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## **A SOCIAL-LEGAL INSIGHT INTO CHILD MARRIAGE AND ISLAM UNDER COVID-19 PANDEMIC IN NIGERIA**

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### **Abstract**

*Islam is a regulative dogma that guides adherents. There is respect for children under Islam; however, female children are discriminated against on issues concerning marriage. All children, regardless of gender, deserve the protection of their fundamental human right as stipulated in various international, regional and domestic laws against child marriage. COVID-19 pandemic have exacerbated forced into early marriage impinging rights of female-children to attain their fullest potential. The fusion of basic Islamic principles and traditional practice of under-aged marriages prevents their protection under the Penal Code in comparison with recently enacted Child Rights Act (CRA). While there is no express prohibition in Islam against child marriage, female children have right of marriage refusal in principle (talaq). However, patriarchy, innocence, parental domination, COVID-19 induced poverty, often makes that choice non-existence. Child marriage is illegal in federal and southern states, the illegality becomes ineffective due to refusal of most northern states to adopt the CRA or abide by international and regional conventions that protect early children marriages. Using doctrinal methodology, the paper begins with the historical concept of child marriage in Islam within the current socio-political situation of abduction of female children and educational backwardness of most northern Nigerian states. The philosophy of Islamic and socio-cultural attitudes to child marriage follows, then an examination of extant laws on child marriage and how COVID-19 has impacted their rights. In conclusion, there is need to protect female children through educational access, legislative reform, sensitization, preventing socio-religious practices to optimize meaningful development in Northern Nigeria.*

**Keywords:** *Islam, Child's Rights Act, Penal Code, Human rights instruments, COVID-19*

## 1. Introduction

The concept of Islam as “faith or religion” is a complex socio-religious mixture that has encapsulated the religious into doctrines of life. The religious belief fuses into traditions, establishing norms, practices, and customs which guide people’s way of lives.<sup>1</sup> The corpus of Islamic faith affects personal legal rules such as marital issues, succession and other related issues that are domiciled within the inter-relationships of followers of Islam. The concept of marriage with children under Islam is *recondite*. The world is constantly evolving even within the interpretation of traditional practices done within the ambit of religion such as child marriage under Islam where there is a reluctance to eradicate it until recently even in Saudi Arabia where Islam originated. Awareness, modernization and education and even alternative views of the interpretation of child marriage makes it most expedient that children, especially the girl-child are allowed the right to their dignity as a human being by being allowed to reach an appreciable age before embarking on adulthood challenges that marriage portends.

The Covid-19 pandemic started in 2019 but became a global siege in 2020. The pandemic led to government restrictions of movement and total disruption of daily activities for all citizens such as closure of all educational and religious places. The restrictions have made procurement of basic needs difficult for the low-income people. Some parents resort to marrying off their under-aged daughters in order to feed the family. The socio-economic impact of the pandemic is the increase in early marriage of the girl child.<sup>2</sup> A 2021 UNICEF Report stated that ‘over the next decade, up to 10 million more girls will be at risk of becoming child brides as a result of the pandemic’.<sup>3</sup> The Report has described early marriage as ‘the marriage of a girl or a boy before the age of 18’. Furthermore, pre-COVID projections show that 100 million girls will still become child brides over the next decade – a far cry from the global goal of ending child marriage by 2030.<sup>4</sup> Nigeria still ranks as having ‘one of the highest rate of girl child marriage in the world (with) about 2.5 million girls are at risk of getting into early marriage in the country by year 2025 due to the Coronavirus Disease (COVID-19)’.<sup>5</sup>

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<sup>1</sup> John L. Esposito, *The Oxford Encyclopedia of the Islamic World* (revised edition, Oxford University 2009).

<sup>2</sup> Shuaibu Saidu Musa *et al* ‘Early marriage and teenage pregnancy: The unspoken consequences of COVID-19 pandemic in Nigeria’, *Public Health in Practice* Early marriage and teenage pregnancy: The unspoken consequences of COVID-19 pandemic in Nigeria Volume 2, November 2021, 100152.

<sup>3</sup> UNICEF ‘COVID-19: A Threat to Progress against Child Marriage’, <https://data.unicef.org/resources/covid-19-a-threat-to-progress-against-child-marriage/>, accessed 25 February 2022.

<sup>4</sup> Ibid

<sup>5</sup> Obehi Okojie, ‘Exploring the Impact of COVID-19 on Communities and the Mitigation Efforts’. Lecture delivered on 9 August 2021 at the Faculty of Public Health and Community Medicine in National Post Graduate Medical College of Nigeria (NPMCN Kaduna State University (KASU), report by Abdulganiyu Alibi, ‘COVID-

Covid 19 pandemic has exacerbated negatively on the mental and physical health as well as the socio-economic level of children and their families and communities.<sup>6</sup> In order to alleviate the sufferings of the family, the girl-child is often the easiest means of alleviating family suffering through forced or coerced marriage for the low income families.<sup>7</sup> While an under-aged marriage is common across many countries across the globe,<sup>8</sup> the focus in this paper is on the northern states of Nigeria where the impact of Covid-19 on under-aged marriage is most apparent. This paper, discussed the prevalence of child marriage in Nigeria against the backdrop of the history of Islam and justification for early girl-child marriage. This is followed by an elucidation of the philosophy of Islamic religion on child marriage and the prevalence of child marriage in northern Nigeria as both a cultural and religious belief. The paper gives a working definition of who a child is and the position of extant Nigerian laws on child marriage against the backdrop of the constitutional ambiguity and evasion by Nigerian legislature in clarifying the vagueness of the legality or otherwise of child-brides. The article reviews international instruments on the rights of the child and their applicability to Nigeria. All these are discussed within the impact of Covid-19 on girl child marriages and conclude by suggesting how child-brides can be curbed.

