no courses with respect to waiting period which may include a child or minor as provided by the Qur'an.. The Qur'an states:

> Such of your women as have passed the age of monthly courses, for them the prescribed period if they have any doubts is three months, and for those who have no courses (it is the same), for those who are pregnant, their period is until they deliver their burdens; and for those who fear Allah, the will make things easy for them[27].

The phrase "prescribed period" in the above Qur'anic verse refers to waiting period after the death of a husband which is known as Iddah in Arabic. The

[24] Qur'an 4:6
[25] Ogunniran I Op cit
[26] Ibid
[27] Qur'an 65:4

contemplation of those who have no course in the above Qur'anic verse may also include women who have attained menopause.Traditionally, the prophet (SAW) was said to have married Aisha at the age of 9 years[28].

As regards child marriage bellow 18 in Islam, a Scholar made a comment thus:

> Marriage in minority would seem to imply a betrothal or some formal agreement, deferring final consummation to a later date. This type of child marriage probably best explained by the desire to draw families together and to facilitate social integration. Given the low sex ratio and racial plurality of Muslim Society, the need for social integration and the high value of sexual purity and virginity, it may become understandable why Islam set no age limits on marriage. Preliminary arrangement may have been made at an early age, but consummation usually takes place when the parties were fit for marital congress, which depends, among other things, on their physical conditions. However, the lawfulness of such marriage does not necessarily mean that they were predominant. Nor were they peculiar to any society, region, or generation[29].

It is imperative to note that child marriage is allowed Islamically with the option of delaying consummation until later date[30] and an option of majority, meaning a minor or a child who has reached the age of puberty is free to go on with the marriage or reject it which is known in Islam as kyiyar al Bulugh (option of puberty).[31] To prevent the misuse of this provision, the marriage of a minor is invalid without the consent of a guardian who must be blood related in case her father is dead and the guardian must have good sense of judgment and consciousness[32]. All the four Sunni Schools of Islamic Jurisprudence have unanimous agreement that there is no fixed

[28]Bukhari M. SahiBukhari. Book 7 Vol.62 Hadith 6
[29]Abd al Ati H. (1977). *The Family Structure in Islam, American Trust Publication*.
[30] Ibid P 76
[31]Ladan M. T. (2006). *Introduction to Jurisprudence, Classical and Islamic. Malthouse Press Limited*. p.263
[32]Ogunniran I. Op cit P 11

age for a girl to marry[33]. Under the Maliki school of Islamic Jurisprudence which is practised in Nigeria, a father has right to compel his daughter of minority age to marry a man of his choice. This is known in Islam as right of Ijbar (compulsion). However, where the minor is given an option to choose who to marry, the father loses the right of Ijbar. In the case of *Karimatu Yakubuvs alh. Yakubu tafida paiko*[34], the court allowed the appeal in favour of the appellant on the ground that having been given the opportunity by her father to choose her suitor, the power of Ijbar the father has cannot be exercised thereafter. In a similar case *of Alh. Isa Bida vs Baiwa Daughter of Alh. Isa Bida*[35], the father first allowed the daughter to choose a husband of her choice but subsequently wanted to exercise the power of Ijbar over her. It was held by the court that there can be no right of Ijbar after the father, having considered his daughter matured enough to decide things for herself; allowed the daughter to choose the husband.

Some Scholars and child rights activists have advanced some reasons why child marriage should be prohibited. Such as, the health implication ofVesicoVaginal Fistula (VVF), the mental and psychological deficiency of a child under 18 years to bear the burden of motherhood and parental responsibilities[36]. To others, it distracts educational achievement. It was reported that other causes of VVF are: early pregnancy, lack of experienced VVF handlers[37]. Should it be so, then, according to a scholar, could it be said that the CRA encourages immorality by denying the child

[33] Promoting Women's Rights Through Sharia in Northern Nigeria. A publication of CILS ABU Zaria (2004)
[34] (1989) S.L.R Vol. 1 P 126
[35] SCA/NWS/CV/47/70
[36] Adeyemi A. A. (2004) A paper presented at Law Teachers Conference, held in May,
[37]2001 Annual Report on the Human Rights Situation in Nigeria. Committee for the Defence of Human Rights (CDHR). Lagos. (2002) P 192-3

legitimate private and family life on one hand and on the other hand gives green light to go back to school after pregnancy through any means?[38] The CRA provides opportunity for a child who becomes pregnant while in school to continue with her education after delivery[39]. While the CRA totally prohibits child marriage, it indirectly permits pregnancy of the child while in school. This writer is of the view that it is better to encourage child marriage which is lawful than allowing child pregnancy while in school. This is because a married child is being taken care of both by her parents and her husband where as an unmarried child who gets pregnant hardly gets required care by the parents because pregnancy outside wedlock is being frowned at both religiously and in many cultures talkless of having the care of a husband which she does not have.

Child marriage, as earlier stated, is not peculiar to a particular society, region, generation or tribe. Kaduna State consists of North and Southern Part. The North comprises Hausa and Fulani having similar culture and religion which is Islam. The Southern part comprises of over thirty different tribes who are mostly Christians with different culture in about eight Local Government Areas[40]having multiple tribes with the exception of Jaba which has one.[41] Among the tribes interviewed during the course of this research, both in Kaduna State[42] and outside[43], child marriage hasbeen in existencefrom time immemorial without the health implication of VVF and 60%[44] admitted there is no specific age of marriage. 80%[45]Christians interviewed

[38]Alkali U Op. Cit. p76
[39] Section 15 (5) CRA
[40]Jaba, Jama'a, Kachia, Kagarko, Kaura, Kauru, Sanga and Zango
[41]http//www.news.nigeriang.com accessed on 15/10/2015
[42] Jaba, Kagoma, Koro, Marwa, Gure, Kagarko, Baju, Kadara, Fulani and Hausa.
[43] Yoruba, Igbo and Tiv
[44] See subsequent analysis

also admitted there is no specific age of marriage. The remaining 40% and 20% that admitted there is age of marriage are not certain because of different ages given.This shows clearly that there is no specific age of marriage but rather an assumption or informally fixed. Though, due to civilization, it is discouraged in Southern Kaduna now. The absence of VVF hitherto demands more study to know why now so as to convince people concerning the disadvantage of child marriage on the health implication of VVF. The 80% of Christians that oppose child marriage base their assertion on the adverse effects of child marriage but not on any express biblical provision.

5.2.3 Use of Scientific Tests for Proof of Paternity.

Having saddled parents with some responsibilities in the promotion and protection of the rights of the child, the paternity of the child is ofutmost importance. In determining the paternity of a child therefore, the CRA relies on scientific test. The CRA provides:

> In any civil proceedings in which the paternity or maternity of a person falls to be determined by the court hearing the proceeding, the court may on an application by a party to the proceedings, give a direction for:
>
> (a) The use of scientific tests, including blood test and deoxyribonucleic acid tests, to ascertain whether the tests show that a party to the proceedings is or is not the father or mother of that person; and
>
> (b) For the taking, within a period to be specified in the direction of blood or other samples from that person or from any two of those persons[46].

[45] Ibid
[46] Section 63 (1) CRA

The use of scientific test of blood and deoxyribonucleic acid otherwise known as DNA is the means of proving the paternity or legitimacy of a child in addition to other ordinary means of proof in civil proceedings. However, this means of proof remains tentative in many Countries. Hence, in Countries like Britain, the method is not a conclusive proof but rather a corroborative proof[47].

Under Islamic Law, the use of scientific test is not expressly authorized, but rather, there are plethora of methods used in determining the paternity and or legitimacy of a child. In Islamic Law, the principle of legitimacy holds that: "Every child has a father and one father only" by so doing, Islam probably meant to put an end to the pre Islamic Arabian practice that left the individuals sometimes without any identity"[48]. In Islamic Law, paternity or legitimacy of a child is created through marriage only. Hence, any child born outside wedlock is considered illegitimate and cannot be attached to the father who is to be punished for zina (fornication).According to the tradition of the prophet: "No legitimacy except in wedlock and the adulteress has nothing but punishment". Thus, the general Islamic Law principle that a child belongs to wedlock mat (al-waledlifiresh)[49].

Some of the methods used to prove paternity or legitimacy in Islamic Law are:

(a). A child born within six lunar months of the marriage is presumed to be illegitimate.

(b). A child born after six lunar months of marriage is presumed to be legitimate.

[47]Nwogugu E. I. Op cit P 144
[48]Abd al Ati H. OP cit P 188
[49]Babaji B. Op. cit. p34

(c). A child born within (i) 10 lunar months (shia law) (ii) 2 lunar years (Hanafi Law); or (iii) 4 lunar years (Maliki/Shafi law) of the termination of the marriage or from the time when cohabitation became impossible, is presumed legitimate[50].

Notwithstanding the fact that scientific test of paternity of a child is not accepted as a means of proving paternity or legitimacy of a child in Islamic Law, under special and exceptional cases, the scientific test may be used as corroboration where all the well known methods established by Islamic injunctions are not sufficient to solve the issue. For example where dispute of maternity is in issue or where an unexplainable circumstances occurred at the time of delivery of a child whereby two children delivered of different parents at same venue and the children got mixed unintentionally and no one to distinguish which child belongs to which parents. In such a scenario, scientific test can be suggested or resorted to in order to determine the paternity and or maternity of the child in question[51].Similarly, where more than one male are involved in the case of paternity, scientific test will play a role in order to ascertain the real father of the child. Should the child be conceived out of wedlock based on the test,the father will be denied paternity of the child and the child will derive descent from the mother. Both the father and the mother will be punished for offence of Zina according to Islamic rule.

