



AN EXAMINATION OF THE CAUSES AND EFFECTS OF CHILD MARRIAGE ON THE CHILD'S DEVELOPMENT IN NIGERIA

By

Adekunle Ademola Aminu, Ph.D*

&

Olorunlaiye Boluwatife Faith**

Abstract

Child marriage is an ancient tradition that entails introducing a child below the age of 18 years into marital union. Like in many other nations of the world, incidences of child marriage is very prevalent in many societies in Nigeria. This development has caused many children who were victims of such experiences from having their full development. The aim of this study is to examine the factors responsible for continuous incidences of child marriage in Nigerian and its debilitating effects on the development of the child. The study adopted doctrinal methodology of research and put to use primary and secondary sources of research. The primary sources include legislations and case law; and the secondary sources are textbooks, journal articles and internet materials. The study found that child marriage is still prevalent in Nigeria despite several legal instruments that have been passed to discourage the practice. The study also found that the extant legal regime has not been effective to this anomaly which has had debilitating effect on the development of the girl-child. The study concluded if the trend of girl-child marriage is not curtailed, it would prevent the girl-child from developing to attain her optimal development. The study recommended that there is the need to promulgate clear legislations that will provide for 18 years as the age of marriage in Nigeria and which will assist to address inconsistency in the provisions of laws relating to marriage. The study also recommended that institutional, governmental and non-governmental bodies charged with the duties of combating

* Lecturer at the Department of Private and Business Law, Al-Hikmah University, Ilorin, Nigeria.

** A legal Practitioner and Post-Graduate student at the Faculty of Law, Al-Hikmah University, Ilorin, Nigeria.



child marriage should be subjected to constant investigation to ensure they perform their functions.

Keywords: Abuse, Child, Legal Instrument, Marriage, Girl-child

1.0 INTRODUCTION

Marriage is an institution ordained by God¹. This union called marriage is to be undergone between two mature people, with mature minds. Therefore, when a child engages in child marriage, it means shoving the responsibilities of an adult to a child, usually a female, and which that child will not be able to handle². Child marriage is defined as the marriage or union between two people in which one or both parties are below eighteen years³. Child marriage is child abuse as it has severe and negative effects on its victims; it is a barbaric concept with the effects of depriving the child of the joys of being a child, the delights of growing up, and their right to blissful innocence⁴. The prevalence of child marriage transcends geographical and cultural boundaries and it is not associated with any single religion or tradition⁵, however, it is quite rampant in socially and educationally underdeveloped areas⁶. Child marriage is illegal in Nigeria and the country has accordingly ratified the Convention on the Right of the Child (CRC) in April 1991⁷, and the African Charter on the Rights and Welfare of the Child (ACRWC) on July 2001.⁸ Additionally, Nigeria took steps to domesticate both instrument in the form of the Child Rights Act (CRA) in 2003. However, such legislation is not always enforced and frequently include legal loopholes that allow children to be married earlier, such as obtaining consent of the parent. The Nigerian constitution provides that 'full age' means the age of eighteen years and above,⁹ while the Child Rights Act states that no person under the age of 18 years is

¹ See Holy Bible, Genesis 2:18-20.

² A. E. Eja, *Criminal & Sexual Offences in Nigeria with Criminal Code Act* (1st edn, Princeton & Associates Publishing Company. Ltd, 2016), 155.

³ <<https://toolkits.knowledgesuccess.org/toolkits/youthpolicy/early-marriage.0>> accessed on 14 June 2024.

⁴ 'CHILD MARRIAGE IS BARBARIC': A Campaign in Ignorance <https://naijainfoman.wordpress.com>> accessed 01 July 2024.

⁵ Research Report: 'Untying the Knot: Exploring Early Marriage in Fragile States', (World Vision UK 2013).

⁶ The Prevalence of Child Marriage in Undeveloped Nations <https://www.populationmedia.org>> accessed 01 July 2024.

⁷ Nigeria signed the CRC in January 1990 and ratified it on 16 April 1991.

⁸ E. S. Nwauche 'Child marriage in Nigeria: (Il) legal and (un)constitutional?' (2015) 15 African Human Rights Law Journal 421-432. ACRWC was ratified by Nigeria on 23 July 2001.