## **I. Historical Antecedence of Child Marriage in Nigeria**

Nigeria has the highest number of child marriages globally and is most common in the North West and North East of Nigeria. Although the statistics varies from one region to another, it was revealed that the highest figures are from the North West region with about 76 %.<sup>9</sup> Niger state has about 4.1 million child brides which is the highest estimate in the world out of the estimated 22 million child brides in Nigeria.<sup>10</sup> This is predominantly within the Hausa/Fulani ethnic group, though it occurs in other parts of Nigeria too. Even before Covid-19 pandemic,

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19 may force 2.5m girls into child marriage, says don', The Guardian 10 August 2021, <https://guardian.ng/news/covid-19-may-force-2-5m-girls-into-child-marriage-says-don/>

<sup>6</sup> UNICEF 'COVID-19: A Threat to Progress against Child Marriage', <https://data.unicef.org/resources/covid-19-a-threat-to-progress-against-child-marriage/>, accessed 25 February 2022.

<sup>7</sup> Human Rights watch, 'Nigeria: Child Marriage Violates Girls' Rights', <https://www.hrw.org/news/2022/01/17/nigeria-child-marriage-violates-girls-rights> (accessed 1st March 2022).

<sup>8</sup> UNFPA, 'Child marriage - Frequently Asked Questions', the UNFPA report states that more than 650 million girls across the globe were married before the age of 18, while 19% of women between 20-24 years were child brides. One in three child brides are in Sub-Saharan Africa <https://www.unfpa.org/child-marriage-frequently-asked-questions#:~:text=Dhana%20Bahadur%20Lamsal-How%20common%20is%20child%20marriage%3F,the%20world%20were%20child%20brides>, (accessed 1<sup>st</sup> March 2022).

<sup>9</sup> Child marriage in Nigeria :Girls are not Brides Country Profile- Nigeria

<sup>10</sup> UNICEF, 'Child Brides in West and Central Africa At A Glance', <https://www.unicef.org/wca/media/2596/file> ) accessed 1st March 2022).

child-marriage is an international problem because 39 per cent of girl still get married before the age of 15 years <sup>11</sup> while 40 percent were married by age 18.<sup>12</sup> More importantly, child marriage is usually forced more on girls than boys. The practice is more common amongst the poorest people in the rural communities than the rich.<sup>13</sup> This affects the wellbeing and educational status of the girl child with its incidental health challenges.

The issue of whether the girl-child marriage is an Islamic prescription or a socio-religious practice that has been immersed in the religious interpretation is an issue that is recondite.

Some Islamic followers believe that 'Islam does not prohibit underage marriage (*Nikkah*). The consummation of marriage (*Rukhsati*) is allowed only when the couple – both husband and wife – reaches puberty.<sup>14</sup> History has it that the marriage between Holy Prophet Mohammed (PBUH) with his wife Aisha occurred when she was just six years old. On the other hand, there has also been controversy that the marriage could not have historically occurred before she reached puberty. This is because 'incontrovertible historical record shows that Aisha was involved in the Battles of Badr in 624 and Uhud in 625, in neither of which was anyone under the age of 15 allowed.<sup>15</sup> However, Al-Azhar Al-Sharif, the highest religious body in the Sunni world, has recently released a new Manual on the rights of Muslim children which states that: "*Marriage in Islam is regulated by certain rules; namely, children must reach puberty and maturity so that they can get married.*"<sup>16</sup> This position affirms the provision of the relevant law that the age of adulthood begins at eighteen.

While socio-religious adoption of child marriage is traced to the marriage of the Holy Prophet Mohammed to Aisha, Saudi Arabia, the birthplace of the Holy Prophet recently regulated marriages under the age of 18 years with the announcement by the Justice Ministry on December 23 2019 to courts and marriage officials (*Maazouns*) to refrain from concluding

<sup>11</sup> UNICEF global databases, 2018, based on DHS, MICS, and other national surveys 2010-2017- 'Child Marriage,' data.unicef.org, (accessed 31 July 2019).

<sup>12</sup> National Population Commission (Nigeria). 2000. Nigeria Demographic and Health Survey 1999. Calverton, MD: National Population Commission and ORC Macro. Data are for 20–24-year-old

<sup>13</sup> This is a global partnership comprising more than 1000 civil society organisations from over 95 countries of the world with the shared commitment to eradicate child marriage and give girls the opportunity to reach their potential before marriage. [girlsnotbrides.org](http://girlsnotbrides.org)

<sup>14</sup> 'Peer Mohammed, 'Marital matters: Underage marriage [Nikkah] not un-Islamic: CII,' <https://tribune.com.pk/story/681784/marital-matters-underage-marriage-nikkah-not-un-islamic-cii/> (accessed 24 July 2019).

<sup>15</sup> David Liepart, 'Rejecting the Myth of Sanctioned Child Marriage in Islam-' [https://www.huffpost.com/entry/islamic-pedophilia\\_b\\_814332](https://www.huffpost.com/entry/islamic-pedophilia_b_814332) (accessed 24 July 2019).

<sup>16</sup> Zafar Khan (editor), 'Are Child Marriages allowed in Islam?' <http://www.islamawareness.net/Marriage/Child/childmarriages.html> (accessed 24 July 2019).

marriages for those under the age of 18'. The Justice Minister Dr Walid bin Mohammed Al-Samaani instructed all courts and officials to refer all cases involving child marriages to the competent courts in accordance with the Child Protection Law 2014.<sup>17</sup> By virtue of Article of 1(1) of that Law, a 'child' is defined as 'Every human being below the age of eighteen'.<sup>18</sup> It should be noted, that despite the law, there are instances when child marriages are permitted in exceptional circumstances. The 2014 law in exceptional circumstances allows child marriages by directing that 'Before the conclusion of the marriage contract, it is necessary to ensure that a person marrying under the age of 18 will not be harmed, whether male or female',<sup>19</sup> but outrightly bans marriages below the age of 15 years under any circumstances. So far, in recognition of the educational advancement of its citizens, especially females, Saudi authorities have moved with modern times will allow marriages under 18 year only when it follows the tenets of the law.