The essence of scientific test in the proof of paternity under the CRA is to know the biological father of the child irrespective of whether the child is legitimate or not and to vest the child with paternity right. In Islamic law once a child is illegitimate, whether the father is known or not, paternity is denied such a child permanently.

[50] Ladan M. T. *Introduction to Jurisprudence* Op cit. p.260
[51] Babaji B Op cit P 34

Hence there is no need of any test once the pregnancy is out of wedlock. For this reason, there are agreed ways of proving paternity which are predicated on marriage alone because of the severity of the punishment of adultery (Zina) which is death sentence that ought not to be taken hastily.

5.2.4 **Lawfulness of Adoption:**

Adoption which is defined as the process by which the legal relationship between a child and his natural parents is severed and reestablished between the child and Third Party or Parties[52] is obviously made lawful under the CRA[53] with the consequences stated thus:

On an Adoption order being made;

> All rights, duties, obligations and liabilities including any other order under the personal law applicable to the parents of the child or any other person in relation to the future custody, maintenance, supervision and education of the child, including all religious rights, rights to appoint guardian and to consent or give notice of dissent to marriage, shall be extinguished[54].

The CRA further prohibits marriage between a person who has adopted a child or his natural child with the adopted child, hence such a marriage is null and void and such marriage is an offence and punishable with imprisonment for a term

[52] Black's Law Dictionary Op cit
[53] Section 125 CRA
[54] Section 141 Ibid

not exceeding fourteen years[55].The rights of the adopted child include among others all religious rights as stated under the CRA.

This provision is in conflict with the provision of the Holy Qur'an that outrightly prohibits adoption thus:Allah has not made for any man two hearts in his breast; nor has he made your wives whom you divorce by Zihar your mothers; nor has he made your adopted sons yours sons. Such is (only) your (Manner) of speech by your mouths. But Allah tells (you) the truth and he shows the (right) way. Call them by after their fathers; that is juster in the sight of Allah. But if you know not their father's names, (then they are) your brothers in faith, or your friends.[56]Similarly, adoption is prohibited when Allah says: "Mohammad is not the father of any of your men but (he is) the apostle of God[57].

From the aforesaid, adopted children in Islam do not have equal rights with natural children of their father unlike under the CRA where the parental relationship between the child and his natural parents is severed and reestablished with the person who has adopted the child. It is unlawful to consider an adopted child as a natural son and since an adopted child is not considered as such, marriage may be allowed more especially between the natural child of the adopter and the adopted child.

5.2.5 Prohibition of Corporal Punishment:

Corporal Punishment is legally defined as physical punishment; punishment that is inflicted upon the body (including imprisonment)[58]. The CRA, under restriction

[55] Section 147 (1) (2) Ibid
[56] Qur'an 33:4-5 Translated by Abdullah Yusuf Ali (Dar Al - Shahbaa)
[57] Ibid 33:40
[58] Black's Law Dictionary Op cit. p.1353

on punishment in part XX provides: “No child shall be ordered to be subjected to corporal punishment”[59]. Flogging is one of corporal punishments based on the definition of corporal punishment, and it is deemed under the CRA as an act of torture, inhuman and degrading treatment, hence, prohibited.

Conversely, the prohibition of corporal punishment is in conflict with Islamic provision.In Islamic Law there are offences for which the punishments are divinely ordained by the Qur’an, and Hadith; known as huddud punishments and are therefore uncondonable. Punishment of flogging is prescribed for the offence of fornication (Zina), false accusation of adultery or fornication.[60]and further extended to alcohol drinking by analogy.A mature Muslim child, having been subjected to Sharia Criminal Justice is liable upon conviction of one of the above mentioned offences to be punished through flogging.

The above mentioned religious challenges are the fundamental challenges of domestication of the CRA in Kaduna State and even other states in the North that are predominated by Muslims. It is obvious that religious injunctions or provisions are to prevail over any law. These conflicts brought about the failure of the case of Senator Ahmad Sani (YerimaBakura) when he was alleged to have violated the CRA by marrying a 13- year old Egyptian. He wriggled himself of the allegation by saying his action is in accordance with Islamic Law and by virtue of Section 37 of the Constitution of the Federal Republic of Nigeria 1999, he is entitled to practise his religion[61]. The prohibition of corporal punishment does not only conflict with Islamic

[59]Section 221 (1) (b) CRA
[60] Qur’an 24:2, 24:4
[61]Jimeta U. S A. et al, (2008) Marriage in Islamic Law and the Case of Ahmad Sani (YerimaBakura) in *ABU Law Journal Vol. 27-28, P 145*

injunction but also Biblical provision that states “He who spares the rod hates his son, but he who loves him is careful to discipline him”[62] this clearly shows that some provisions of the CRA are contradictory not to only Islamic Law but also Biblical provision which will also affect Christians. This means if the CRA is to be strictly followed religious rights are going to be affected. Unfortunately, only the Islamic Law issues were the matter of hot debate on the Child’s Rights Bill.The ban of corporal punishment by about forty-five countries beginning with Sweden in 1979 attracted religious arguments among Christian denominations. The United Methodist Church is the first to officially take position against corporal punishment in 2004 discouraging parents from hitting children and calling upon States to prohibit corporal punishment in school. In 2012, Presbyterian Church of USA passed resolution against corporal punishment. The Catholic Church Ohio based Centre for Effective Discipline also opposed corporal punishment. The policy of the opponent is related to the theological teaching on the dignity of the human person. To some, Jesus’ teachings advocate respect for children and training without striking them. Conversely, among the fundamentalist protestants who are the only religious group that publishes doctrinal justification for corporal punishment with Biblical verses[63] to back their belief, claim if you hit a child with a rod, he will not die, but instead will have his soul saved. To the fundamentalists, fear of rebellion is prominent. Dobson[64] recommends that parents be flexible and use various non-violent discipline methods for most problem behaviours of children. But for “willful disobedience”, he believes corporal punishment should be a parent’s first resort and that a parent must “win decisively”. He

[62] Proverb 13:24, see also 19:18, 20:30, 22:15 and 23:13-14
[63] Ibid
[64] Dobson J .*The New Dare to Discipline, Wheaton 111.Tindale*, 1992

recommends holding the child closely after accepting his punishment assuring him of the parent's love and then praying with the child in confession that we have all sinned and asking for God's forgiveness. To Judaism, the verses in the book of Proverb are not interpreted to be authority to hit children with implements. Israel is among countries that prohibited corporal punishment of children. Gordon Hindley, the fifteenth president of the Church of Jesus Christ of Latter-Day Saints (the Mormons) said "I have never accepted the principle of 'spare the rod and spoil the child'-children don't need beating. They need love and encouragement. Some opponent are of the view that there is no New Testament verses that say children should be struck with the hand or with implements. That Apostle Paul speaks of fathers "chastening" and "correcting" their sons as an analogy for the trial Christians encounter in their spiritual growth, but the verse does not indicate that chastening should be physical. Paul also says children should honour their parents, but also says fathers should not anger or discourage children[65].This writer is of the view that the arguments of the opponent of corporal punishment is weak.This is because the fact that corporal punishment is not expressly prohibited in the New Testament, does not invalidate the provision of the Old Testament and all the denominations concerned use the Old Testament when and where ever it suits their interest.

According to some critics, the most injurious and even deaths due to physical abuse of children begin as discipline. Also hitting children with implements makes the parents less aware of the force being used. Most research on the impact of corporal

[65]Rita S. Religious Attitudes on Corporal Punishment available at http//www.childrenshealtcare.com accessed on 3/10/2015

punishment are criticized as unscientific. Elizabeth Gershoff[66], in reviewed 88 studies of corporal punishment with 62 years of data, found that corporal punishment was associated with ten negative outcomes for children; the positive effect was short term compliance. Robert Larzelere, however, found that corporal punishment confined to loving parents infrequently giving toddlers a few swats on the buttocks was beneficial[67]. This writer is of the view that Elizabeth's finding may be true only based on the environment where her research was conducted. As far as Nigerian environment and situation is concerned, corporal punishment as discipline both at home and in schools, mostly in those days have positive and lasting effects. According to a woman Rights Activist[68], during her school days, their teachers punished them with the use of canes to instill discipline; this has helped them to be good citizens today in terms of behaviours. Similarly, a school proprietress[69] said…

> My father is a disciplinarian, not like the children of nowadays that don't see any reason for you to beat or scold them. My father beat me one day to the extent that I had to wet my pant. This was because he wanted me to have the fear of God and be nurtured well morally. He ensured that he inculcated in me the fear of God. I am using this opportunity to advise parents to emulate this. I think the society will be a better place. For some of us who grew up in the 50s and 60s, we know what it is to be a child. I had a humble beginning and my parents did a lot to make sure that I had the best. Today's parents are not given to serious discipline of their children which is why the children of nowadays are spoilt and too dependent.

[66] Elizabeth G. (2002) Corporal Punishment by Parents and Associated Child Behaviour and Experiences: A Meta-analytic and Theoretical Review. *Psychological Bulletin 128, NO.4, 538-79*
[67] Rita S. Op cit
[68] Nancy Talatu, in African Independent Television (A I T) Hausa Television programme titled "KukanKurciya" on Topic "Chin Hanci da Rashawa" {Bribery and Corruption} 6:00 PM 2/5/2016
[69] Princess TitiladeIjiwole. Saturday Mirror Newspaper, 3/4/2016

On the ban of corporal punishment, forty Christian schools filed suit to overturn United Kingdom ban on all school corporal punishment, charging that it prevents them from teaching morals to their children and interfered with religious freedom. The European Court of Human Rights and United Kingdom Courts ruled against them. A similar case was brought by 196 South African Christian schools. The South African Constitutional Court ruled against them[70].