⁹ Section 29 (4) (a), Constitution of the Federal Republic of Nigeria, 1999.



capable of contracting a valid marriage, and accordingly a marriage so contracted is null and void and of no effect whatsoever.¹⁰ Section 3 (1) (e) of the Matrimonial Causes Act¹¹, states that a marriage is null and void if either of the parties is not of a marriageable age. Section 21 of the Act provides for the prohibition of child marriage for the determination of the legal minimum age of marriage, which is eighteen¹². Article 16 of the Universal Declaration of Human Rights (UDHR) states that persons must be at 'full age' when married and that marriage should be entered into 'freely' and with 'full consent.' In other words, any country that allows child marriage is committing a violation of human rights¹³. Child marriage violates the rights of children and has widespread and long term consequences for child brides and grooms, but it is more common among girls. Under the Child Rights Act, the minimum legal age of marriage is eighteen years. However, as of May 2017 there were twelve Nigerian states (eleven of which are located in the north of the country)¹⁴ that did not include the Child Rights Act as part of their state legislation. It follows that in those states, local laws are applied, most of which are Islamic Law provisions, and the minimum age of marriage in some of those states is as low as twelve years.

2.0 MEANING OF CHILD MARRIAGE

Under the Child Rights Act¹⁵, a child means a person under the age of eighteen years. This expressly makes it obvious that a person may only be considered to have become an adult upon the attainment of the minimum age of eighteen years. On the other hand, marriage is a universal institution which is recognised and respected all over the world.¹⁶ Marriage may be generally defined as the legally or formally recognised union of a man and a woman (or, in some jurisdictions, two people of the same sex) as partners in a relationship. It is defined as an institution that is divinely ordained and has been generally accepted by everyone regardless of race, colour or belief¹⁷. Lord Penzance, in the celebrated English case of *Hyde*¹⁸

¹⁰ Section 21, Child Rights Act 2003.

¹¹ Matrimonial Causes Act, Cap M7, LFN 2004.

¹² Section 21 CRA 2003.

¹³ CRA 2003.

¹⁴ The 11 northern states are Bauchi, Yobe, Sokoto, Adamawa, Borno, Zamfara, Gombe, Kastina, Kebbi, Kano and Jigawa. However Jigawa had passed the CRA into law as Jigawa Child Rights Law, 2008. But its state law did not adopt the age of 18 as the age of majority as specified in the Act. Instead, it determined the age of childhood in relation to puberty.

¹⁵ Section 277, CRA 2003.

¹⁶ Marriage|Definition,|History, Types, Customs, Laws, & Facts |Britannica accessed 14 June 2024.

¹⁷ P. O. Adekola et al, "A Qualitative Assessment of the Effect of Child Marriage on Female Education and Entrepreneurship in Northeastern Nigeria", (2016) 2 (1) International Journal of Scientific Research in Multidisciplinary Studies, ISORET, 7-15.

¹⁸ (1854) 1 Ecc. & Ad. 371



v Hyde, defined marriage as a voluntary union for life of a man and a woman to the exclusion of all others. The Black's Law Dictionary,¹⁹ defines marriage thus: Marriage as distinguished from the agreement to marry, and from the act of becoming married, is the civil status, condition, or relation of one man and one woman united in law for life, for the discharge to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex.

In Nigeria, there are two recognisable systems of marriage namely, monogamous marriage and polygamous marriage²⁰. Monogamous marriage otherwise known as statutory marriage in Nigeria is governed by the Marriage Act (MA)²¹ and the Matrimonial Causes Act (MCA),²² based on the Interpretation Act 2003. The two laws regulating statutory marriage in Nigeria did not give specifications as to the mandatory age that must be attained before marriage, but the Marriage Act gave twenty one years of age as the legal age of marriage²³ and the punishment of marrying a minor under the age of twenty one is an imprisonment of two years.²⁴ While there are two types of marriages under polygamous marriage namely, customary marriage is regulated by the various incidents and features of customary law, the number of wives that a man can marry is unrestricted and often depends on the man's wealth, and the second, Islamic marriage is regulated by the incidents and features of Islamic law, although this type of marriage is polygamous in nature as it permits the man to marry up to four wives, provided he has the ability to treat them equally, it is different from the polygamy under customary law where there is no limit to the number of wives that a man can marry and there is no pre-condition as to equal treatment of all the wives.²⁵ Islamic law and customary law are often confused together, however the Supreme Court of Nigeria has made a distinction between the two systems of law.²⁶ It is important to note that under both customary marriage²⁷ and Islamic marriage²⁸, there is no uniform prescribed age of marriage, but the marriageable age is usually left at when the child is 'mature' or has attained 'puberty' in which case is confusing as there is the question of when a child has reached puberty or

¹⁹ B. A. Garner, Black's Law Dictionary, (8th edn, West Publishing Co. 2004).

²⁰ marriage overview-eCitiBiz accessed 14 June 2024.

²¹ Cap M6 LFN 2004

²² Cap 220 LFN 1990.

²³ Section 18 MA, Cap M6 LFN 2004

²⁴ Section 48 MA, Cap M6 LFN 2004

²⁵ Equal Treatment of Wives- Masjid DarusSalam accessed 14 June 2024.

²⁶ Per Bello C.J.N. in Umaru v Umaru (1992) 7 NWLR (Pt.254), 277.