However, in the north –eastern and north western states of Nigeria, marriage of the girl-child will be difficult to eradicate because the chastity and virginity of a female child has been subsumed into the religious perception of a true Islamic faithful. Fathers are encouraged to protect the family name by ensuring that their daughters marry as virgins, therefore it is most expedient to ensure they marry once puberty is reached which could be between the ages of 11-18 for girls. Some Islamic adherents believe that a girl should get married once she has her first menstrual cycle as the next cycle must meet the girl in her husband's house. In the northern states of Nigeria the practice is more prevalent because it is perceived as a religious obligation by a father to his daughter.<sup>20</sup> Fayokun recognised that child marriage is one of the strongest social disorders which must be eradicated<sup>21</sup> due to the negative effect on the medical, mental and biological development of female children whose bodies are yet to be

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<sup>17</sup> The Kingdom of Saudi Arabia, *Executive Regulations of Child Protection Law* <https://hrs.gov.sa/sites/default/files/Executive%20Regulations%20of%20Child%20Protection%20Law.pdf> (accessed 28 February 2022).

<sup>18</sup> Article 5(1) of The Act further stipulates how the age of the child is to be determined so as not to violate the rights of the child.

<sup>19</sup> Arab News Saudi justice minister vows action against underage marriages <https://www.arabnews.com/node/1603156/saudi-arabia> (accessed 25 February 2022)

<sup>20</sup> Human Rights Watch, Nigeria: 'Child Marriage Violates Girls' Rights States Should Urgently Adopt Laws to Enforce Child Rights Act', January 17 2021, <https://www.hrw.org/news/2022/01/17/nigeria-child-marriage-violates-girls-rights#:~:text=In%20many%20Sharia-legislated%20states,%2C%20bodily%20autonomy%2C%20or%20rights> (accessed 26 February 2022).

<sup>21</sup> Kayode Olatunbosun Fayokun, "Legality of Child Marriage in Nigeria and Inhibitions Against Realisation of Education Rights." *US-China Education Review B*, July 2015, Vol. 5, No. 7, 460-470, (davidpublisher.com. David Publishing, 11 Jul. 2015 <http://www.davidpublisher.com/Public/uploads/Contribute/55bb43bda2e6a.pdf> (accessed 20 February 2022).

sufficiently developed enough to carry a pregnancy. The most prevalent result of child marriage are vesico-virginal fistula, that often result in ostracisation, stigma and rejection of the child-bride by the husband and his family and sometimes death of the girl during child-bearing when the pelvic is insufficiently developed to allow the baby to pass through the birth canal. Yet child marriage is a common practice in Muslim dominated societies and predominantly occurs among female children. The patriarchal nature have caused unfair and imbalanced socio-economic factors which is prevalent globally, but apparent mostly in the northern parts of Nigeria. This is one of the issues that have contributed and aided the continuation of the girl child marriage.<sup>22</sup>

## **II. Introduction Of Islam As A Socio-Religious And Cultural Philosophy In Nigeria**

The introduction of Islam into Nigeria was from two geographical routes, which are North Africa and the basin of Senegal. Islam's origin in Nigeria is closely related to its emergence all around Africa. It was first documented in the central region of Sudan by efforts of medieval Islamic geographers and historians, namely; Al-Maqrizi, Al-Bakri, Yaqut al-Hamawi, and subsequently, the works of Ibn Battuta and Ibn Khaldun gave some records of Islam in West Africa.<sup>23</sup>

Islam took a foothold mainly in North-Eastern Nigeria. This can be particularly traced to the Kanem Borno Empire as a result of the trans-Sahara trade interaction between Kanem Borno and the regions of Egypt, Cyrenaica, and Fezzan, in Northern African in the 11th century.<sup>24</sup> Muslims trading in stocks of merchandise from the North sometimes tarried in settlements along the trading routes; the merchant class subsequently began to propagate Islam to the communities hosting them. The very first conversion of the traditional ruler dates back to the eleventh century, when Mai Ume Jilmi of Kanem decided to convert to Islam, having been persuaded by an Islamic scholar whose offspring held the inherited position of Chief Imam of Kanem.<sup>25</sup>

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<sup>22</sup> Fayokun (n 5).

<sup>23</sup> Ismail A. B. Balogun, 'The Penetration of Islam into Nigeria (University of Khartoum. Sudan Research Unit. African studies seminar paper no. 7) Unknown Binding – January 1, 1969, <https://www.amazon.com/penetration-Nigeria-University-Khartoum-Research/dp/B0006C15Q> (accessed 1<sup>st</sup> March 2021).

<sup>24</sup> *Ibid*

<sup>25</sup> *Ibid*

However, in the predominantly original Hausaland or Hausa Bakwai<sup>26</sup>, in particular Kano, Islam penetrated the territory in the 14th century through western African traders who had been converted by Tukolor Muslims from the Senegalese reservoir and Muslim merchants from the Mali Empire. Sarki Muhammed Rumfa (1463-1499) was the first traditional ruler to be converted to Islam in Hausa land. The religion expanded to other major cities in the northern part of Nigeria in the 16th century, subsequently to the hinterland towards the Middle Belt territory. There are pockets of other claims of an earlier arrival of Islam. A Muslim scholar argued that 'Islam reached Sub-Sahara Africa, Nigeria inclusive, as early as the 1st century of Hijrah through concerted efforts of Muslim traders in the reign of an Arab conqueror name Uqba ibn al Nafia (622–683), whose Islamic conquests under the Umayyad dynasty, during Muawiyah<sup>27</sup> and Yazid's<sup>28</sup> dispensation, spread across Northern Africa or the Maghreb, which makes up present-day Morocco, Tunisia, Algeria, and Libya.<sup>29</sup> Much of the doctrines and customs of these regions through a process of acculturation of the Arab/Fulani migrants and the indigenous Hausa people became imbued in the values, customs, tenets, and traditions of most parts of Northern Nigeria such that there was no identifiable difference between the cultural and their religious practices and Islamic doctrines.