Punishment is meant to discipline and correct individuals that misbehave. For a child to be disciplined effectively, the infliction of pain and not injury is at times required. Punishment of a child, however, should not be excessive so as to avoid harm to the child.

In the course of this research, some Christian religious leaders of different denominations[71] were interviewed and their views on corporal punishment differ[72]. To some, there should not be use of corporal punishment at all stating that it is not necessary but rather the use of alternative means such as "sectioning" and Naughty corner method among others.[73] To others, amounting to 70%[74] the use of corporal punishment may be adopted where other punishments fail or are ineffective. However, the use should be cautious in other not to inflict injury. [75]

100% of the Islamic religious leaders and teachers interviewed[76] are of the view that prescribed corporal punishments are non-compoundable; as to that of child

[70] Rita S. Op cit
[71] Anglican, Catholic, Baptist, Deeper Life, HEKAN, Living Faith, Redeemed Christians Church of God (RCCG)
[72] See Appendix VIII (A)
[73] According to a Catholic Priest of St. Joseph's Catholic Church. Lagos Street, Kaduna. Sectioning and Naughty, corner method is to command a child to confine himself in a particular place or corner without leaving for a period of time denying his opportunity to move or play.
[74] See subsequent analysis
[75] Anglican Church Pastor.
[76] At Gyellesu, Zaria City and Kaduna. See also appendix viii

discipline, it could be applied when and where a child fails to heed to several warnings. Also in virtually all traditional religions, corporal punishment plays a vital role in the discipline of a child.

On whether there is conflict between the CRA and religions provisions, 85% of both Islamic and Christians religions leaders and teachers are of the view that there is conflict.

5.2.6 **Prospects for Religious challenges**

On the prospect of resolving religious conflict which is the most sensitive and controversial of all other challenges in other to ensure the domestication of CRA in Kaduna State, there are remedies. The Islamic conflicts of child marriage and betrothal, scientific proof of paternity adoption etc have solutions. This is because some of the Islamic provisions are only permissive and not obligatory and therefore can be regulated based on the conditions attached to those provisions for instance the suppression of consummation till later date and for those that are obligatory such as scientific proof of paternity which rarely arises and not mandatory under the CRA should be left intact in the case of Muslim marriage. Those conflicting provisions of the CRA can be possibly amended or modified to suit religious provisions. The example of Jigawa State Child's Rights Law is very important as a prospect of domesticating CRA in Kaduna State having the same religious and socio-cultural characteristics. Jigawa State Government was able to domesticate the CRA having modified some controversial provisions. This effort can be equally made by Kaduna State in order to domesticate the CRA.

5.3 Socio-Cultural Challenges

Various societies globally have their local peculiarities that are cultural or customary in nature[77]. Nigeria generally is characterized with some cultures that are regarded as harmful,discriminatory and degrading under the CRA such as tattoo and skin mark, female genital mutilation, child marriage, denial of female child to inherit a deceased father on the basis of sex among most Nigerian cultures, the senior male child inheriting to the exclusion of younger ones, corporal punishment, exploitative labour etc, it should be noted that none of the above mentioned cultural practices is being practised with intent to harm, discriminate negatively or degrade a child. For instance, the practice of tattoo and skin mark is for identification of a particular clan or tribe.For example, President OlusegunObasanjo under whose administration the CRA was signed into law, boasted of his tribal mark as one of his means of identity[78], female genital mutilation is to lower the libido (sexual urge) of a female child in order to avoid promiscuity, child marriage is to avoid waywardness, denial of female child to inherit which was ruled in the case of *Mojekwu vs Mojekwu*[79] to be repugnant to natural justice, equity and good conscience is because female are to be completely taken care of by male brother or brothers and if married by the husband. The eldest male child inheriting to the exclusion of other sons as ruled in the case of *Obganon vs Reg Trustees CCC*[80], that under Benin native law and custom, the eldest son of a deceased person or testator is entitled to inherit without question the house or houses known as “Igiogbe” in which the deceased testator lived and died.Thus a

[77] Ladan M. T. The CRA ,2003 Op cit. p.11
[78] Daily Trust News Paper, November 4, 2014 P 8
[79] (1997) 7 NWLR (Pt 612) P 238-425
[80] (2002) 1 NWLR (Pt 749) P 675

testator cannot validly dispose of the "Igiogbe" to any other person. Same decision was made in the case of *Idehen vs Idehen*[81]. This culture is premised on the fact that the eldest son holds the estate as a trust for the use of the family as held by the deceased father, corporal punishment is aimed at training the child to be well discipline so as to behave well in the community and wherever he is and lastly labour which may be exploitative is not also intended to be so but aimed at training a child to be self-reliant.

Kaduna State is a heterogeneous state with several tribes, cultures and religions like other Northern States and Nigeria in general. Kaduna State consists of North and South. The North comprises of Hausa/Fulani with similar culture and the South with many tribes and different cultures as earlier said.The lack of reflection or consideration of culture of the indigenous people in the process of drafting and passage of the Bill on the Rights of the child poses a challenge of adoption in one hand and that of implementation and enforcement of the CRA on the other hand generally.

The prohibition of child marriage and betrothal, child labour, buying, selling etc, for the purpose of begging, hawking corporal punishment etc by the CRA can hardly be enforced due to cultural and economic situation of the people of Kaduna State. The Hausa/Fulanis who are the majority of Northern part of Kaduna are known with the practice of child marriage[82] and problem of child beggers while the other tribes of Southern Kaduna do deny female children from inheriting their deceased fathers. Six out of the eight tribes of Southern Kaduna interviewed don't allowed

[81] (1991) 6 NWLR (Pt 198) P 382

[82] The Role of Islam in Childhood Marriage Case Study: Nigeria. Available at http//www.orgsbloomu.edu/gasi/proceedings% 20 PDFS/Khatir.pdf accessed 20/9/2015

female child to inherit her deceased father[83].As to street hawking, it is both practised in the entire state,corporal punishment in all parts as way of discipline[84]. Apart from being a religious issue it is also a cultural issue. This is because corporal punishment such as flogging is a way of punishing a child to serve as deterrence where a child disobeys or misbehaves. This mode of discipline is acceptable in both parts of Kaduna as a culture to both the Northern Hausa/Fulani and other tribes of the Southern part[85]. Flogging among the Hausa/Fulani could be two way, that is the religious type which is a prescribed one with specific number of strokes and cultural one which is unspecified. Similarly, to the people of the Southern Kaduna, who are mostly Christian. It could be two way, that is the Biblical instruction which is unspecified unlike Islamic type, and the cultural type which all the tribe recognize as way of discipline.

Though the socio-cultural challenges play more rolesin the implementation and enforcement of the CRA, its prevalence amongst the people of Kaduna is a fundamental hitch to the domestication or adoption of the CRA. This is because although emphasis is not being laid on other challenges like that of religion, the people might not attract government attention on other grounds or challenges, hence the people may be silent but when it comes to observance of the rights of the child, no particular state can effectively implement or enforce the rights as a result of these socio-cultural challenges which every state has its ownthat is prevalent.[86] The

[83] See Subsequent analysis
[84] Ibid
[85] See subsequent analysis
[86]Alenika E.E.O. et al, (2005) A Report prepared for the Committee on the Rights of the Child 38th Session – Geneva, January,

practice and culture of child trafficking and genital mutilation in the South and the practice of child marriage and street begging in the North among others.

5.3.1 Prospects for socio-cultural challenge

On the prospect of resolving Socio-Cultural challengein order to ensure domestication of CRA in Kaduna State, it could be seen that some of the cultural practices that are harmful to children are practised for certain purposes not intended to harm children, those practices are now dying on their own due to civilization and absence of some reasons which hitherto were in placewith more sensitization, these practices will stop even without legislation aimed at stopping them. This will automatically guaranty acceptance thereby leading to domesticationof CRA in Kaduna State.For instance the response of people of Southern Kaduna on child marriage is that it is not allowed ad this is as a result of awareness and civilization which changed the previous practice of child marriage not necessarily because of any law on ground.

5.4 Economic Challenges

The economic strength of a Country determines the standard of living of its citizens, same goes for the various states of the country. Economic retrogression occasions poverty and this has adverse effect on the citizens and the entire country or state leading to economic and social crises. Recent record shows that 65%f of Nigerians are poor[87]; most especially the Northern States including Kaduna. The

[87] National Bureau of Statistic Report, February 3, 2014 available at http//www.nigeriainsight.com*accessed on 6/4/2015*

economic hardship must definitely lead people into different struggles both legitimate and illegitimate to secure means of livelihood.

The CRA prohibits among others, the use of child for the purpose of begging for arms, guiding beggars most especially the Almajiris and for hawking of goods or services on main streets, brothels or highways. However, the irony is that, the welfare of the citizenry which is a constitutional responsibility of the government[88] is not the priority of the government both at federal and state levels as opposed to what is obtainable in developed nations of the world. Most of child hawkers interviewed[89] in the course of this research admitted that they engage in hawking in order to survive because their parents are either death or poor and cannot sponsor them in school.

As to issue of street begging of arms by children who are mostly the Almajiris, it was not like that before as discussed previously. The economic situation on ground forces those children into begging so as to earn their means of livelihood for the time being during their acquisition of religious knowledge. Most of this hawkers are willing to go to school to acquire western education if opportuned.

