



Examining the Paradox of Child's (Human) Rights, Parental Upbringing and Discipline in The Yoruba Cultural Context: A Legal Perspective

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Abstract

The conflicting point between child's rights and Yoruba methods of child upbringing as a whole cannot be overemphasised. But when a child's right becomes upheld by legal counsel as against traditional norms, the people believe the child's future has been destroyed and traditional means of social control have been curtailed. This paper examined the cultural roles traditionally assigned to the parents in child's parenting and the conflicts between applicable child's rights and corporal punishment in parenting. The study adopted a descriptive research design, using the secondary method of data collection by purposively reviewing relevant legal documents on child's rights; academic journals and literature on parenting in Yoruba culture. The paper found out that while the cultural role assigned to parenting in Yoruba land subdues a child to parental property that could be handled based on their best interest, children are also an important entity in the family who have the right and also have freedom to their own opinion and interest. It was also discovered that the Yoruba culture has reduced child molestation to mere discipline which in most cases usually results in low self-esteem and depression and kills their value for life. Therefore, the study concludes that at all levels; be it home, school, or religious settings children's rights should be upheld to reduce child molestation, abuse and degradation. Hence, the paper recommended that concerted efforts must be made to achieve a point of convergence in which children's rights can be adequately implemented within the traditional context.

Keywords: Low Self-esteem, child degradation. Norms, significant others, Holistic, legal counsel

Introduction

Human rights are universal in nature, scope, and application. Every individual human being is expected to enjoy the rights and freedoms recognized and guaranteed by the law. Every person, including a child, should enjoy liberty and freedom without unpermitted interference or inhibition. Fundamental Human Rights are fundamental because they are guaranteed by the Constitution (Uzoukwu and Ezeonu II, 1991). The fundamental human rights as constitutionally recognised and statutorily protected in Nigeria are the rights that pertain to life; the dignity of the 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 freedom of association; freedom of movement; freedom from discrimination; and freedom to acquire and own immovable property anywhere in Nigeria (FRN,

1999). Thus, the constitutional provisions relating to, connecting with and touching on fundamental human rights apply to every human being.

However, there are additional sets of complex, comprehensive, and sophisticated provisions in Nigerian law that were designed and put in place to protect children from hurt, harm, exploitation, and abuse. This species of law that is focused on children's protection is known as child rights law. This fact of law seems to have elevated the rights of children above the rights available to other categories of human beings, i.e., adults that have reached the age of minority. Right from the colonial era, the need to protect children from themselves, their parents, harmful customary cultural practices, criminal elements within the native society, and from the State, is obvious from the socio-legal configuration of the pre-independent Nigerian legal system and the



legislative reality of pre-independent Nigeria.

Conversely, at the centre of parental upbringing in the Yoruba culture is discipline and regimentation of children's lives as they go to shape them into whatever the parents want them to be (Holy Bible [Prov.13 24]). It is generally believed among the Yorubas that the heart of every child is occupied with madness/foolishness and it takes the rod (cane) of correction to drive it far from him: because a child not well and methodically disciplined brings shame to his/her parents (KJV Bible). Thus, culturally, the decisions relating to the training of a child are exclusively those of his parents. Again, it is imperative to point out at this juncture that in training a child, all full-grown adults and mature persons, within the community are considered as the parents of a child. This informed the Yoruba proverbs that it is 'four eyes that birthed a child, but it takes two hundred eyes to train him.'

Some of the discipline protocols of the Yorubas are, caning, slapping, prohibition of children from playing unchecked, taking part in decisions that affect them, and insisting on what they want or want to be in life (to preserve some uniqueness of the family), child labour, forced marriage, just a mentioned a few. No doubt, some of what are considered as disciplinary measures among the Yorubas are harsh and seemingly inhuman in outlook which outlooks called for interventions by the government. Hence, the passage of laws to protect children from harmful cultural practices and repugnant parenting culture. This ethnological library-based study is divided into five sections. The first section examines who is a child under Nigerian law. The second section highlights the cultural roles traditionally assigned to the parents in parenting. The third section discusses the concept of 'child rights' from socio-legal and socio-cultural prisms and the legal framework for the protection of child rights. The fourth section examines the conflicts between applicable child rights and parents both in the precolonial setting and under the contemporary Yoruba culture. The last section (Section 5) provides a summary and makes recommendations to parents and policymakers.