²⁷ Customary marriage <https://intergovernmentalmarriage.org> accessed 14 June 2024.

²⁸ AN ISLAMIC HUMAN RIGHTS PERSPECTIVE ON EARLY AND FORCED MARRIAGES <https://www.girlsnotbrides.org> accessed 14 June 2024.



mature enough to get married. The absence of a uniform marriageable age in the country gives rise to the practice of child marriage.

In instances of child marriage, only one of the partner is a child, and most often, the marriage is of a young girl to an older boy or man. Child marriage otherwise referred to as early marriage is an ancient tradition and can therefore be defined as any marriage that occurs when the girl is not physically, mentally or physiologically ready to bear the pressures of marriage and child bearing²⁹. Child marriage therefore basically relates to the idea of introducing a minor (i.e. a person below the age of eighteen) into marital union. It is often initiated by women, men and younger members of the family of the girl-child³⁰. In Nigeria, child marriage is predominantly in the northern parts of the country where a girl child can marry at the age of 15 as against her counterpart at the age of 20 from the south³¹.

3.0 CAUSES OF CHILD MARRIAGE

There are various causes of child marriage which include among others, poverty, illiteracy, religious and social pressure, traditions, insecurity particularly during war, famine or epidemics, strengthening family bond or political ties. These factors that contribute to the practice of child marriage are explained;

(a) Poverty: Globally, forced child marriage is much more common in poorer countries and regions, and within those countries³², it tends to be concentrated among the poorest households. Poor families sell their children into marriage to either settle debts or to make some money and escape the cycle of poverty. Several child marriages are tied to poverty, with parents needing the bride price of a daughter so as to clothe, feed, educate, and provide for the rest of the family.³³ Where daughters are considered a liability, poor people in the society are willing to give out their daughters for marriage early. The continuing hardship in some part in Nigeria is encouraging the rise in child marriage, as it is often regarded as a family building strategy, an economic strategy and the resulting transaction important for the financial and social survival of the child and the family³⁴.

²⁹ T. Alabi et al. 'The Girl Child: A Sociological View on the Problems of Girl-Child Education in Nigeria' (2014) 10 (12). European Scientific Journal, 06-13.

³⁰ Forced Marriage- the Interagency Safeguarding Children Procedures <https://nottinghamshirescb.proceduresonlinr.com> accessed 14 June 2024.

³¹ A. Adebimpe and P. Oluwatomiye, 'Health Implications of Child Marriage in Northern Nigeria' https://geografie-uoradea.ro/Reviste/Anale/Art/2017-1/6.AUOG_730_Allen.pdf accessed 30 June 2024.

³² Child Marriage in West and Central Africa-UNICEF accessed 30 June 2024.

³³ Child marriage: Facts, FAQs, and how to help end it|World Vision accessed 30 June 2024.

³⁴ T.S.Braimah Child marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the protection of children against marriage accessed 30 June 2024.



(b) Illiteracy: One of the significant causes of child marriage is ignorance on the part of the parents who are illiterates. Ignorance in the sense that some parents are of the opinion that their daughters are safer when they are married off early so as to prevent sexual attacks and violence. Lack of adequate knowledge as to the dangers which child marriage pose encourages this practice. In most localities where child marriage is rampant it is considered regular and acceptable as it forms part of their belief system, religion and tradition. They would rather ascribe the blame for infant and maternal deaths to spiritual forces, activities of envious relatives or the young bride, or as an act of God. Many people do not have a proper knowledge about the post-marital life the child will have to face and the childbirth complications³⁵.

(c) Protecting a girl's sexuality: In certain cultures, marrying a girl young presumes that the girl's sexuality, therefore the girl's family honour will be protected by ensuring that the girl marries as a virgin. The imposition of family honour on a girl's individuality, in essence, robbing her of her honour and dignity, undermines the credibility of family honour and instead underscores the presumed protection's aim, to control the girl. Marriage is seen as a cover of respect and protection by women, by not going to school, it reduces the risk of being sexually active outside the house or being harassed while commuting. A female will thus be married at a young age to ensure that she is a virgin when she marries and to guarantee that she does not become pregnant before marriage, which would bring shame on the family. Thus, any early opportunity for marriage may be seized upon. In some cultures, the older the child the lesser her bride price would be, making the parents marry her off at an early age to secure a higher price from the money paid as her bride price.

(d) Strengthening political ties or family bonds: Marriage is a union between two families and some parents lure their child into marriage in order to consolidate family alliance. In many of these child marriage in Nigeria, the children are given to the men free for economic gains to the family or to build alliances for business or political benefits, particularly in the northern part of the country. Families cement financial or political ties by having their children marry. The betrothal is considered a binding contract upon the families and the children. It is also believed in most part of the northern Nigeria that a man can marry a child as young as the age of nine, as long as sexual relations with her is postponed until she has attained puberty.³⁶

³⁵ O. Tadema, 'Oh no I;m married': An Appraisal of Child Marriage Issues in Contemporary Nigeria, <<https://ssrn.com/abstract=3110474>> accessed on 30 June 2024.