Some Mallams (Teachers)[90] of the Almajiri schools (Sangaya) interviewed during this research admitted that it was neither the intention of the teachers nor that of the Almajiris to go into begging but it was as a result of the economic situation and the indifferent treatment by the government that led to the present situation of begging that actually has some social implications. That it is incumbent on them with the religious knowledge to impart it to the younger ones; and acquiring this

[88] Chapter II CFRN
[89] On the street of Ahmadu Bello way Kaduna, Agoro Motor Park Zaria, Kantin Kwari motor park, Kaduna etc.
[90] At Gyellesu and Zaria City of Kaduna State.

knowledge in one's environment most especially the indigent children is very difficult. Hence, the migration of children from diverse places to the Mallams for acquisition of the religious knowledge. To corroborate their view on the migration of children in such of religious knowledge. Some Almajiris were interviewed in Kaduna and Zaria and a very high percentage of them admitted they are from different places such as Gombe, Sokoto, Niger, Zamfara, Kebbi etc.One of the Mallams[91] stated that he has about 30 almajiris and all of them are from Zamfara State. The Mallams are of the view that should the government restructure the Almajiris system and sponsor it well, that would be a welcome development.

For instance, in the United States of America (USA), non-custodial parents, under Economic Stability and Job Services enjoy reliable child support payment by helping them find and keep work. Families in USA apply for Temporary Assistance for Needy Family (TANF) cash assistance as a right[92]. In China, significant progress has been made in extending social assistance to poor households. This is of major importance for the wellbeing of children in poverty. UNICEF China has workedin collaboration with Ministry of Civil Affairs in strengthening social assistance and developing a comprehensive social welfare system for children. It is also working with Ministry of Commerce and the National Health and Family Planning Commission on a conditional cash transfer project[93]. In Canada, a system of children's aid societies was established by provincial and territorial governments at times in partnership with private organizations to provide services to supplement or substitute for parental care

[91] Mallam Mohammad Auwal Gyellesu.
[92] http//www.childwelfare.gov accessed on 3/8/2015
[93] http//www.unicefchina.org/e accessed on 3/8/2015

and supervision. Family allowance is paid to families with children to help cover the cost of child maintenance in Canada. This started in 1945 as first Universal Welfare Programme. However, in the 1980s, it is targeted increasingly to low-and-middle income families[94].

The family support assistance in the above mentioned countries is not obtainable in Nigeria as a whole. The question then is, how can there not be the use of child for the purpose of begging, guiding beggars who may be parents to the child or close relation or for brothels or highways or employment of the child as domestic help outside his own home or family environment as prohibited by the Act?As regards the religious aspect of economic situation, the Islamichadd punishment for theft according to a lecturer of classical and Islamic Jurisprudence was said to have been suspended in Medina during the time of Caliph Umar when there was poverty and famine.From the aforesaid, punishment is not justified when there is economic hardship. This is because people must struggle to live. This economic situation is responsible for the 3 out of 4 and 14 out of 20 house help and hawkers respectively that don't go to school. All the 30 Almajiris go to Islamic school (Tsagaya) only[95].

5.4.1 Prospects for economic challenge

The prospect of ensuring the domestication of CRA in Kaduna through resolving economic challenge can be assured if the government can live upto its economic responsibility which can help remarkably in the easy implementation and enforcement as well. By booming the economy with job opportunities and assistance to the people as attainable in other climes.

[94] Article by Dennis Guest, Revised by Julia Skikavich 2006 available at http//www.thecanadianencyclopedia.com accessed on 4/8/2015
[95] See Subsequent analysis

5.5 Administrative Challenges

Good administration is fundamental in any organization or government in order to achieve set goals. The Kaduna State is faced with administrative challenge of political will to promote and protect the best interest and welfare of the child who is vulnerable, marginalized, disadvantaged and discriminated as a result of lack of coordination and harmonious working relationship between the concerned state ministries such as Ministries of Women Affairs and Justice and between ministries and the state legislature respectively [96] which serves as a barrier to the domestication or adoption of the CRA and may still affect implementation and enforcement in case where the CRA has been adopted. Another administrative challenge is that of collaboration and cooperation between the Kaduna State government and the civil society groups such as human rights groups in promoting and protecting children's rights in Kaduna State. This is occasioned as a result of non-identification and appreciation of the limits of each other organization and the complimentary role played by the others in addressing the best interest and welfare of the child.[97].

5.5.1 Prospect for Administrative challenge

On the prospect for the challenge administration, the respective concerned ministries are capable of liaising together to work towards the achievement of the goal of domesticating the CRA in Kaduna state. At present, there is attempt on ground to have that synergy.

[96] Ladan M. T. OP cit P 15
[97] Ibid P 16

5.6 Awareness and Acceptability Challenge

As earlier said, creation of awareness alone cannot solve the problem of non-domestication of the CRA in Kaduna State. This is because while others arenot aware of the existence of the CRA, others are aware of its existence as well as the contents but yet do not and cannot accept it. This is mostly due to the most sensitive issues of religion which cannot be compromised. Acceptability therefore is a serious problem which also militate against the domestication or adoption of the CRA in Kaduna State.

One of the challenges of domestication or adoption of the CRA in Kaduna State particularly and other states that have not adopted the CRA is lack of awareness. This awareness could be the awareness of the existence of the CRA and its contents by the people on one hand and the awareness of the adverse effects of some of the socio- cultural practices that are prohibited by the CRA.

As regards to the existence and contents of the CRA many people do not know of the existence of the CRA as law promoting and protecting the rights of the child. Among few that know of the existence of the law, only a negligible number know what the CRA is all about in terms of contents. A representative of an NGO[98] stated that lack of awareness stalls domestication of CRA in Kaduna. He stated that "most (household) members are not even aware of this Child's Rights Law. There are so many gaps in awareness on the need for the Child's Rights Law". This lack of awareness is not only among the people but even among the police as law

[98] Silas Ideva: System Transformed for Empowered Action and Enabling Responses for Vulnerable children and families (STEER) in an Interview with News Agency of Nigeria (NAN) in Zaria, available at http//www.nannewsnigeria.com accessed on 10/10/2015.

enforcement agents. This is because the police lack special training in child related offences[99]. Acceptability challenge is religious related and therefore very sensitive.

On the issue of lack of awareness of the adverse effects of some socio-cultural practices it should be noted thatnotwithstanding the fact that these cultural practices are not intended to harm, discriminate or degrade a child, they may be accompanied with health and socio-economic implications which the society needs to know; unfortunately, despite the inclusion of National Orientation Agency in the implementation committee under the CRA[100], the awareness of the existence of the CRA and its contents as well as the adverse effects of some cultural practices in Kaduna and Nigeria at large is too low.

5.6.1 Prospects for awareness and acceptability challenge

With general friendly awareness creation which is currently very low and modification of some provisions of the CRA which is possible, people will get to know the essence and benefit of the CRA and this will pave way for its domestication as well as compliance in Kaduna State.

5.7 Challenge of Non-implementation and Enforcement of CRA in other states

While domestication or adoption of the CRA is one thing, another is the implementation and enforcement of CRA in the Federal Capital Territory and various states that have adopted it. 24 States[101] out of 36in Nigeria including the Federal Capital Territory have adopted the CRA as States Child's Rights Laws (CRL). 11 States out of the remaining 12 that have not adopted the CRA are from the North out

[99] U S Embassy Abuja, Official E- mail communication to U S Department of Labour, May 21,2010
[100] Section 260 (2) (b) (III)
[101] Abia, Akwa-Ibom, Anambra, Bayelsa, Benue, Cross-River, Delta, Ebonyi, Edo, Ekiti, Imo, Jigawa, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Taraba

of which Kaduna is one. However, despite the adoptionby two-third $^{2}/_{3}$ of the States in Nigeria, implementation and enforcement is said to be very poor[102]. Only twoStates out of 24 are given recognition as having beenimplementing Child's Rights Laws[103]. This fact is corroborated with statistical records of out of school children in Nigeria which is about ten million[104] and on health and health services as rights of a child, maternal and infant mortality rate in Nigeria is ranking second highest in the world[105]. Regarding the enforcement of child's rights in Nigeria as a whole, the federal government has attempted enforcing the child's rights through some federal ministries an agencies among which are the Ministry of Labour and Productivity and the National Agency for Prohibition of Trafficking in Persons and other related Matters (NAPTIP). Factory inspectors were employed under the Ministry of Labour aimed at curtailing child labour. In 2013, a number of investigations and violations were documented. However, there is no available information on the number of child labour law violations or the number of citations issued[106]. The NAPTIP also investigated 137 cases of trafficking involving children including 37 that involved child labour. Unfortunately also, there is no information as regards number of prosecutions and convictions[107].

On judicial enforcement, the courts are reluctant to enforce the CRA[108]. For instance, the CRA provides that any person who has sexual intercourse with a child

[102]Donelly J. Universal Human Rights in Theory and Practice, Ithala and London Cornel University Press, P9
[103]Lagos and Akwa-Ibom. According to the Minister of Women Affairs and Social Development, ZainabMaina. At commemoration of International Day of Elimination of Violence Against Women in 2014 available at http//www.premiumtimesng.com accessed on 12/3/2015.
[104] UNICEF Report, June, 2015 available at http//www.premiumtimiesng.com accessed on 22/8/2015
[105] U N Report in 2015 available at http//www.premiumtimesng.com accessed on 12/3/2015
[106] U S Embassy Report, Abuja, January 23, 2014 available at http//www.dol.gof accessed on 15/3/2015.
[107] Ibid
[108] Alkali U. OP cit. p.72

irrespective of being her husband, has committed an offence of rape and is liable on conviction for life imprisonment[109]. However, in the case of *Upahar vs State*[110], the accused persons were charged under section 357 of the Criminal Code for the rape of a 12 years old girl, MissUshitileTyosher. The accused were found guilty and were sentenced to 3 years imprisonment. Similarly, in the case of *Ogunbayo vs State*[111], the appellant was arraigned under section 357 of the Criminal Code before the High Court of Ogun State on the allegation of rape of a 13 years old girl, KeniAdekunle. The Appellate Court dismissed his appeal and confirmed his conviction of seven years imprisonment with hard labouror five thousand naira fine.