Traditionally, most children were married by the age of 15 where Hausa /Fulani are predominant and Islam /Sharia law are practiced. At the time when life expectancy was between 40-45 years,<sup>30</sup> it was the practice to marry their children, especially girls before the age of 15 due to the high mortality rate of pregnant women during childbirth. Attainment of puberty was therefore proclaimed as age of adulthood using Islam as justification. By the 20th Century, a better understanding of the health hazards of early marriage on girls had expanded especially due to an increase in life expectancy. However, the education of boys and girls made many countries to change their laws prohibiting marriage before the age of 18 years. Despite the increased awareness worldwide, many states in the North-eastern parts of

<sup>26</sup> The seven true Hausa states, or Hausa Bakwai had no central authority, were never combined in wars of conquest are Borno, Kano, Katsina, Plateau, Taraba, Niger and Adamawa. <https://www.legit.ng/1176164-major-hausa-states-nigeria.html> (accessed 1st March 2022).

<sup>27</sup> Wikipedia The Free Encyclopaedia, 'Muawiyah I', [https://en.wikipedia.org/wiki/Muawiyah\\_I](https://en.wikipedia.org/wiki/Muawiyah_I) (accessed 28 July 2019).

<sup>28</sup> Wikipedia The Free Encyclopaedia 'Yazid ibn Mu'awiya', [https://en.wikipedia.org/wiki/Yazid\\_I](https://en.wikipedia.org/wiki/Yazid_I) (accessed 28 July 2019).

<sup>29</sup> Hamzah Adesola Dawood, 'Conceptualization of Roadmap of Qur'anic Education in Nigeria: Tribute to a Pioneer (Sheikh Murtadha Abdul Salaam)' (2014) IJERN 2(1).

<sup>30</sup> World Atlas, Child Marriages Throughout History <https://www.worldatlas.com/articles/child-marriage-rationale-historical-views-and-consequences.html> (accessed 29 July 2019).



Nigeria still retain child marriage, especially for girls justifying it under religious injunction. It became expedient during the heat of Covid-19 pandemic when everyone was forced to stay home to marry girls out to suitors who could pay the bride price that could be used to maintain the family basing it on Islamic injunctions.

### III. Philosophy Of The Islamic Religion On Child Marriage

The Islamic religion has three jurisprudential schools that existed just after Islam gained a foothold in Nigeria. These are Sunni.<sup>31</sup> Shiite<sup>32</sup>, Ibadi.<sup>33</sup> However, several other schools of Islamic theology emerged, which in effect expanded and widened the scope of the religion, namely: *Qalas*<sup>34</sup> and *Qadiriyya*<sup>35</sup> and several others, in the Medieval era while other variations have emerged in modern times such as the *Ahmadiyya*,<sup>36</sup> Muslim Brotherhood,<sup>37</sup> *Mahdist*,<sup>38</sup> *Salafist*,<sup>39</sup> and *Wahabist*.<sup>40</sup> Statistics on religion shows that 46% of the world populations are Muslims, 46.3% are Christians, and 7.7% are other beliefs.<sup>41</sup>

Under Islamic law, a marriage contract is named *Aqd Nikah*. At the same time, *Nikah*, an Arabic word with the original literal meaning "sexual gratification," is referred to as marriage contracy exclusively in the Quran.<sup>42</sup> In modern times *Nikah*, is expressly defined as a 'marriage contract'; 'marriage', 'wedlock or matrimony'.<sup>43</sup> However, within the context of Islamic religion, there are pre-requisites for marriage. The following must, therefore, be duly considered and observed:<sup>44</sup>

<sup>31</sup> Pew Research Centre. *Mapping the Global Muslim Population: A report on the size and Distribution of the World's Muslim Population* (2009).

<sup>32</sup> Toyib Olawuyi, *On the Khalifah of 'Ali over Abu Bakr' A Dictionary of Sahih Sunni Ahadith* (2014) 3

<sup>33</sup> John L. Esposito, *The Oxford Dictionary of Islam* (Oxford, 2004)

<sup>34</sup> Quran 68 (sect of Islam founded based on quests for knowledge).

<sup>35</sup> Gladney Dru. "Muslim Tombs and Ethnic Folklore: Charters for Hui Identity" (1987) *Journal of Asian Studies* 46 (3).

<sup>36</sup> Yohanan Friedmann, *Prophecy Continuous: Aspects of Ahmadi Religious Thought and its Medieval Background* (Berkeley: University of California Press 2011)

<sup>37</sup> Kevin Borgeson and Robin Valeri, *Terrorism in America* (Jones and Bartlett 2009).

<sup>38</sup> Heinz Halm, *Shiism* (2nd edition, Columbia University Press 2004), 22.

<sup>39</sup> Pew Research Centre (n 14).

<sup>40</sup> Mark Juergensmeyer and Wade Clerk Roof, *Encyclopedia of Global Religion* (SAGE 2011) 1369.

<sup>41</sup> Brian J. Grim, Todd M. Johnson, Vegard Skirbekk and Gina A. Zurlo (editors), *Yearbook of International Religious Demography 2017*, (Leiden: Brill, 2017).

<sup>42</sup> J Schacht, *et al*, *Encyclopedia of Islam* (2<sup>nd</sup> edition, BRILL 2012).

<sup>43</sup> J. M. Cowan, *Arabic-English: The Hans Wehr Dictionary of Modern Written Arabic* (4<sup>th</sup> edition, Spoken Language Services 1993).

<sup>44</sup> Qur'an 4:24.

- i. Chastity is an Islamic injunction that does not accept fornication or pre-marital sex for both male and females. Pre-marital sex disqualifies a person from marrying a chaste partner except the intending couples have been truly repented or their sins and has been purified in accordance with Islamic injunctions. Chastity after marriage is also a condition for the preservation of the marriage institution.<sup>45</sup>
- ii. Marriage is to be conducted on a contractual arrangement, and a specified amount should be mandatorily provided to the bride, which is referred to as '*mahr*.' The groom is under compulsion to furnish the *mahr* to the bride at the moment of marriage. The only exception is where the groom and the bride mutually agree to put a hold on the timing for executing the payment. Nevertheless, in Islam, there is no concept that enunciates the imposition for an obligation to furnish dowry. Dowry is a payment to the groom by the bride's family, and such is not an Islamic custom. Also, payment of the bride price is also expressly declared 'unIslamic'.<sup>46</sup>
- iii. The woman's verbal consent is imperative for marriage to occur, except she is not a virgin and her *Wali*<sup>47</sup> and is neither her father nor her paternal grandfather. A virgin is not to be married off without her full cooperation and consent. Silence is deemed as an implied agreement, and any *Wali*, who forces a bride against her volition into a marriage, is regarded as *wali mujbir*. By this prerequisite, it can be deduced that child marriage is an accepted practice in Islamic religion but with the full consent of the girl child.<sup>48</sup>