³⁶ I. Nnadi "Early Marriage: A Gender-Based Violence and A Violation of Women's Human Rights in Nigeria". (2014) 7 (3) Journal of Politics and Law, 35-39.



(e) Insecurity: The rising cases of insecurity in Nigeria has seen the rise of kidnapping and other criminal vices. This has seen young girls kidnapped on their way to school or at school premises and thereafter forced into marriage by the captives. The case of abduction and eventual forceful marriage and impregnation of some of the Chibok girls in the northern part of Nigeria is a typical example of this. The abduction of 276 Chibok girls in 2014 was just one instance of a disturbing tactic used by Boko Haram- child marriage as a weapon of war. Christians and Muslim girls were kidnapped and married of by Boko Haram in an attempt to dismantle communities and attract male recruits who were awarded 'wives' if they fight for their cause³⁷. On the 19th of February 2018, Boko Haram struck again, this time in Yobe State, kidnapping a total of 110 girls from the Government Girls Science and Technical College, Dapchi, Yobe State. The majority of the girls are believed to be under the age of 18, at the risk of sexual abuse and torture by the members of the dreaded sect³⁸.

(f) Traditional and cultural beliefs: Beliefs vary from communities, some of them are based on traditions or religions and such communities are unwilling to change their way of life. Some religious beliefs do not condemn marriage to under aged girls and this has thereby encouraged the perpetuation of such acts.

(g) Gender inequality: Often, people are convinced that the boy child is a good luck, while the girl child is not regarded as such and she can only be used as a future bride to secure favour or to settle debt. Also, Nigeria as a patriarchal society, where the system is dominated by males rather than females; this makes it difficult for girls to acquire adequate education or to aspire for high positions in the government.³⁹

4.0 EFFECTS OF CHILD MARRIAGE

The result of child marriage are enormous, for the purpose of this study some of the aftermath will be examined.

(a) Domestic Abuse: Child brides are more likely to experience domestic abuse and violence than their contemporaries who marry later. They are also more likely to believe that a man is justified in beating his wife and it is his right as the head of the house. An ICRW study in India shows that girls who married before age eighteen years reported experiencing physical violence twice as often, and sexual violence three times as often as girls who married at a later age.⁴⁰ Most

³⁷ <https://www.girlsnotbrides.org/child-marriage/nigeria/>>accessed on 30 June 2024.

³⁸ Boko Haram Strikes Again, Punch Newspaper. Published: 19 February 2018.

³⁹ M.K.N. Patriarchal Effects on the Education of the Girl-Child in Nigeria <https://www.sjjesgs.com>>do accessed 30 June 2024.

⁴⁰ International Center for Research on Women (ICRW). 2005. Development Initiative on Supporting Healthy Adolescents (DISHA) project: Analysis of quantitative baseline survey data conducted in 2004. ICRW: Washington, DC.



men are impatient when they marry a young girl forgetting the fact that the wife is a child that needs to be corrected with love. They unleash their anger at every mistake by the child, thereby causing physiological trauma for the child. Often times they live in fear of the unknown, due to the series of abuses from the husband or his family member. Inflated injuries from physical abuse or violence pose a threat to her existence, as it can lead to premature death. It is on record that most girls lose their lives in the name of marriage, when they run back to their parents, they are sent back. They digest all the violence because they are made to believe that marriage is for better for worse.

(b) Denial of Education: Child brides are often denied further education and pulled out of school, their children are also more likely to be illiterates. In most cases before the marriage, the men make promises to send the girl to school but could not keep the promise as the girl is turned to a baby factory⁴¹. Lack of education leads to inability to express one's self in the society or lack of self-confidence, or seen as shameful among their educated peers. Early marriage abruptly terminates any form of schooling and introduces the girl child to early sexual life, early motherhood with a myriad of health problems and a cycle of illiteracy and poverty. At this meeting (the Dakar World Education Forum), the United Nations Secretary- General, Kofi Annan, launched the UN Girls' Education Initiative (UNGEI). In an unprecedented step, 13 UN entities, led by UNICEF agreed to work together on this 10-year initiative to help governments meet their commitments to ensure a quality education for all girls globally.⁴² According to UNESCO reports, not only has Nigeria and sub-Saharan countries failed to achieve the 2015 "Education for All" (EFA) goals, indeed they are very far from achieving them. In the words of Kate Redman, "Nigeria now has more children out of school than when the global goals were set", and this is obviously traceable to a myriad of challenges inhibiting most especially the girl child.⁴³

In Yemen, Widespread child marriage jeopardizes Yemeni girls' access to education and also harm their health, the women complained that marrying early had brought an abrupt end to their education, and some said they had been subjected to marital rape as well as domestic abuse.⁴⁴

⁴¹ N. C. Beauty, 'Negative Effect of Early Girl-Child Marriage on Nigeria the Way Forward' (2018) 8 (10), *International Journal of Scientific and Research Publications*, 550-560.