In the above cases, the CRA which carries severer punishment for the offence of rape of a child was not used in charging the offenders. This therefore, defeats the intention of the law makers in prescribing severer punishment. Due to lack of Implementation and Enforcement of Child's Rights in those States that have adopted the CRA which would have served as example to those that have not adopted, it has become like just existing in theory and not in practice to show the benefit of the laws to a child which every parent and government would have appreciated. Non-implementation and enforcement of laws in Nigeria generally poses a big challenge in virtually all aspects. For instance, despite several laws to curb corruption in the country[112], Nigeria is still one of the top list of most corrupt countries[113]. Realistically, should government at all levels observe their primary duties of ensuring the security and welfare of the people, there would be no need for numerous enactment of laws.

[109] Section 31 (2) CRA
[110] (2003) 6 NWLR (Pt 816) P.230
[111] (2007) 8 NWLR (Pt 1035) P.157
[112] Such as CCB Act, EFCC Act, ICPC, Act. etc
[113] http//www.usnews.com, www.proshareng.com accessed on 2/3/2015

5.7.1 Prospects for the challenge of non-implementation and enforcement of the CRA in other states

The aforesaid, among others, are the challenges militating against the domestication of CRA in Kaduna State in particular and other states that have not yet adopted the CRA. The religious challenge is the most fundamental as a result of sensitivity of religion, while others are not strong due to lack of universality, they are fundamental challenges against the Implementation and Enforcement of Child's Rights Act and Laws in various states of Nigeria.

Based on the above considerations, the Kaduna State government under the Ministry of Women Affairs and Social Development in collaboration with the Ministry of Justice had several meetings aimed at domesticating the Child's Rights Act 2003. After several failed attempt to get the Bill passed at the Kaduna State Assembly, the stake holders have gone far currently with the effort to present the Bill again before the State Assembly.As at present, the memorandum on the position of Child's Rights Act in Kaduna State dated 4th June, 2015 is before the Governor of Kaduna State from the Ministry of Women Affairs and Social Development stating previous abortive attempts and the further attempt by engaging groups such as Jama'atulNasir-Islam, Christian Association of NigeriaJama'atuIzalatulBidiahwaIkamatusSunna Zaria Local Government, MSS Kaduna State Chapter and other concerned citizens, Civil Societies, International Organizations etc. after careful analysis of comments from various quarters, relevant stakeholders were able to identify and enumerate contentious areas of the Child's Rights Act and recommended some amendment in 2009. The 2009 Bill has been amended as 2016 Bill for Kaduna State Child's Rights

Law which is currently at the Ministry of Justice for onward transmission to the executive governor of Kaduna State for presentation to the State Assembly for passage[114].

On the prospect for the above challenge, there is possibility for the government to implement and enforce laws which if done, some laws would not have been contemplated. However, due to lack of political will to do so, many states have failed. Implementation and enforcement is possible when other factors are considered and tackled.

With the effort so far put in place, it is obviously clear that there is high feasibility of domestication of the Child's Rights Act in Kaduna State notwithstanding the prevailing challenges.

5.8 Data Analysis

The research methods and Data Collection

It is imperative to throw more light on the empirical research methodology adopted in this research beside doctrinal method through analysis. Qualitative research is concerned with day to day relationships, perspective and interpretations of people based on their life experiences. It seeks to gain insight into the "thinking and behaviour" of people. [115] Learning from people means Ethnography methodology. [116] The researcher used the method to explore the behaviours, perception and culture of the subjects concerned.[117] To social information through

[114] Information accessed from Ministry of Women Affairs and social Development Kaduna State. Children Unit.
[115] Arksey, H. and Knight, P. (1999) *Interviewing for Social Scientists.* Sage Publications, London, P. 10
[116] Spardley, J.P. (1980) *Participant Observation.* Holt, Rinehart and Winston, USA, P.3
[117] Esterberg, K. (2002) *Qualitative Methods in Social Science Research.* McGraw-Hill, USA, P.35

this method, two methods are used which are participant observation through issuance of questionnaire and interview.

Participant observation: This method is used to acquire first hand views of the relevant or concerned individuals on the inherent challenges associated with the domestication of CRA in Kaduna State.

Interviews: - It is a social encounter that creates avenue for individuals to talk about, reflect over past any present actions, experiences, feelings and thoughts.[118] It helps the researcher to raise important issues related to the subject matter of the research.

TABLE 1

Response of Lawyers and Judges on the Jurisdiction of Family Court

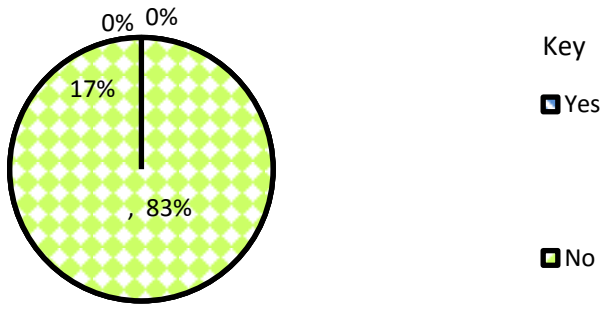
Status	Sex	Age	Whether there is Conflict	Domestication feasibility	Maximum compliance
Lawyer	M	40-59	Yes	Yes	No
Lawyer	F	18-29	Yes	Yes	No
Judge	M	40-59	Yes	Yes	No
Lawyer	M	30-39	Yes	Yes	No
Lawyer	M	30-39	Yes	Yes	No
Lawyer	M	18-29	No	Yes	Yes
Judge	M	40-59	Yes	Yes	No
Lawyer	F	40-59	Yes	Yes	No

[118] Raplay, T. (2004) *Interviews in Qualitative Research Practice.* Sage Publications, London, P. 16

Judge	M	30-39	Yes	Yes	No
Lawyer	M	18-29	Yes	Yes	No
Lawyer	M	18-29	Yes	No	No
Lawyer	M	40-59	No	Yes	No
Judge	M	40-59	Yes	Yes	No
Lawyer	M	30-39	Yes	Yes	No
Lawyer	F	30-39	No	Yes	Yes
Lawyer	M	30-39	Yes	Yes	No
Lawyer	M	60+	Yes	Yes	No
Lawyer	M	40-59	Yes	Yes	No
Judge	M	30-39	Yes	Yes	No
Lawyer	M	60+	No	Yes	Yes
Lawyer	F	30-39	Yes	Yes	No
Lawyer	M	18-29	Yes	Yes	No
Lawyer	M	30-39	Yes	Yes	No
Lawyer	M	40-59	Yes	Yes	No
Lawyer	F	18-29	Yes	Yes	No
Lawyer	M	30-39	Yes	Yes	No
Lawyer	M	40-59	Yes	Yes	No
Lawyer	F	30-39	Yes	Yes	No
Lawyer	M	60+	Yes	Yes	No
Lawyer	M	18-29	Yes	Yes	No

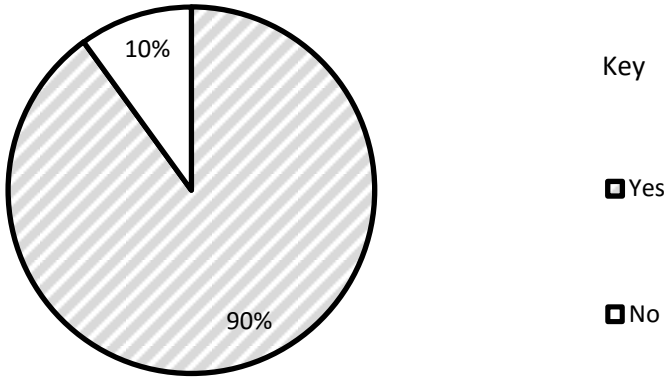
A Chart on whether there is conflict between the CRA and the Constitution on the jurisdiction of the family Court

Chart 1



A chart on whether domestication of the CRA is feasible amidst the conflict

Chart 2



A chart on whether there would be maximum compliance to the CRA

Chart 3

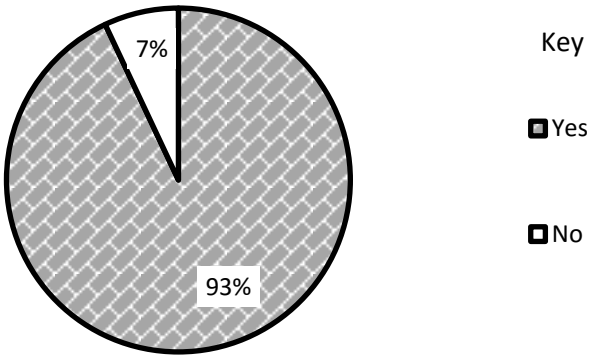


Table 1 Information

The information in table one are the views of lawyers and judges as individuals that are learned in law and can give opinion that are reliable as to constitutionality of a particular provision of any law whether consistent or not. The views are on whether the unlimited and exclusive jurisdiction of the Family Court under the CRA is consistent with the provision of the Constitution on the jurisdiction of Sharia Court of Appeal. The information in the table is further represented in three different charts as shown above on the aspect of conflict between the CRA and the Constitution on the jurisdiction of the Family Court, the feasibility of the domestication of the CRA amidst the conflict and the issue of compliance with the provisions of the CRA. Chart 1 show that 83% of both lawyers and judges are of the view that there is conflict between the CRA and the provision of the Constitution on jurisdiction of the Family Court which is unlimited and exclusive under the CRA. Hence, ousting the jurisdiction of the Sharia Court of Appeal as provided under the Constitution.