Islam allows marriages for chaste spouses who are Muslims, Jews, the 'People of the Book'; (Arabic Ahli Kitab, Christians) and Serbians, but disallowed with polytheists or "idolaters".<sup>49</sup> Without expressly stating so in the Quran, the practice of underage girls is to ensure that the female is chaste at the point of marriage since there is less likelihood that a prepubescent girl is likely to have been promiscuous, Marriage is entered into to avoid promiscuity as the girl

<sup>45</sup> Nasir M. Malik, 'Chastity – Essential for Preservation of the Institution of Marriage', Al Islam, <https://www.alislam.org/articles/chastity-essential-for-preservation-of-institution-of-marriage/> (accessed 4 March 2022).

<sup>46</sup> Muhammed Hamidullah, '*Introduction to Islam*', Center for Culturel Islamique Paris, Series No.1/a, (Booksellers and Exporters, Lahore Parkistan, 1969), [https://archive.org/details/IntroductionToIslam\\_201308/page/n1](https://archive.org/details/IntroductionToIslam_201308/page/n1) (accessed 01 March 2022).

<sup>47</sup> *Wali* is someone who has *wilayah*, i.e. authority or guardianship over someone else, and in Islamic jurisprudence it means an agent of the bride who is authorized to conclude a marriage contract', <https://www.merriam-webster.com/dictionary/wali> (accessed 2nd March 2022).

<sup>48</sup> Educalingo. <https://educalingo.com/en/dic-jv/wali-mujbir> (accessed 2nd March 2022).

<sup>49</sup> Qur'an 22:221

reaches puberty. An example of this approval is the case of the Nigerian Senator Sani Ahmed Yarima in 2000 who married a 13 years old Egyptian girl despite outcry by human rights advocates.<sup>50</sup> When some Non-governmental Organisations (NGO) instituted legal action against the Senator, issues of recognition under Islamic religion and '*locus standi*' were raised prior to prosecution. Eventually, the whole issue was jettisoned on the grounds of the Senator's exclusive exercise his constitutional right to personal religion under section 38(1) of the Nigerian Constitution which states that

every citizen is guaranteed 'freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or private) to manifest and propagate his religion or belief in worship, teaching.'<sup>51</sup>

The protests subsided majorly because the bride is a foreign national from Egypt that also upholds the tenets of the Islamic religion. Since the application of Islamic law is considered personal law, it is treated as part of the nation's customary law. By this reasoning, some scholars advocate that if child marriage is practiced under Islamic personal law, it should pass through the validity test prescribed for customary law. In fact, any Islamic personal law that is contrary to the provisions of the Constitution should be declared invalid.<sup>52</sup>

Under the Maliki Islamic School of thought, it is acceptable for a father to arrange a marriage for his infant sons and virgin daughters. The child has the right to repudiate that arranged marriage on reaching puberty without any adverse repercussion on the child. Despite these conditions stipulated under Islam for child marriage, the compliance is minimal compared to the number of children that are married to adults with their consent. Several surveys show that female children are more often married too much older adults by their parents without their consent or intimidated into giving consent.<sup>53</sup> This is attributed to the domineering influence of parents, guardians, and elders especially in a patriarchal society like Nigeria. Free consent is a prerequisite to a valid marriage under Islam; therefore, the question is, can a child give a valid consent? The question is difficult to answer because while there is a

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<sup>50</sup> Al Jazeera, 'Nigerian senator marries girl of 13', <https://www.aljazeera.com/news/2010/5/18/nigerian-senator-marries-girl-of-13>, (accessed 3 March 2022).

<sup>51</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended)

<sup>52</sup> Fayokun (n 5).

<sup>53</sup> *ibid*

Jacob Wale Mobolaji, Adesegun O. Fatusi & Sunday A. Adedini. 'Ethnicity, religious affiliation and girl-child marriage: a cross-sectional study of nationally representative sample of female adolescents in Nigeria', *BMC Public Health* volume 20, Article number: 583 (2020) <https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-020-08714-5> (accessed 4 March 2022).

definition of who a child is under the Child's Rights Act, which stipulates 18 years,<sup>54</sup> there is no universally accepted definition of marriageable age in Nigeria. There are some countries where child marriage was acceptable based on Islamic faith, but who have over the years amended their laws to reflect the changing attitudes to child marriage within the socio-cultural and religious environment and developmental stage of each country. One of such countries is Saudi Arabia;<sup>55</sup> though there are several other countries that have shown a reluctance to end child marriage. This is one of the reasons why the UNICEF Resource Center 'Girls Not Brides', have been working with these countries to end under-aged marriage. Nigeria is one of such countries.

The proselytization of Islamic religion and its dissemination is enshrined in the Qur'an 4:24 to propagate the faith with the tacit traditional approval of the practice of child marriage which the Holy book does not expressly state, but practiced by convention however, with the strict proviso of the free consent of the girl child. Free consent is a condition that is usually lacking in many of the marriages involving the girl child. Most times, consent is given by the girl through coercion and intimidation into marriages with persons far older than her. Legally, the question is whether a child can give consent to marriage, and what are the yardsticks for determining a valid or true consent? In a quick response, for a person to give consent, he or she must be fully aware, well knowledgeable, and have the capacity to comprehend the issue that requires the consent.<sup>56</sup>

Aderibigbe and Okonkoh stated that for a child to freely give consent, it must be established that the child has the intelligent and informed knowledge to freely comprehend what they are consenting to.<sup>57</sup> Many female children do not comprehend fully the notion of marriage which leads to some girls committing murder by killing their husbands who they see as taking away their childhood. Some girls have remained on the death row for killing much older husbands like the case of 15 year old Maimuna Abdulmunini in 2015 who burnt her 35 year old

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<sup>54</sup> The Child Rights Act came into effect on the 31<sup>st</sup> July 2003

<sup>55</sup> India has enacted 'The Prohibition of Child Marriage Act, 2006', which is a national law but does not apply to Muslims. Geetanjali Minhas, 'Apply Prohibition of Child Marriage Act to Muslim girls too', <https://www.governancenow.com/news/regular-story/apply-prohibition-of-child-marriage-act-to-muslim-girls-too> (accessed 5 March 2022).