Statement of the Problem

The Yoruba see children as an important member of society that needs to be protected and guided. They are seen as the most important heritage and legacy to leave behind after death (Hadi, 2019). Also Culturally, children were seen as the image of their family, hence, each family member sees it as a point of duty and responsibility to participate actively in the nurturing of a child to ensure his/her conformity to societal rules and regulations, most importantly not to tarnish the image of the family. Hence, traditionally punishment and reward were seen as potency of ensuring obedience and conformity. According to Odejebi (2012) cited in (Hadi, 2019), the Yoruba lay more emphasis on the good qualities of raising a child and believes that each child should have an enforcer (oniberu) who the child will respect and fear. This idea of enforcing societal norms necessitates the use of corporal punishment against children, mostly as a means of correction and to create fear in their minds (Awodele, 2013). Therefore, the flogging or sparking of a child is aimed to serve as deterrence to other children of the family not to commit similar offences and to prevent the child from becoming a difficult person. The attitude was developed from a Yoruba adage that "omo ti a ko ni yo gbe ile ti a ko ta" (meaning: the untrained child will be the one that will ruin the family) (Babatunde, 2022).

This cultural belief in corporal punishment made it difficult to enforce a child's right in most Yoruba settings because to Yoruba's child's rights go against the culture and tradition of a child's upbringing in society. Hold on to this belief, most victims of child abuse/violence cannot report the case to court to avoid being labelled as a spoiled child or bastard, especially when the culprit is a significant other such as parents' teachers and close relative. Hence, many children were subject to physical and emotional abuse, mental torture and human degradation which in most cases leads to low self-esteem, psychological problems, death, violence etc. However, a series of literature has been on children's rights, and the effect of parental upbringing on a child's self-esteem but there is a dearth of knowledge on the contradiction in child's (human) rights, parental



upbringing and discipline in the Yoruba cultural context from a legal perspective. Hence, necessitates the need to understand the Cultural Roles Traditionally Assigned to the Parents in the Child's parenting and Conflicts between Applicable Child Rights and Corporal Punishment in Parenting.

Objective of the Study

The following are the objectives set for this study

- i. To examine the cultural roles traditionally assigned to the parents in a child's parenting
- ii. To Identify Children's Rights and Parenting
- iii. To understand the Conflicts between Applicable Child Rights and Corporal Punishment in Parenting

An overview of who a Child is under the Nigerian Law

The general definition of a child is any human child between the ages of 0 and 18 years. All the international legal instruments touching on human rights support this definition. For instance, the 'African Charter on the Rights and Welfare of the Child (ACRWC 1999) defined a child as "every human being below the age of eighteen years." The United Nations Convention on the Rights of the Child (CRC, 2003) also defines a child as "a person below the age of eighteen years". The age of a person begins to count immediately it has completely proceeded in a living state from the body of its mother. This position of law finds legislative support in section 307 of the Criminal Code Act, which expressly provides thus:

A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel string is severed or not. (Cap. C38 L.F.N. 2004).

Thus, a newly born child becomes a person with human rights immediately after it is born alive. The question of who is a child, or put in other words, when a child becomes an adult, under Nigerian law is not simplistic nor mono-

dimensional. For instance, the Black's Law Dictionary defines a child variously as "a person under the age of majority; a person who has not reached the age of 14 (at common law); a boy or girl; a young person; a son or daughter" (Bryan, 2004). Thus, a person is said to have attained the age of maturity, usually at age 18, at which he is entitled to full civic rights and considered legally capable of handling his affairs lawfully. The cumulative effect of the Black's Law Dictionary definition is that, depending on the situation, a child is, generally speaking, a person between 0 to 18 years, and 0 to 14 years on the common law. The description of a child as a 'son or daughter', from the African characterization or classification of children, means a child to his parents will remain as such. This is consonant with the Yoruba saying that a child will always remain a child to his parents. For instance, constitutionally speaking, a citizen of Nigeria is of full age if the person is eighteen (18) years and above, and when not measured by age, any woman who is married is deemed to be of full age (FRN, 1999). The implications of these constitutional provisions are that:

- a. A boy child must be age 18 to be counted as a person of full age;
- b. A girl-child may be under 18, ordinarily a child, but once she is married at whatsoever age, she lost her childhood for all purposes and she will be deemed as an adult;
- c. There is a constitutional discrimination between a boy and a girl: a boy child would not be considered as an adult even if he is married until he reached age 18;
- d. A man will not be guilty of marrying an underage immediately after the marriage is perfect either under the native law, customary law, Islamic law or Marriage Act.

The effects of constitutional provisions over any other law in Nigeria is immutable: where the provisions of any other law are inconsistent with the provisions of the Constitution, the 'Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.



Therefore, the definition of a child under the Child Rights Act, is a person under the age of eighteen, a person may be under 18 years of age, and yet under the constitutional provision, not be a child as defined by the Child Rights Act (Child's Rights Act, 2003). Another statutory definition of the word 'child' (Children and Young Persons Law, 2006) is a person under the age of fourteen years, while a person who has attained the age of fourteen years and is under the age of seventeen years is tagged as a young person under the Act. In the same vein, under the Labour Act, a child is recognised as a person under the age of twelve years. These legal inconsistencies imply that the definition of the term, 'a child' is not a simple, nor settled, principle of law. However, for this study, a child is a person who is born alive but has not reached the age of majority, which is 18 years.

Theoretical Framework

This paper adopted Will's Theory to explain the paradox of a child's (human) rights, parental upbringing and discipline in the Yoruba cultural context from a legal perspective. This theory was developed by Herbert Hart (1907-92), the theory was based on the assumption that Freedom is the most basic right and the purpose of the law is to grant to the citizen the means of free expression of his will (Hemant, 2023). The theory believed that to have rights is to have the ability to determine what others may and may not do, and the ability to exercise authority over certain domains of your life such as private life, freedom of wish and the like. The theory argues that human beings have the right to please their interest, which includes how others are to treat them, behave to them and also respect their wish. Also, children like adults should be given maximum dignity, and entitled to the best state of physical and mental health as they have free will as adults and, hence should be allowed to make decisions about their lives and other things that concern them. Herbert has, however, been criticised for his seeing human rights as inalienable, as freedom protected by rights includes the freedom to waive any right, including the freedom to accept payment for waiving rights, he has also been criticised for neglecting the cognitive capacity of the child as may not have the will to even protect the right and

having a right required the understanding how to claim or wave the right.

Methodology

Research Design

The study employed Qualitative research design. The research design entails the collection of data from a relative documents that address the phenomenon under study

Data Collection Method

This research employed secondary data method. Relevant Data were extracted from various academic literatures, journals, constitution and other relevant legal document related to the study

Data Management

Different quality checks at various stages of data collection were conducted; and extracts were properly checked to avoid plagiarirism and aslo relevancy to the study.

Method of Data Analysis

Thematic and content ananysis were used to analysis different information gather from the literatures

The Cultural Roles Assigned to the Parents in Child's Parenting

Parenting in most African societies is the domestic social responsibility of leadership from home or family considered the nucleus of the society. Parenting is an act as well as a process that vents responsibility and roles on the parents to ensure social stability, harmony, and progress within the community of the people (Okoroafor & Njoku, 2012). The traditional duty of parents to provide the necessary guidance, discipline, education and training for the child in his or her care has been stamped with statutory approval. In traditional African societies, discipline of children is seen as a corrective measure and is still commonly tolerated among the Yorubas (Abdullahi 2002). The Yoruba culture saddles the biological parents with the traditional responsibility to train their children in the acceptable ways and moral standards of the society where the parents and the child live. Every parent in Yoruba Culture aims to have a child who



is better than them in terms of social acceptability, economic influence, leadership involvement, and communal respect. Thus, the parents will strive to mould and direct the growth of their children to these lofty heights. In the Yorubá society, the training of a child begins right from the once she begins to kick its mother in the womb. It is common to see a pregnant Yorubá woman tapping on her stomach when she feels the foetus kicking her too hard to force the unborn child to learn lessons by corrections. It has been suggested that such tapping could make the foetus calm down and stop discomforting the mother (Aládesanmí & Ògúnjìnmí, 2019).