Chart 2 shows that 90% of both lawyers and judges are of the view that the domestication of CRA in Kaduna State is feasible and this is simply because it is the

sole responsibility of the State House of Assembly of Kaduna to do that and not that of the public.

Chart 3 shows that 93% of both lawyers and judges are of the view that there will not be maximum compliance with provision of the CRA as a result of conflict therein. Based on the findings in the table 1 above as represented in the charts that follow, it is obvious that there is conflict between the CRA and the Constitution and which is capable of defeating the aim of the CRA even though domesticated in Kaduna State because compliance will be difficult as perceived by lawyers and judges in the table below.

Perception of lawyers and Judges

Lawyers	Perception
	80 percent of lawyers are of the view that there is conflict, 88% admitted domestication of CRA is feasible, 92% viewed maximum compliance impossible. Majority viewed the issue of domestication as exclusive to the legislature where as compliance is general.
Judges	Perception
	100% of judges are of the view that there is conflict, 100% view domestication feasible and 100% consider compliance impossible.

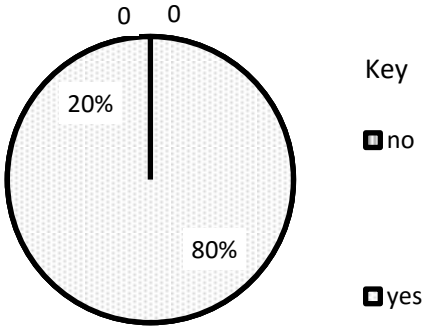
TABLE 2

Response of Religious Leaders

Religion	Sex	Age	Status	Is there Specific age of marriage	Is Child marriage allowed	Is Corporal punishment allowed	Is there Conflict	Is CRA Acceptable	Would there be maximum compliance
Islam	M	40-59	Islamic Teacher	No	Yes	Yes	Yes	No	No
Islam	M	40-59	Islamic Teacher	No	Yes	Yes	Yes	No	No
Christianity	M	40-59	Priest	Yes	No	No	No	Yes	Yes
Islam	M	30-39	Islamic Teacher	No	Yes	Yes	Yes	No	No
Christianity	M	40-59	Clergy	No	No	Yes	Yes	No	No
Christianity	M	30-39	Clergy	No	Yes	Yes	Yes	Yes	No
Christianity	M	30-39	Clergy	No	No	Yes	No	Yes	Yes
Islam	M	60+	Imam	No	Yes	Yes	Yes	No	No
Islam	M	40-59	Islamic teacher	No	Yes	Yes	Yes	No	No
Christianity	M	40-59	Clergy	No	No	No	Yes	Yes	Yes
Islam	M	40-59	Islamic Teacher	No	Yes	Yes	Yes	No	No
Christianity	M	30-39	Clergy	No	c	Yes	Yes	No	No
Islam	M	60+	Imam	No	No	Yes	Yes	No	No
Islam	M	30-39	Islamic Teacher	No	No	Yes	Yes	No	No
Christianity	M	60+	Clergy	No	Yes	Yes	Yes	No	No
Islam	M	40-59	Islamic Teacher	No	No	Yes	Yes	No	No
Islam	M	40-59	Islamic Teacher	No	Yes	Yes	Yes	No	No
Christianity	M	30-39	Clergy	No	No	Yes	Yes	No	No
Christianity	M	40-59	Clergy	Yes	Yes	Yes	Yes	No	No
Christianity	M	40-59	clergy	No	No	Yes	Yes	No	No

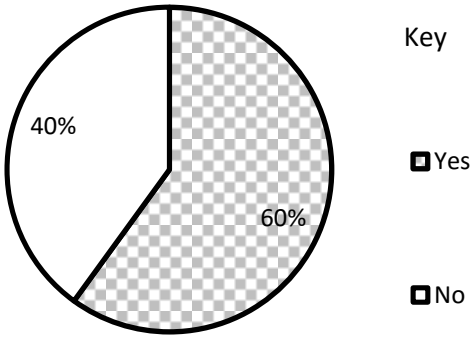
A chart on whether there is specific age of marriage

Chart 1



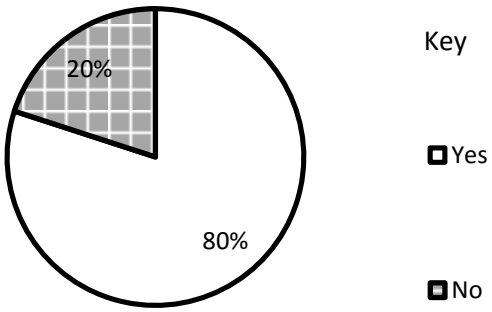
A chart on whether child marriage is allowed

Chart 2

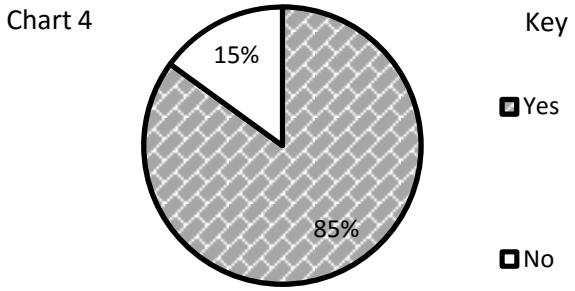


A chart on whether corporal punishment is allowed

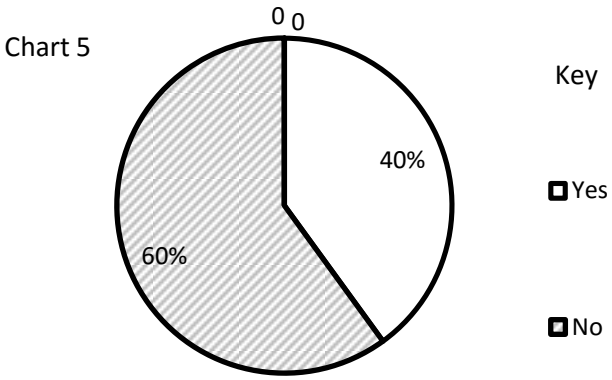
CHart 3



A chart on whether there is conflict between CRA and Religion



A chart on acceptability of CRA



A chart on Maximum compliance

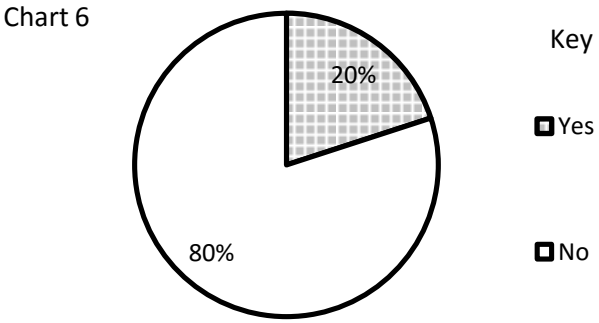


Table 2 Information

The information in table two are the views of religious leaders on the conflict between the CRA and some religiously allowed practices and teachings. The information is further represented in six different charts.

In chart 1, 80% of religious leaders and teachers are of the view that there is no specific age of marriage. In chart 2, 60% of religious leaders and teachers are of the view that child marriage is allowed. In chart 3, 80% of religious leaders and teachers are of the view that corporal punishment is allowed in the discipline of a child. In chart 4, 80% of religious leaders and teachers are of the view that there is conflict between some provisions of the CRA and some religious provisions. Chart 5 shows that 60% of the religious leaders and teachers are of the view that the CRA is not acceptable as a result of some conflict between the CRA and some religious provisions. Chart 6 shows that 80% of religious leaders and teachers are of the view that there will not be maximum compliance with the provisions of the CRA even if domesticated in Kaduna State.

The information, as further represented in the above charts show that the provision of specific age of marriage under the CRA, prohibition of child marriage, prohibition of corporal punishment are in conflict with religious provisions. These therefore, make the CRA unacceptable by majority of people of Kaduna State on the ground of religion. Hence, there will not be maximum compliance.

With the problem of acceptability and minimal compliance, the aim of the CRA is defeated should it be domesticated in Kaduna State. Below are the perceptions of individual religious leaders and teachers in relation to the above information.

Perception of Religious leaders

Islam	Perception
	100% of Islamic teachers and Imams are of the view that there is no specific age of marriage in Islam. Same percentage agree that child marriage is allowed, the same goes for corporal punishment, inconsistency of the CRA with Islamic provision of CRA is not acceptable and hence even domesticated cannot have maximum compliance.

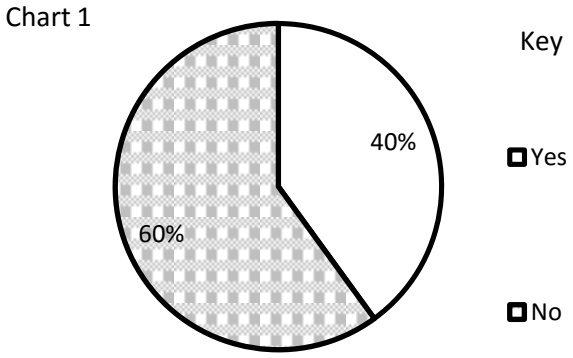
Christianity	Perception
	80% of Christian clergies and priest admitted there is no specific age of marriage, that notwithstanding 80% do not agree to child marriage. On corporal punishment, 70% allow it, same percentage agree there is conflict. On acceptability, 80% are of the view that the CRA is acceptable. On maximum compliance, 60% are of the view that there would not be maximum compliance.