<sup>56</sup> Kayode Olatunbosun Fayokun, "Legality of Child Marriage in Nigeria and Inhibitions Against Realisation of Education Rights." *US-China Education Review B*, July 2015, Vol. 5, No. 7, 460-470, (davidpublisher.com. David Publishing, 11 Jul. 2015 <http://www.davidpublisher.com/Public/uploads/Contribute/55bb43bda2e6a.pdf> (accessed 20 February 2022).

<sup>57</sup> Titilayo O. Aderibigbe and Amarachi C. 'Parental Refusal of Treatment and Children's Rights in Nigeria', *Journal of Law and Medicine*, 2021 March. 28(2):449-461.

husband and killed him. Her death sentence was upheld when she turned 18;<sup>58</sup> or Wasila Tasi'u aged 14 who also murdered her 35 year old husband at her own wedding party and has been on the death row for the last five months as a result of judicial strike and Covid-19 lockdown.<sup>59</sup> An ECOWAS court freed her because her age was not put into consideration during her trial, but the court has no power to free her, but can only urge the Nigerian government to abide by the regional court's verdict.<sup>60</sup> Several other girls have run from home only to be returned to their husbands by their families; others have attempted and some have succeeded in suicide.<sup>61</sup> The element of free and true consent should be considered as vital and indispensable in Child marriage.

Generally, in Nigeria and specifically in the northern parts of Nigeria before the advent of Islamic religion, child marriage was deeply rooted in traditional societies. For example, cultural norms emphatically placed responsibility on females and their families to get married as virgins. This was imperative to promote and maintain the family name and honour. To ensure the chastity, parents often betrothed and married off their daughters at an early age as a preventive measure against sexual assault and out-of-wedlock pregnancies. Child marriage is often well-intentioned by the family because it is believed to protect the dignity of the girl within her community, and ensure that the girls' family is given the task of not taking care of her which can become burdensome for the family. The UNFPA Executive Director, Natalia Kanem in her foreword to the 2020 Report said "Good intentions, however, mean little to the girl who must abandon school and her friends to be forcibly wed, or to the girl who faces a lifetime of health problems because of mutilation from a harmful rite of passage".<sup>62</sup> Prior to Covid-19, there had been a lot of improvement with societal changing perceptions of child marriage irrespective of religious leanings, especially with respect to who a child is. Covid-19 as explained earlier has drawn back the clock and there has been an increase in girl-child marriage without a clear understanding of who a child is.

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<sup>58</sup> Joe Sandler Clarke, 'Nigeria: Child brides facing death sentences a decade after child marriage prohibited', <https://www.theguardian.com/global-development-professionals-network/2015/mar/11/the-tragedy-of-nigerias-child-brides> (accessed 5 March 2022).

<sup>59</sup> Ibid.

<sup>60</sup> Voice of Africa, ; 'Nigerian Child Bride Accused of Killing Husband to Be Freed', <https://www.voanews.com/a/nigerian-child-bride-accused-of-killing-husband-to-be-freed/2815935.html> (accessed 5 March 2022).

<sup>61</sup> Ibid

<sup>62</sup> UNFPA, Relief Report, 'Five things you didn't know about practices that harm girls', <https://reliefweb.int/report/world/five-things-you-didn-t-know-about-practices-harm-girls> (accessed 5 March 2022)

#### IV. Who Is A Child?

According to Black's Law Dictionary, a child is defined as "a person under the age of maturity".<sup>63</sup> In the case of Nigeria, attaining the age of maturity or adulthood means attaining 18 years of age, any age below that is a child. Article 1 of the Convention on the Rights of the Child provides that a "child means every human being below the age of 18 years unless, under the law applicable to the child, the majority is attained earlier".<sup>64</sup> This implies that anyone who has not attained the age of 18 cannot be said to be a matured person. In relating this provision, a person who gets married before the age of majority cannot be able to enjoy the protective rights or correlative duties available under laws applicable to adults.

Article 2 of the African Union Charter on the Rights and Welfare of the Child defines a child as 'every human being below the age of 18 years'.<sup>65</sup> In addition, the Child Rights Act puts the age of a child as 18 years as other international and regional treaties on who a child is. Since 2003, Nigeria has, however, embraced the United Nations Convention on the Rights of the Child as a Federal Law. While 23 states out of the 36 states of Nigerian federation have adopted this convention as state law, only 13 states (all in the northern parts of Nigeria) are yet to implement it.<sup>66</sup> Therefore, the rights and protection accruable to a child under this legislation are only applicable in the Federal Capital Territory and southern states in the Federation of Nigeria. The reason for this legal variation is a constitutional one because children and customary/ Islamic law marriages come under Residual List of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).<sup>67</sup> Being a residual matter, it gives the States equal power to define who a child is under their own domestic state legislation. To this end, factors like religion and tradition are within the constitutional ambit of each state, which includes the definition of a child.

Since Nigeria is multi-ethnic (with over 250 different ethnic groups) and multi-religious society with diverse cultural norms and beliefs, the definition of who is a child will vary in all

<sup>63</sup> Bryan A. Garner, *Black's Law Dictionary* (9<sup>th</sup> edition, Thomson Reuters 2009).

<sup>64</sup> United Nations Convention on the Rights of a Child 1989, Article 1 <https://www.cypcs.org.uk/ufiles/UNCRC-Pocketbook.pdf>, (accessed 5 March 2022).