⁴² G. V. Kyari, J. Ayodele, 'The Socio-Economic Effect of Early Marriage in North Western Nigeria' (2014) 5 (14), *Mediterranean Journal of Social Sciences*, 582-588.

⁴³ E. S. Abasi, (2015). Sub-Saharan Africa "very far" from achieving EFA goals, by UNESCO. *The Guardian*. <<http://www.ngrguardiannews.com>> accessed on 30 June 2024.

⁴⁴ Yemen: Child Marriage Spurs Abuse of Girls and Women, <<http://www.hrw.org/news/2011/12/08/>> accessed on 30 June 2024.



(c) Early Pregnancy: The majority of child brides have limited knowledge and access to contraceptive and reproductive health services. They are exposed to early and frequent sexual relations and to multiple pregnancies and child birth before they are physically mature and psychologically ready.⁴⁵ The children that survive are more likely to be premature, have a low birth weight, and are more at risk to be infected with STDs, in particular HIV and human papilloma virus (HPV).⁴⁶ The risk of getting pregnant as such a young age is very high, in most cases they either lose their lives or that of her babies at birth, as complications do arise due to lack of proper medical care which results in so many health issues in the long term, or then lead to death.⁴⁷

(d) Health Risks: In most cases, child marriage results in many health problems, some of the key ailments child brides are exposed to includes Vesicovaginal Fistula (VVF),⁴⁸ Anaemia,⁴⁹ High Blood Pressure (HBP),⁵⁰ Postpartum Depression (PPD),⁵¹ Post-Traumatic Stress Depression (PTSD),⁵² Malnutrition,⁵³ Sexually Transmitted Diseases (STDs)⁵⁴, and HIV/AIDS.⁵⁵ VVF is reportedly

⁴⁵ Adolescent pregnancy and child marriage-Girls Not Brides accessed 30 June 2024.

⁴⁶ Health Consequences of Child Marriage in Africa –PMC-NCBI accessed 30 June 2024.

⁴⁷ Child Marriage | UNICEF <https://www.unicef.org/protection> accessed 30 June 2024.

⁴⁸ Fistula is an abnormal opening between the bladder and the vagina that results in continuous and unremitting urinary incontinence. See Vesicovaginal fistula: Diagnosis and Management-PMC- NCBI accessed 30 June 2024.

⁴⁹ It is a condition that develops when the blood produces a lower-than-normal amount of healthy red blood cells. See What Is Anemia <https://nhibi.nih.gov/health> accessed 30 June 2024.

⁵⁰ It raises the risk of heart attack and stroke. It damages the walls of arteries and makes them more likely to develop deposits of plaque that harden, narrow or block the arteries which can lead to blood clots. See 8 Negative Effects of High Blood Pressure |UPMC in Central Pa. accessed 30 June 2024.

⁵¹ This is a medical condition that many women get after having a baby. It is strong feelings of sadness, anxiety and tiredness that last for a long time after giving birth. See Postpartum depression| March of Dimes <https://www.marchofdimes.org/po> accessed 30 June 2024.

⁵² It is a disorder that develops in some people who have experienced a shocking, scary or dangerous event. See Post-Traumatic Stress Disorder- National Institute of Mental Health <https://www.nimh.nih.gov/topics> accessed 30 June 2024.

⁵³ This is a condition that develops when the body is deprived of vitamins, minerals and other nutrients it needs to maintain healthy tissues and organ function. See Malnutrition | Johns Hopkins Medicine <https://www.hopkinsmedicine.org> accessed 30 June 2024.

⁵⁴ These are infections transmitted through sexual contact caused by bacteria, viruses or parasites.

⁵⁵ HIV damages the immune system and interferes with the body's ability to fight infection and disease, while AIDS is a chronic immune system disease caused by the human immunodeficiency virus (HIV).



the worst and its corrective operations often require the consent of the spouse, and more often than not the sufferers are abandoned or divorced by their husbands and ostracized by their communities.⁵⁶