TABLE 3

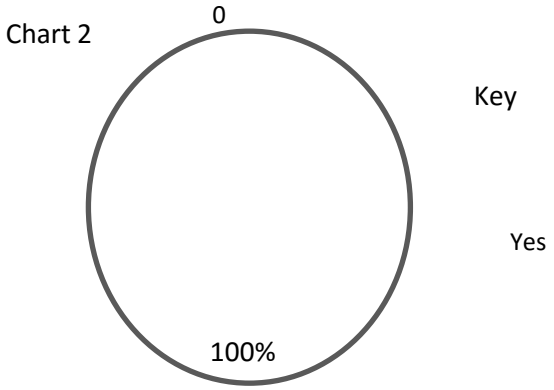
Response of Selected Tribes from Ten LGAs of Northern & Southern Kaduna on some Socio-Cultural practices

Tribe	Local G.A	Is there Specific age of Marriage	Is Corporal punishment allowed	Does a Female inherent	Tribe Mark Practice
Jaba	Jaba	Yes	Yes	No	Yes
Kagoma	Jama'a	Yes	Yes	No	No
Kaduna	Kachia	Yes	Yes	No	Yes
Koro	Kagarko	No	Yes	Yes	No
Marwa	Kaura	Yes	Yes	Yes	Yes
Gure	Kauru	No	Yes	No	Yes
Kagoro	Sanga	No	Yes	No	Yes
Baju	Zango	No	Yes	No	Yes
Fulani	Lere	No	Yes	Yes	Yes
Hausa	Zaria	No	Yes	Yes	Yes

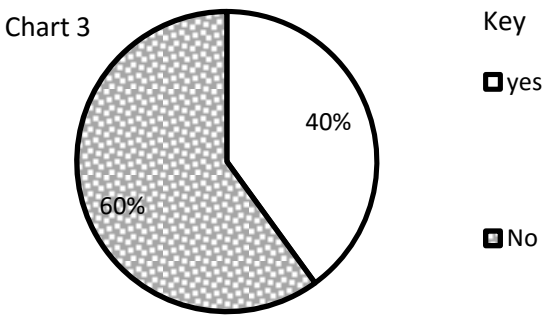
A chart on specific age marriage among the tribe in Kaduna State



A chart on whether corporal punishment is allowed



A chart on whether female child inherits



A chart on tribal mark practice

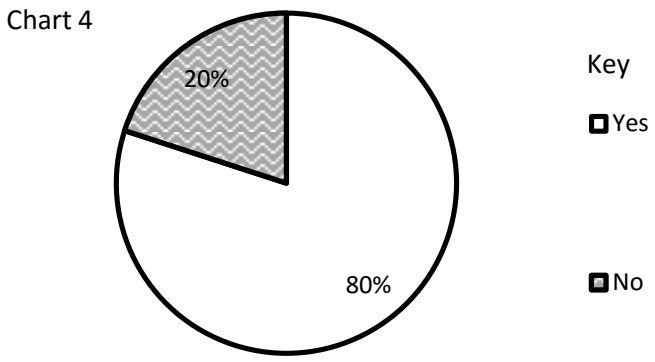


Table 3 Information

Table 3 contains information acquired from some selected tribes in Kaduna State relating to some socio-cultural practices that are considered harmful to the child under the CRA. The information in the above table 3 is further represented in four different charts on the response of ten selected tribes in Kaduna State with respect to some socio cultural practices.

Chart 1 shows that 60% of the selected tribes are of the view that there is no specific age of marriage. This shows that the prohibition of child marriage based on age by the CRA is contrary to most cultural practices of the people of Kaduna State hence, generating a conflict. Chart 2 shows that 100% of the selected tribes apply corporal punishment as means of discipline of their children as opposed to the provision of the CRA which prohibits corporal punishment of a child. Chart 3 shows that 60% of the selected tribes do not allow female children to inherit their parents. This is in conflict with the provision of the CRA which prohibits discrimination on the

basis of sex. Chart 4 shows that 80% of the selected tribes practise tribal marking as a means of identity. This practice is prohibited under the CRA.

While age of marriage and corporal punishment are religious challenges, they are also socio-cultural challenges among the people of Kaduna State in addition to the issues of female inheritance and tribal mark. This are challenges against the domestication of the CRA in Kaduna State in one hand and compliance in the other hand if the CRA gets domesticated. Hence they need to also consider the socio-cultural issues. Below is a table showing the perceptions of selected tribes in Kaduna State.

Tribes	Perception
Jaba Kagoma Kaduna Koro Marwa Gure Kagoro Baju Fulani Hausa	60% are of the view that there is no specific age of marriage in their culture, corporal punishment is acceptable 100%, 60% don't allowed female children to inherit their parents, 80% have tribal marks as means of identification. The 40% that admitted there is age of marriage, differ in terms of the age. Two amongst the Southern tribes allow females to inherit. The Fulani and Hausa of the Northern part allow female children to inherit based on the Islamic provision.

Table 4 Analysis on Economic Challenges

Practices	Gender	Age	State of Origin	Practice	Education
Almajiri	M	12	Gombe	Farmer	N
Almajiri	M	10	Gombe	Farmer	N
Almajiri	M	13	Sokoto	Trader	N
Almajiri	M	12	Niger	Trader	N
Hawker	M	15	Kaduna	Farmer	P5
Almajiri	M	11	Bauchi	Hunter	N
House help	M	16	Kano	Farmer	N
House help	F	14	Katsina	Farmer	N
Hawker	M	12	Kaduna	Farmer	P3
Hawker	M	17	Nasarawa	Farmer	P6
Almajiri	M	15	Katsina	Washman	N
Almajiri	M	9	Zamfara	Blacksmith	N
Almajiri	M	11	Zamfara	Trader	N
Almajiri	M	13	Sokoto	Farmer	N
Almajiri	M	10	Katsina	Trader	N
Hawker	F	15	Kaduna	Carpenter	N
Hawker	M	13	Kaduna	Farmer	P5
Hawker	M	12	Kaduna	Fisherman	P4
Hawker	F	16	Niger	Farmer	P6
Almajiri	M	11	Bauchi	Mason	N
House help	F	14	Kaduna	Trader	P5
Hawker	M	15	Kano	Trader	P4
Almajiri	M	12	Jigawa	Farmer	N
Almajiri	M	14	Gombe	Farmer	N
Almajiri	M	14	Yobe	Trader	N
Almajiri	M	10	Kaduna	Farmer	N
Almajiri	M	13	Niger	Tailor	N

Hawker	F	15	Kaduna	Farmer	P6
Hawker	M	16	Kogi	Trader	P5
Hawker	M	15	Katsina	Farmers	N
Hawker	M	14	Kaduna	Trader	P5
House Help	F	13	Jigawa	Farmer	N
Hawker	M	12	Kano	Farmer	P3
Hawker	M	15	Niger	Mason	P4
Hawker	F	15		Hunter	N
House Help	M	12	Bauchi	Farmer	N
Almajiri	F	15	Kaduna	Farmer	P5
Hawker	M	14	Jigawa	Farmer	N
Hawker	M		Kano	Farmer	N
Hawker	M	11	Sokoto	Trader	N
Almajiri	M	13	Zamfara	Farmer	N
Almajiri	M	10	Zamfara	Farmer	N
Almajiri	M	10	Zamfara	Hunter	N
Almajiri	M	9	Zamfara	Butcher	N
Almajiri	M	12	Zamfara	Farmer	N
Almajiri	M	14	Zamfara	Farmer	N
Almajiri	F	13	Kano	Trader	P4
House Help	M	14	Kaduna	Farmer	P4
Hawker	M	12	Jigawa	Farmer	N
Almajiri	M	11	Niger	Farmer	N
Almajiri	M	9	Katsina	Trader	N
Almajiri	M	14	Kebbi	Farmer	N
Almajiri	M	10	Kebbi	Farmer	N
Almajiri	M	13	Zamfara	Famer	N
Almajiri	M	15	Gombe	Farmer	N

A chart showing occupation of parents of children involved in some practices

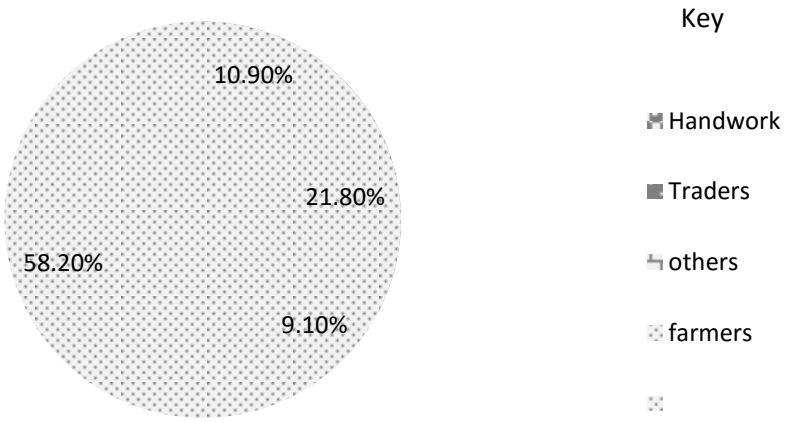


Table 4Information

Table four contains information on the categories of work or practices children are engaged in as a result of economic situation in Kaduna State which range from street begging by Almajiris, hawking and house help which are considered as child abuses and prohibited by the CRA.

The chart above shows the occupations of the parents of the children involved in some of the socio-economic practices. 58.20% of the parents are farmers, 21.80% are petty traders, 10.90% engage in hand work and 9.10% engage in other vocations.