<sup>65</sup> African Union Charter on the Rights and Welfare of the Child was adopted on July 1 1990 and came into force on November 29, 1999, <https://au.int/en/treaties/african-charter-rights-and-welfare-child> (accessed 5 March 2022).

<sup>66</sup> Sokoto, Zamfara, Kebbi, Katsina, Kano, Kaduna, Yobe, Borno, Bauchi, Gombe, Niger, Adamawa and Enugu are the states that are yet to domesticate the CRA < <https://www.premiumtimesng.com/health/health-features/336790-why-every-nigerian-state-must-domesticate-implement-child-rights-act.html> > (accessed on 9<sup>th</sup> of July, 2019).

<sup>67</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended), Laws of the Federation of Nigeria.

the State of the Federation. Instructively, the Constitution which is the grundnorm of the land, does not provide a specific definition of a child. Invariably, to define a child depends on the environment the child is found within the Nigerian federation. For example, a child of sixteen under the Child Rights Law of Kwara State, 2007 can be considered as an adult.<sup>68</sup> So far, as at November 2021, only 28 states in Nigeria have domesticated the Child's Right Act. The nine states yet to adopt and domesticate the law are all in the northern states. These states are Adamawa, Borno, Bauchi, Gombe, Jigawa, Kebbi, Yobe, Kano and Zamfara. Most of these states that adopted and transformed the Child's Right Act have done it in such a way as to suit their local content and protect children.

## **V. Child Marriage In Northern Nigeria As A Religious Or Cultural Practice**

In light of this background, the argument is whether child marriage is the norm encouraged by Islamic injunctions or unwritten traditions of Nigerian ethnic societies that have not moved with changing societal attitudes? It can be argued that both contribute to the adherence of child marriage since traditional societies pre-existed the advent of Islam and the practice of child marriage.<sup>69</sup> As stated at the beginning of this paper, child marriage was expedient in the medieval age due to economic reasons where huge dowry was paid by families of the bride. For this reason, young virgin girls were married to older men who could afford to care for the girls. During wars, unmarried women were often carried away as booties, and it was expedient for fathers to marry them early to protect the girl child. Besides, it was believed that a young girl who had reached puberty and was not married was a social outcast, therefore to avoid the stigma, fathers married their daughters early to seal friendships, as political cohesion between nations and economic sustenance for families.<sup>70</sup> Most of these gender-biased reasons are no longer justification for marrying girls early in modern times because it has been seen that females contribute as much as men to the economic development of a family and nation under the same environment and given the same opportunities as their male counterparts.

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<sup>68</sup> Laws of Kwara State Nigeria.

<sup>69</sup> World Atlas, '*Child Marriages Throughout History*', <https://www.worldatlas.com/articles/child-marriage-rationale-historical-views-and-consequences.html> (accessed 5 March 2022).

<sup>70</sup> *Ibid.*



## Impact of Covid19 On Child Marriage

With societal developments and education of the girl child, societies have come to realize that the utility of female children are not measured by what their marriage brings to their families. Several countries have, therefore given children the right to reach their highest potential before they reach the domain of marriage. Child marriage is still hidden under the cloak of religious tenets, but it does lead to intergenerational cycle of poverty. Young unskilled girls who get married become dependent on their husbands and are not in a position to add to the economy of the family. This cycle became more apparent during Covid-19 because lack of jobs increased poverty levels especially for the low-income groups and rural dwellers that live on subsistence farming. The ongoing Boko-Haram attack on villagers mostly in the northern parts of Nigeria has added to insecurity which in turn makes it more expedient to marry girls early because they are deemed to have less economic value to their families in the long term. The World Bank reported in 2017 that child marriage is causing an annual loss of \$7.6 billion in earnings and productivity in Nigeria.<sup>71</sup> Education was a deterrent against girl child-marriage. However, closure of schools led to idleness, promiscuity, unintended pregnancies and moral laxity amongst the community.

Gharib in a 2021 study in Niger state in the north of Nigeria said that the young girls themselves are part of a global campaign to stop child marriage in their community even during Covid-19 pandemic.<sup>72</sup> The girls themselves are aware through enlightenment campaigns of the side effects of child marriage. Child marriage has unsurprisingly taken many poor Nigerian girls out of school.<sup>73</sup> Early pregnancy, high health risk, low self-esteem, financial insecurity and other severe challenges are the consequences of child marriage.<sup>74</sup> This has resulted in poverty cycle, insecurity and limited education which the girls themselves are greatly aware of. Since consent under Islam is . The devastating effect of child marriage will affect the economic development of society. Since religion and traditional

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<sup>71</sup> ReliefWeb, 'COVID-19 and child marriage: How COVID-19's impact on hunger and education is forcing children into marriage', <https://reliefweb.int/report/world/covid-19-and-child-marriage-how-covid-19-s-impact-hunger-and-education-forcing-children> (accessed 5 March 2022).

<sup>72</sup> Sarah El Gharib, 'UNICEF/GlobalCitizens, '10 Million More Girls Are at Risk of Child Marriage in the Next 10 Years Due to COVID-19: Report', <https://www.globalcitizen.org/en/content/child-marriage-unicef-report-covid-19/> (accessed 5 March 2022).

<sup>73</sup> UNICEF/GlobalCitizens, '10 Million More Girls Are at Risk of Child Marriage in the Next 10 Years Due to COVID-19: Report', <https://www.globalcitizen.org/en/content/child-marriage-unicef-report-covid-19/> (accessed 5 March 2022).