The Yoruba culture considers the character formation of a child as a fundamental duty of the family. The children in a family are expected to learn the family orientations, values, belief systems, traditions, history, literature, and politics from their parents. Okoroafor and Njoku (2020) opined that effective parenting denotes resourceful rearing of children by providing all the necessities, or at least, adequate care, treatment, attention, nurture, and proper upbringing that they require to be normal, well-functioning, well-behaved, and useful members of their family and society. In nurturing a child toward these directions, some of the times, recourse is made to corporal punishment, when all other alternatives are considered inadequate, to train the child to shape them appropriately while still a child, believing that a child could be shaped only when he is still a child. This flows from the shared assumption that *"a dried palm frond can only be weaved before the sun is high in the sky"*.

Corporal punishment, as an infused factor in parenting, is a correctional parenting method in which a person exercising the rights of parenting deliberately inflicts pain upon a child to redirect and ingrain the acceptable character in the child (Iguh, 2020). The use of corporal punishment as a disciplinary measure in training a child has been established to be a widely accepted practice in Nigerian society (Ofoha and Ogidan, 2020). However, the Yoruba culture abhors the harsh discipline or correction of children in an inhumane manner: thus, the Yoruba saying, 'when

we chastise a child with the right hand, we draw him to our chest with the left hand'. In line with the Yoruba stance on acceptable parenting principle, acceptable corporal punishments are those physical actions of the parents, i.e., flogging, caning, twisting of the ear lobe, hitting or slapping him/her on the hand/arm/leg, hitting him/her on the bottom or elsewhere on the body with a hard object, spanking or hitting him/her on the bottom with a bare hand, hitting or slapping him/her on the face, head or ears, and beating him/her over and over as hard as possible e.t.c., intended to cause physical pain or discomfort, but no injuries to the child (UNICEF, 2023).

It is apposite at this juncture to emphasise the cultural fact that an average Yoruba parent would resort to corporal punishment when all other modal correctional methods such as verbal corrections, explaining why a particular behaviour is wrong, taking away of certain privileges e.t.c., are not yielding results or when the child is believed to be daring his parents or recreant. It is also important to note that physical violence and parental bullying are not the same as corporal punishment. The signposts of the differences are in two folds: corporal punishment is calculated, conscientiously, and deliberately imposed to correct a wrongdoing: physical violence and parental bullying are intended to impose fear on the child. Secondly, parental corporal punishments are carefully applied in such a way that no injuries will be done to the child, but in case of physical violence and parental bullying; both mental and physical injuries are intended. A casual observation of parenting in the Yoruba culture shows that parents do not accept harsh discipline, physical violence or bullying of their children: 'ba mi na omo mi ko denu olomo' (meaning: help discipline my child is not wholeheartedly requested by the parent). Hence, one can easily conclude that any correction or act that results in injuries is seen as child maltreatment, physical violence or bullying. Those actions are criminal in nature and amount to child abuse in the estimation of the authors of law. As a matter of legal principle, any act of parenting that is not in the best interest of the child is illegal.