(e) Social Stigma: This arises from early marriage, most especially from those that survive fistula, they are often sidelined by their friends and families. They hardly identify or associate in any occasion or ceremonies as they are enclosed to forced life of an introvert. It is pathetic that girls with such medical conditions are considered unclean and ostracised by society. As the child avoid been victimised by the society for not marrying after attaining puberty, upon marriage chances of being divorced or widowed are high, and this in turn places a huge stain on her personality which society will exploit, causing psychological damages which might in turn lead to committing suicide if unbearable. In Nigeria this condition affects 150,000 women.⁵⁷ The stigma of lack of education, not being able to express one's self among peers, contribute to discussion or knowledge of the things happening in the community also affects the girl. After marriage the child's education is either slowed down or denied totally, being an illiterate the child's opportunity to be employed in the future will be limited to the educational level attained before marriage. For communities that practice child marriage, the fear and stigma attached to premarital sex and child bearing outside marriage and the associated family honour, are often seen as valid reasons for the actions families take to secure their honour and the child's dignity. Many of such marriages end in divorce or the girls become widows, and custom forbids divorced or widowed women to remarry, further impoverishing them.⁵⁸

(f) Death: Girls who marry and give birth before their bodies are fully developed are more at risk of death or terrible injury and illness in childbirth. In 2007, UNICEF reported that a girl under the age of 15 is five times more likely to die during pregnancy and childbirth than a woman in her 20s.⁵⁹ Apart from dying during childbirth, it is also very possible that through maltreatment in the husband's house, a child bride would die.

⁵⁶ E.E.O. Alemika et al, Rights of the Child in Nigeria, Report on the implementation of the Convention on the Rights of the Child by Nigeria, (A report prepared for the Committee on the Rights of the Child 38th Session – Geneva, January 2005) 11.

⁵⁷ <<https://researchcyber.com/early-child-marriage-nigeria-causes-effects-solutions/>>accessed on 30 June 2024.

⁵⁸ A. Krishnakumar, Kishnagiri's 'distinction'. Cover story on Child Brides, Frontline Magazine, 22 (14), 2-15 July 2005.

⁵⁹ UNICEF. 2007. The State of the World's Children 2007: Women and Children, the Double Dividend of Gender Equality. UNICEF: New York, NY. <<http://www.unicef.org/sowc07/docs/sowc07.pdf>>accessed 30 June 2024.



(g) Poverty: Child brides - already poor - are isolated and denied education and employment opportunities, making it difficult for them to break out of the cycle of poverty. In many countries child marriage is linked with poverty. According to the National Bureau of Statistics, more than 82 million Nigerians live on less than \$1 a day, Nigeria was already struggling to shake off the effect of the 2016 recession before the new 'Corona Virus Pandemic hit economies nationwide. The statistical office said it did not include Borno state, the state with the worst hit by the decade-long Boko Hara armed uprising, because many areas were not safe to reach, also the highest poverty levels were in the northwest state of the Sokoto, where 87.7 percent of people live under the poverty line compared to 4.5 percent in commercial hub Lagos state which has the lowest rate.⁶⁰

5.0 LEGALITY OF CHILD MARRIAGE

Section 29 (4) (a) and (b) of the 1999 Nigerian Constitution did not establish a minimum age of marriage. The Child Rights Act which raised the minimum age of marriage for girls to eighteen was introduced in 2003.⁶¹ The Act is designed to safeguard children's rights, protecting them from every form abuse and inhumanity. This includes invalidating any marriage contract for persons under the age of eighteen years and prohibiting child betrothal by legal guardians and parent.⁶² Still the Act is weak, the legislation which was created at a federal level is only effective if it is passed by the state governments. Currently in Nigeria, not all 36 states have taken steps to implement the minimum age of marriage. Strictly speaking, going by the CRA, child marriage is illegal in the country and punishment provided. However due to some loopholes in the constitution, child marriage is still persistent in the country, some cultural traditions also support child marriage and as such seen as legal. The CRA which was domesticated to become law in Nigeria by virtue of extant Nigerian Constitution⁶³ made its provisions applicable in the country. As such the provision relating to marriageable age in the Act⁶⁴ is legally binding on all forms of marriage in the country. However, the CRA is not a compulsory law present in all states of the Federation, the Act is only applicable to states that have incorporated it as part of their various state legislation. Thus, the provision of the Act providing the marriageable age is not applicable to the Nigerian states, mostly northern, yet to adopt the Act. The first loophole in the 1999 Constitution is Section 29 (4), while the other is item 61, part 1 of the Second Schedule of the 1999 Constitution.

⁶⁰ <www.aljazeera.com/news/2020/05/forty-percent-nigerians-live-poverty-line-report-200504141558636.html>accessed on 30 June 2024.

⁶¹ Section 21 CRA 2003.

⁶² Ibid.

⁶³ Section 12 CFRN, 1999, as amended.

⁶⁴ Section 21 CRA 2003.