The information on the chart clearly shows that children who are engaged in these socio-economic practices are children of the poor people who cannot take care of the children adequately as a result of economic embarrassment. This shows the negative impact of economic challenge against domestication as well as compliance with the provisions of CRA in Kaduna State. The perceptions of these categories of children are shown in the table below.

Category of practice	Perception
Almajiris	The Almajiris whose ages range from 9 – 16 are mostly children of peasant farmers from states outside Kaduna who came to Kaduna in quest for Islamic knowledge. They admitted passing through hardship but for the sake of Allah and knowledge, they have to bear till the end of their learning. Few of them have intention of acquiring western education after the Islamic education.
Hawkers	Perception
	The hawkers, some of which do go to school attribute their engagement in hawking as a result of economic situation because their parents are poor. They hawk to survive and some pay their school fees through that.
House help	Perception
	House help who are virtually females attribute their engagement to poverty and the influence of their poor parents, some do go to school.

CHAPTER SIX

SUMMARY AND CONCLUSION

This chapter, being the concluding chapter is a summary of preceding chapters and in addition makes observations and shows findings made in the research and recommendations in relation to the findings

6.1 Summary

The vulurability of the child attracted global attention which led to promulgation of laws at international, regional, National and State levels. The chapter states the problem of the research which are constitutional religious, socio-cultural, economic etc with the aim of finding solution to the challenges of non-domestication of CRA in Kaduna State as the research area using doctrinal and empirical method of research.

Basic concepts are clarified for more understanding of the issues involved in the research. Concepts like Child, best interest of the child,Rights, Child abuse, juvenile justice, legitimacy, deoxyribonucleic acid test, Almajiri system of Education andCulture.

CRA which came about to fill the existing gap in other child's rights related laws through enactment by virtue of constitutional provision being a treaty.

The best interest of the child is the primary intent of the CRA; to achieve this, the CRA provides specific rights for the child in addition to the fundamental rights under the CFRN and makes provisions for the protection of the said rights after

saddling the child and parents with some responsibilities to enhance the realization of the protection of the rights.

Other provisions are made under the CRA for the benefit of the child among which are the establishment of family court as a judicial mechanism in the administration of child's justice.

Child Rights related laws in Kaduna State are examined pointing out some existing gaps in the laws which warrant the need for an all encompassing law leading to the enactment of the CRA and the need to adopt or domesticate it.

Examination ofthe prevailing challenges that serve as hitches to the domestication of the CRA in Kaduna State which range from constitutional challenge on enactment of the CRA, prohibition of some religious practices and ouster of jurisdiction of the Sharia Court of Appeal on Islamic personal law, religious challenge which those not affect only Islamic religion.Other challenges are socio-cultural such as child marriage, skin marks, corporal punishment street begging and hawking among others, economic challenge of abject poverty, administrative challenge faced by the government and the challenge of non-implementation of the CRA in those states that have adopted or domesticated the CRA.

The above challenges are however not devoid of prospective solutions should steps be taken by the appropriate stakeholders.

6.2 **Findings:**

The preceding discussion in this research led to the following findings;

(1) The provisions of Sections 4 and 12 of the Constitution requiring the ratification of treaties by states of federation was not complied with.

(2) The examined child's rights related laws in Kaduna State contemplate the Religions and customs of the people. Hence, their acceptance and or domestication in Kaduna State.

(3) Only Muslims contest against the provision of the CRA that are contrary to Islamic religious injunctions and practices in Nigeria. The CRA does not only contradict Islamic religion but also Christian religion as one of the fundamental religions

(4) The economic situation in Nigeria cannot favour implementation and enforcement of the CRA. Hence, the level of compliance is as well negligible.

(5) Governments at all levels have failed in their responsibility of ensuring the welfare of the citizens vis-a- vis what is obtainable in other countries like USA, Canada, China etc. This led to economic crisis hence, pushing both parents and children to engage in one activity or the other such as street begging, hawking, working outside family etc, to have means of survival.

6.3 Observations

From the foregoing findings the following observations are made which need to be attended to in order to make the domestication of the CRA feasible in Kaduna State as well as proper implementation an enforcement of the CRA for the benefit of all children.

The issue of child's Rights has being of global concern which led to enactment of international, regional, National and State Laws to protect the child. However, children are still deprived of their Rights due to several challenges.

Kaduna State at present, applies some laws in dealing with matters relating to children. Those laws are either specifically enacted to protect the interest of children or enacted for the generality of all people in Nigeria or Northern region of Nigeria but with special provisions to protect the interest of the child who is considered vulnerable. The following observations are made in this research:

(1) The Constitution is a law having supremacy[1] over all other laws in Nigeria, be it Federal, State or bye laws of Local Governments. The provisions of the Constitution apply to the general citizens of Nigeria. Notwithstanding the general examination of the Constitution previously, the most important aspect of the Constitution that matters in this research is the provision of fundamental rights under chapter IV which range from Right to life through Right to seek for redress in High Court of a State in case of violation of the guaranteed rights.[2] These fundamental Rights are to be enjoyed by all irrespective of age among others. Children are therefore entitled to enjoy the rights as well.Some of the rights provided under the Constitution are in conflict with Islamic provisions with respect to children, such as Right to freedom of thought, conscience and religion[3] which under Islamic law is subject to the age of the child. This is because under Islamic law, a child is free to choose his religion only when he has attained the age of puberty [4] otherwise his father's religion must be his

[1] Section 1 (1) CFRN
[2] Section 33-46 Ibid
[3] Section 38 Ibid
[4] Ladan M. T. *Introduction to Jurisprudence* Op cit, P 259

religion.[5]Another right is freedom against discrimination on grounds of sex, religion and circumstances of birth. Under Islamic law, a male child gets double of what a female child gets in case of inheritance[6], a non-muslim child is prohibited from inheriting his deceased father[7] and an illegitimate child has no recognition in terms of paternity[8] hence, cannot inherit.Those provisions, despite being contrary to Islamic provisions are weak and do not pose much problem because there are no punishments immediately attached to their violations as sanctions. Furthermore, the Right to religion which guarantees practice of one's religion prevails over the right not to be discriminated against on the bases of sex, religion and circumstances of birth. This is because the denial of a female child to get equal of what a male child gets, a non-muslim from inheriting and an illegitimate child from inheriting are religious practices divinely ordained.

(2) It is observed that before the enactment of the CRA there are child rights related laws operational in Kaduna state either as state law or federal law. The state laws are: Kaduna State children and young person's law which applies to all children without restriction and does not affect religious or customary rights of the young person, the Kaduna State infant Edict is a law that specifically relates to children, providing for capacity of liability of infants, their guardianship and custody. The Edict, under part II[9] provides for marriage settlement by infant. This shows that an infant, as defined by the Edict can marry. In terms of guardianship and custody, the Edict exempts

[5] Ibid
[6] Qur'an 4:11
[7] Abd al AtiH opcit P256
[8] Ibid P 191
[9] Section 8 KSIE

children who are subject to Islamic law or issues of marriage under customary law.[10] This exemption cannot be unconnected with the fact that Islamic and customary laws have their own provisions regarding guardianship and custody of children.Kaduna State Legitimacy Law is not a law for particular age bracket but rather a law that guarantees a child born out of wedlock a right to legitimacy through subsequent marriage of the parents of the child. A child referred to under this law may be of any age. However, this law applies only to Christian marriage.[11] This is because in Islam, an illegitimate child remains illegitimate forever. Hence, this law cannot apply to Muslim marriage.The Penal Code as a Federal Legislation applies to the Northern states of Nigeria in terms of criminal offences. It contemplates the vulnerability of the child and allowing corporal punishment. The sharia penal code applies to Muslims and has the same protection for children.

The Labour Act applies to all the country in relation to labour matters. It contemplates the vulnerability of the child by providing some protection. It does not affect any religious or customary right of the individuals. The Matrimonial Cause Act, also a Federal legislation applies to the entire country, it relates to marriage contracted under the Act only. It protects children of such marriage in term of custody, guardianship, welfare etc. It does not apply to Muslim or customary marriage[12] Those laws are with their short comings.

(3) It is observed that the CRA provision do not just affect Islamic religion but also Christian religion and even traditional religious generally in the country in some aspects.

[10] Section 28 (2) Ibid
[11] Section 2 KSLL
[12] Section 3 MCA

(4) Economic strength of a country plays a vital role in the implementation and enforcement of laws and as well as compliance from the citizens.

(5) The government has a lot of roles or responsibilities to observe in terms of welfare of the people, implementation and enforcement of the CRA.

6.4 Recommendations:

Based on the observations made and subsequent findings, the following are recommended:

(1) The Supremacy of the Constitution Federal Republic of Nigeria, being the ground norm should always be considered and complied with when laws are been enacted.

(2) The interest of the citizens in terms of their religions and customs, etc should be put into consideration when enacting laws so as to get maximum compliance and acceptance.

(3) People of various religions should collectively protest against what is contrary to religion. This will give a signal to law makers that a particular law is in conflict with all religions or cultures and traditions. A situation where only a particular group or religion will be against a law that actually contradicts other religions or cultures does not help but rather creates a wrong impression of those protesting.

(4) The government should not only be in a haste to domesticate laws in the name of other countries are doing so but should also emulate what other countries are doing for their people such as welfare provision which is a constitutional responsibility. This will help in attracting compliance from the people.

(5) The Government should be up to its constitutional responsibilities most especially the welfare of the people.This will give way to easy implementation, enforcement as well as compliance to the CRA. The government should also modify the CRA to be in conformity with the provisions of the CFRN, religions and cultures of the people of Kaduna State.

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