Child's Rights and Parenting

Traditionally, parenting and discipline of children are aimed at making them future leaders by preparing them for certain leadership positions. The parents are culturally expected to protect the children from harm and abuse. The child's rights are both traditional and statutory. Right from the beginning of time before the enactment of Human rights anywhere in the world, every child traditionally was entitled to be loved by his/her parents (particularly, the mother), to be given a name, to be fed, to be clothed, to be protected from harms and danger, to be guided and trained on how to live acceptably in the society and be allowed some level of freedom and play. It could be argued that these rights can be located in the human instinct and institution before the development of the contemporary legal orders. Thus, with due respect, the argument that child protection was non-existent in Nigeria for a long time as posited by Justice Zaynab Bashir (2023) has no historical support. In fact, among the Yorubas, Children occupy a strategic space. It is an unquestionable fact, not only among the Yorubas, but in almost all the cultures in Africa that children that are properly trained, culturally socialised, psychologically prepared, and economically equipped are critical for societal continuity. Given these realities, it may not be correct to propound that the societies where children are considered as the 'tomorrow' of society have no native/customary protection mechanism for the protection of their children. The truth is, the pre-colonial Yoruba people recognised the basic rights of the children and had a way of protecting them in the form of taboos located within their native unwritten customary law. For instance, child labour was prohibited among the Yoruba: 'bi omode ba to loko, a loko ...', a child would be allowed to work on the farm only when he is old enough to own a hoe and cutlass.

The most important of child's rights recognised by common sense and law is the right to be born alive, without this right, all other rights peel into insignificance. Thus, the killing of an unborn child has been a very serious offence in Yoruba tradition and under the contemporary legal

system. Hence, any person who prevents a child from being born alive is deemed to have unlawfully killed the child. Under the Criminal Code Act, such an act or omission is a crime punishable with life imprisonment (Criminal Code Act 2003). Other rights have emerged from this right life, cumulated into human rights, fundamental human rights, and children-centric rights termed as child's rights. However, these rights have been statutorily expanded and legislated by the Nigerian National Assembly via the Child's Rights Act in the year 2003 to specifically apply to children in addition to the fundamental human rights protected as guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999. The basics of these special rights are:

1. Right to survival and development (Section 4)
2. Right to name (Section 5)
3. Freedom of association and peaceful assembly (Section 6)
4. Freedom of thoughts, conscience and religion (Section 7)
5. Right to private and family life (Section 8)
6. Right to freedom of movement (Section 9)
7. Right to freedom from discrimination (Section 10)
8. Right to the dignity of a child (Section 11)
9. Right to leisure, recreation and cultural activities (Section 12)
10. Right to health and health services (Section 13)
11. Right to parental care, protection and maintenance (Section 14)
12. Right of a child to free, compulsory and universal primary education, etc. (Section 15)
13. Right of a child in need of special protection measure (Section 16)
14. Right of the unborn child to protection against harm, etc. (Section 17)
15. Contractual rights of a child (Section 18)
16. Responsibilities of a child and parent (Section 19)
17. Parent, etc. to provide guidance concerning the child's responsibilities (Section 20). (FRN, 1999)



These rights aim to afford the protection of the child's best interest, care for his necessities, and secure the child's wellbeing. In addition to the rights highlighted above, the Child's Rights Act specifically prohibits child marriage and child betrothal. This is one of the departures from the act of giving out a child's hand in marriage once the child looks mature without considering her actual age. In other to discourage underage marriage, the Act provides that: *"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 and of no effect whatsoever"* (FRN, 1999).

Sequel to this protection, no parent, guardian or any other person acting in that capacity can lawfully betroth a child to any person, in the eye of the law, any such betrothal i.e., of a person who is not 18 years old is a nullity. The punishment for offences related to or touching on child marriage and or child betrothal carries criminal liability on conviction which is a fine of N500,000; or imprisonment for a term of five years or both such fine and imprisonment (Criminal Act 2003, Section 23). Under normal circumstances, the parents must protect their children from abuse and breach of the rights provided for them. No doubt, in Nigerian society today, it is considered an anti-social abnormality for parents to violate the rights of their children. This explains the newsworthiness of such occurrences in our society today.