Section 29 (4) permits a citizen of Nigeria of full age who wishes to renounce his citizenship to make a declaration in the prescribed manner. The Section states that: m(4) For the purposes of subsection (1) of this section - (a) 'full age' means the age eighteen years and above; and(b) any woman who is married shall be deemed to be of full age. However, the Senate had initially voted to delete Section 29 (4) (b) which contradicts Section 21 of the Child Rights Act on the age limit of marriage, then Senator Yerima of Zamfara State persuaded the Senate for a second vote which eventually went in his favour. He argued that it would be blasphemous and against Islam to legislate or fix the age of marriage in years.⁶⁵

The second loophole, Part 1 Section 61 of the 1999 Constitution renders the Child Rights Act unenforceable in relation to Islamic and Customary marriage, and also in the various Nigerian states that are yet to implement the CRA as a state law, as the 1999 Constitution serves as the supreme law of the land in Nigeria, overriding all other legislation. Item 61 of Part 1 Second Schedule provides that the formation, annulment and dissolution of marriages other than marriages under Islamic law and customary law including matrimonial causes thereto. It effectively takes marriages under Islamic and customary law out of the federal legislative competence. An example of how this section can be used as a constitutional backing for child marriage was shown in 2010, when a Nigerian Senator, Ahmed Yerima, married a 13 year old Egyptian girl. In 2010, Ahmad Yerima⁶⁶ married the daughter of his chauffeur, a 13 year old Egyptian girl, after allegedly paying a dowry of \$100000. Although the marriage was in contravention of Section 21 of the CRA, Yerima justified the marriage on religious grounds that Prophet Muhammad (SAW) married Aisha at the age of nine. Therefore, any Muslim who marries a girl of nine years and above is following the teaching and practices of Prophet Muhammad.⁶⁷

According to Tardzer, although Ahmad Yerima's conduct seemed reprehensible, there was nothing anyone could do about his marriage to the child.⁶⁸ The Attorney

⁶⁵ N. C. Okafor and I. Oyakhiromen, "Nigeria and Child Marriage: Legal Issues, Complications, Implications, Prospects and Solutions", (2014) 29 (9) Journal of Law, Policy and Globalization, 120-124.

⁶⁶ Sani Ahmed Yerima, in the year 2000 as the then governor, had introduced full brown Islamic Sharia Code into Zamfara State. Yerima while defending his actions in a BBC interview denied breaking any law saying "I do not have to obey the Child Right Act so long it contravenes my religious beliefs". Newspaper reports claimed Yerima had earlier married a 15-year-old girl as third wife. Curiously no charges were passed against Yerima. An official of the Egyptian Embassy in Abuja, Mohammed Saber, was however of the opinion that marrying an underage girl is illegal in Egypt.

⁶⁷ YouTube 'Nigerian senator defends teen marriage' <<http://www.youtube.com/watch?v=rQJ8Rbgiox4>>accessed 30 June 2024.

⁶⁸ C.S.K.Tardzer My Odyssey, My Country (2012) 77.



General of the Federation, Bello Adoke, maintained that because Ahmad Yerima's marriage was contracted under Islamic law, he would not face prosecution. According to Bello Adoke:

I do not like pedophile and I see the action of Senator Yerima as one that can be likened to pedophile. Let me say as irresponsible as his conduct is but I have to prosecute him according to the dictates of the law. The Child Rights Act is meant for Nigerian child but the girl in question is an Egyptian and the girl was brought into the country by her parents for marriage to Senator Yerima.⁶⁹

His statement that the CRA is directed at Nigerian children is not right as the Act is meant to protect anyone considered a child within the Nigerian jurisdiction, irrespective of race or nationality. In addition, if the CRA was only designed for Nigerian children as he maintains, it means that anyone who indulges in child marriage by marrying a non-Nigerian child is exempted from prosecution, which is not what the CRA was created for.⁷⁰

Looking at the case of Yerima, it would be asked if a religious practice override the laws of the land even when there is nothing in the operating law that provides for such an exemption. The answer to this is no. However, if a child marriage is contracted under Islamic law or customary law, the Federal Government cannot interfere with such marriages under Part 1 Item 61 of the 1999 Constitution. Therefore, while Ahmed Yerima is in contravention of the CRA because his marriage is alleged to have taken place in Nigeria, he cannot be prosecuted because the federal government would be in contravention of Part 1 Item 61 of the Constitution. As such it is illegal and difficult to prosecute Ahmed Yerima for his violation of section 21 of the CRA. However, it is very important to note that the age of childhood for the purpose of marriage under Islamic law is different from the provisions of the CRA. A child is defined by the CRA⁷¹ as, a person under the age of eighteen years, and the provisions for the prohibitions of child marriage or betrothal is contained in the Act,⁷² and as such, any marriage which is contracted under these sections are null and void. Unlike the availability of justification of child marriage under Islamic law, the CRA make provisions for punishment of participating in child marriage or betrothal.⁷³

⁶⁹ L. Akinbode 'Okigbo report. We can't prosecute IBB, says FG', Vanguard. <<http://www.vanguardngr.com/2010/08/okigbo-report-we-can't-prosecute-ibb-says-fg>>accessed on 30 June 2024.

⁷⁰ <www.ahrlj.up.ac.za/brahimah-t-s> accessed on 30 June 2024.

⁷¹ Section 277 CRA

⁷² Sections 21 and 22 CRA

⁷³ Section 23 CRA.



Due to the pressure placed on children to marry at a young age in the north, 48 per cent of Hausa-Fulani girls are married by age fifteen, and 78 per cent are married by age eighteen.⁷⁴ In Hausa land, some tribes practice the custom of placing young girls under the care of their betrothed before they reach marriageable age, this is common among the Kona, Margi, Mamuye, and Mumbake, as well as the Mosi tribe. The objective appears in twofold. First, the responsibility for the girl's upbringing and chastity is thrown on the fiancé's family, and second, the appropriation of the girl by her betrothed is clearly signified. As a result of pre-nuptial relations, a man can repudiate his betrothal at any time without the payment of damages⁷⁵. However, despite the practice of child marriage among the Hausa-Fulani, child marriage is illegal in Nigeria. Those who exploit these loopholes push the provision into conflict with other sections of the Constitution. They sometimes harp on Section 38(1) of the Constitution⁷⁶ which states that every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, freedom (either alone or in community with others, and in public or private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

Government need to have clear and consistent legislation that establishes 18 as the minimum age of marriage. Adequate safeguards must be put in place to ensure that parental consent and other exceptions are not used to force girls into marriage. With this provision, one may contend that age was not part of the conditions which must be met before marriage could be solemnized in Islam. However Section 45 provides inter alia, that nothing in Sections 37, 38, 39, 40, and 41 of this constitution shall invalidate any law that is reasonably justifiable in a democratic society: (a) in the interest of defence, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedom of the other persons.

Thus, the counter-argument is that child marriage can justifiably be outlawed as a constitutional restraint on the freedom of religion, on the strength of Section 45. There is still a debate even within Islam about what age a girl reaches maturity. Many Muslim communities and Islamic scholars agree with the internationally recognised age of maturity which is eighteen years. Moreover, many Muslims argue against child marriage because they believe Islam mandates men and women to choose their partners voluntarily, and children are unable to do so.⁷⁷

⁷⁴ United Nations Population Fund 'Early marriage in Nigeria'. <<http://nigeria.unfpa.org/nigeriachild.html>> accessed on 30 June 2024.

⁷⁵ <<http://family.jrank.org/pages/1211/Nigeria-Marriages-in-Nigeria.html>> accessed on 30 June 2024.

⁷⁶ CFRN, 1999.

⁷⁷ See 'I'm Muslim but after hearing about Islam supporting child marriage' <<https://www.quora.com/I'm-Muslim>> accessed 30 June 2024.



The Constitution provides for its supremacy⁷⁸ and it further provides that if any other law is inconsistent with the provisions of the constitution, such law shall be void.⁷⁹ The constitution did not provide for a specific marriageable age and as such is not binding on other legislations which provide for various age of marriage. This omission in the constitution can be addressed by amending Section 29 (4) (b), to ensure that the marriageable age is clearly stated and not subject to other interpretations. This would in turn make any other legislation on age of marriage which is not in conformity with the provision of the amended section to be void. In this way the constitution can exercise dominance on the regulation of marriageable age throughout the country.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),⁸⁰ the most comprehensive international bill of rights for women, states that any betrothal or marriage of a child should not have any legal status. The Committee that monitors this convention states further that the minimum age for marriage for both male and female should be 18 years, the age when they have attained full maturity and capacity to act.⁸¹

6.0 CONCLUSION AND RECOMMENDATIONS

Marriage of children less than 18 years is a fundamental violation of their human rights, including their sexual and reproductive health which is damaged during marriage. It is also a threat to the prosperity and stability of countries, as child marriage adds to the number of school dropout leading to an increasing rate of illiteracy. Also, it increases the level of poverty, especially among married children which in turn affects the development of children from such marriages. To minimize this scourge of child marriage to the barest minimum, there is the need to promulgate clear and consistent legislation that establishes that eighteen years is the minimum age of marriage in Nigeria and this will assist in no small means to address inconsistency among laws relating to marriageable age in Nigeria. Government also needs to undertake public awareness and provide basic needs of life for Nigerians to make life bearable for them and reduce incidents of child marriage. Further, institutional, governmental and non-governmental bodies charged with the duties of combating child marriage should be subjected to constant investigation to ensure that they perform their functions efficiently.

⁷⁸ Section 1 (1) CFRN, 1999, as amended.

⁷⁹ Ibid, Section 1 (3).

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⁸¹ General Recommendation 21 Article 16 (2).