The Conflicts between Applicable Child Rights and Corporal Punishment in Parenting

"Any punishment in which physical force is employed and intended to cause some degree of pain or suffering, however light," according to the United Nations Committee on the Rights of the Child, is considered corporal punishment. Most involve striking (or "smacking," "slapping," or "spanking") kids with hands or objects like whips, sticks, belts, shoes, wooden spoons, etc. However, it can also include other behaviours, such as punching, kicking, shaking, or throwing kids, pulling their hair or boxing their ears, making them stay in awkward positions, burning, scalding, or forcing them to eat something hot

(like washing their mouths out with soap or forcing them to swallow hot spices). The Committee considers physical punishment to be generally humiliating. Additionally, there are further non-physical kinds of punishment that are likewise cruel and humiliating and are, therefore, prohibited by the Convention. For instance, this could involve punishing the child in a way that denigrates, humiliates, makes them the victim, or makes them the target of a threat (UNCRC Committee, 2006). The European Committee of Social Rights (ECSR, 2000) see corporal punishment as any form of violence against children, whether at school in any other situation, in their home or elsewhere.

Though, the use of corporal punishment against children in schools, at homes and as sanctions for those who break the law is rarely seen as a violation of their rights in Nigeria settings; instead, it is seen as the necessary application of cultural and moral norms for maintaining law and order and a child's moral development in society (Temitope 2013). Corporal punishment against children such as slapped, smacked, pinched, punched, caned, flogged, beaten and battered by parents, teachers or other significant others as a normal style of parenting in Nigeria is not seen as abuse but as a means of correction and instilling discipline in the child. Most of which parents justified with the biblical injunction that "foolishness is bound in the heart of a child; but the rod of correction shall drive it far from him (Holy Bible, Prov. chap. 22 vs.15)" and the adage spare the rod and spoil the child. Thus, many child abuse cases were not reported as the majority of the victims are afraid of being tagged or stigmatised, hence, many culprits of child abuse go unpunished and the reported cases were sometimes sceptically handled in court, in order not to break family ties. But the point of divergence with a child's right is how significant others/parents use corporal punishment against children often which violates their physical integrity, demonstrates disrespect for human dignity and undermines self-esteem. These ways of handling children by significant others were seen as a breach of their fundamental right to human dignity and physical integrity (UNCRC



Committee, 2006). Irrespective of the cultural disguise of corporal punishment as a discipline, violence against children is frowned upon, as it is against a child's right. Hence, as corporal punishment may seem right in Nigeria as a means of ensuring conformity, it also raises some human rights issues regarding child's rights law, as most punishment practices most times violate the rights of the child who is the victim, and may sometimes lead to inhuman and degrading treatment, for example, in schools children are beating and subject to assault for failing or for making noise, which is totally against ways of impacting knowledge, some will go far to inflicting injuries on the student on the claim of ensuring discipline. The International world has responded to the practice for this reason, and the European Union in particular, has previously issued a statement denouncing all forms of corporal punishment while upholding the practice's legality (Stephen, 2020).

Conclusion

This paper examined the paradox of child's rights, parental upbringing and discipline in the Yoruba culture context from a legal perspective. The child's right was properly stated in Nigeria's constitution but what is however lacking is the incorporation of these rights into the cultural perception of child-rearing within the Yoruba context. Consequently, this paper recommends that there must be concerted efforts and following up on eradicate many of Yoruba's ways of rearing children that are against the child's rights. The use of corporal punishment in schools, home and religious settings should attract serious punishment both legally and traditionally in a more meaningful and systematic manner to eradicate the practice. Children, especially, should be made to understand their rights and how to defend these rights in Nigeria. Also, people should be encouraged to report cases of abuse of children's rights in their vicinity. Public orientation could also assist in many of these areas. In that way, this tool will pave the way for a happy future, full of new perspectives and conveniences for children.

Recommendation

Given the above findings, the paper recommends that children's rights should be included in the primary school curriculum to sensitise the children on their rights. The government should also create enlightening programmes in the media to incorporate children's rights within the Nigerian cultural systems relating to parenting. Both governmental and non-governmental organisations should also see it as their duty to protect children's rights. Adequate government funding and proper monitoring of schools in Nigeria to protect children's rights. Severe punishment should be meted out to anyone who abused a child or was involved in the child's degradation. Finally, clear and stringent measures should be against child abuse and degradation of children under any circumstance irrespective of who is involved.

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