<sup>74</sup> Save the Child, *Working Together to End Child Marriage*, Ending Marriage Child Marriage by 2030: 5 Key Messages to Take Away.



norms have been the factors that justified child marriage in most parts of Northern Nigeria<sup>75</sup> there is now a concerted effort by non-governmental organizations and awareness among the girls themselves to put an end to child marriage despite the restrictions of Covid-19 pandemic.<sup>76</sup> Within the backdrop of Covid-19 pandemic the extant laws on child marriage obviously should have an impact on society

## **VI. The Position Of Nigeria Extant Laws On Child Marriage**

Immature, voiceless, defenseless and innocent, children need to be protected by adults who know much better. In realization of their vulnerability, the United Nations promulgated the ‘United Nations Convention on the Rights of the Child’, (UNCRC) in 1989 which is ‘a legally binding international agreement that set out the civil, political, economic, social and economic rights of every child, regardless of their race, religion or abilities’.<sup>77</sup> Several United Nations member States have been encouraged to adopt and transform the UNCRC into national laws. To this end, Nigeria at the federal level adopted this law and enjoined its federating states to follow suit in March 1991. Nigerian Child’s Rights Act (CRA)<sup>78</sup> remains the most comprehensive law that protects children in every facet of their lives. The Act in Part 1 specifically states that the ‘Best Interest of a Child to be of Paramount Consideration in all Actions’. There are specific sections of the Act that provide for children’s protection. For example Section 21 of the Child Right Act states that:

no person under the age of 18 years can contract a valid marriage,  
and accordingly, a marriage so contracted -is null and void  
of no effect whatsoever.<sup>79</sup>

Section 31 further prohibits ‘Unlawful sexual intercourse with a child, etc by specifically stating:

- (1) No person shall have sexual intercourse with a child.
- (2) A person who contravenes the provision of Subsection (1)

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<sup>75</sup> Campaign to End Child Marriage in Africa, *The Effects of Traditional and Religious Practices of Child Marriage on Africa’s Socio-Economic Development*, A Review of Research, Reports and Toolkits from Africa, African Union.

<sup>76</sup> ReliefWeb Report, ‘Strengthening livelihoods and preventing child marriage in times of COVID-19’, <https://reliefweb.int/report/world/strengthening-livelihoods-and-preventing-child-marriage-times-covid-19> (accessed 5 March 2022).

<sup>77</sup> UNICEF, <https://www.unicef.org/child-rights-convention> (accessed 5 March 2022).

<sup>78</sup> Child’s Rights Act, Laws of the Federation of Nigeria, C 50, 2003.

<sup>79</sup> Child Rights Acts, 2003, Laws of the Federation of Nigeria.

of this section commits an offence of rape and is liable on conviction to imprisonment for life.

(3) Where a person is charged with an offence under this section, it is immaterial that- (a) the offender believed the person to be of or above the age of eighteen years; or (b) the sexual intercourse was with the consent of the child.<sup>80</sup>

Any person who ‘abuse or sexually abuses or sexually exploits a child in any manner not already mentioned under this Part of this Act commits an offence’ which is ‘liable on conviction to imprisonment for a term of fourteen years’.<sup>81</sup> Any other form of exploitation not already mentioned in Part 1 of the Act but is ‘prejudicial to the welfare of the child’ will find the offender liable to a fine of five thousand Naira or five years imprisonment or both.<sup>82</sup>

Other laws that protect children’s rights is section 218, Criminal Code Act (CCA) which provides that:

any person who has unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony and liable to imprisonment for life, with or without caning.<sup>83</sup>

An attempt to have carnal knowledge of a child is equally punishable by imprisonment for fourteen years, with or without canning. Also, the Penal Code<sup>84</sup> stipulates the age of 14.

Furthermore, Section 222A of the same Penal Code states that:

whoever, having the custody, charge or care of a girl under the age of sixteen years, causes or encourages the seduction, unlawful carnal knowledge or prostitution of, or the commission of an indecent assault upon, such a girl, is liable to imprisonment for two years.<sup>85</sup>

The Criminal Code Act also prescribes a series of obligations to preserve the child's right to life, security and safety for the parents and those in *loco parentis*. Section 300-301 of the Code<sup>86</sup> imposes obligations on those who are responsible for children, either as masters or

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<sup>80</sup> Ibid Section 31.

<sup>81</sup> Ibid Section 32(1) and (2).

<sup>82</sup> Ibid Section 33(1) and (2).

<sup>83</sup> Criminal Code Act, Laws of the Federation, 2004.

<sup>84</sup> Section 282(1) of the Penal Code, Laws of the Federation of Nigeria.

<sup>85</sup> Criminal Code Act, Laws of the Federation, 2004.

<sup>86</sup> Criminal Code Act, Laws of the Federation of Nigeria, 2004.

guardians or heads of the family, to provide for children's necessities of life. Section 209(1)<sup>87</sup> places incapacity on a child to give evidence in any court proceedings, by implication this rule should unarguably be applied to a child making a weighty decision such as entering into a marriage contract which by nature, a child is incapable of making such an informed decision.

Several international instruments to which Nigeria is a signatory make similar provisions to protect children's right against exploitation, including sexual exploitation and marriage.

## **VII. International Instruments on the Rights of the Child**

Several international treaties, conventions apart from the CRA puts certain obligations on adults towards children and protecting their rights not to be exploited. Children enjoy human rights under the 1948 General Assembly of the United Nations Universal Declaration of Human Rights (UDHR). Article 1 of the Declaration states that: 'All human beings are born free and equal in dignity and rights', and by Article 2 everybody is entitled to all the rights and freedoms set forth in the Declaration. Article 25(2) affirms that 'Motherhood and Childhood' are entitled to special care and assistance and, all children, whether born in or out of wedlock, shall enjoy the same social protection.

The African Charter on the Rights and Welfare of the Child (1991) (ACRWA) also makes special provisions on children's rights as the CRA. It should be noted that the two instruments contain largely the same provisions, and our attention will be on the Charter provisions. The provisions include Article 19 which states:

Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child.

The most direct rejection of child marriage is contained in Article 21 of (ACRWA) that prohibits harmful social and cultural practices by specifically stating:

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<sup>87</sup> Evidence Act, 2011 Laws of the Federation of Nigeria.

States Parties to the present Charter shall take all appropriate measures

to eliminate harmful social and cultural practices affecting the welfare,

dignity, normal growth and development of the child and in particular:

(a) those customs and practices prejudicial to the health or life of the child;

and (b) those customs and practices discriminatory to the child -on the grounds of sex or other status.

2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be eighteen years and make registration of all marriages in an official registry compulsory.

However, despite the various local and international laws and treaties, the outcry about children's plight is still raging because the rights seem to be mere rhetoric especially when it comes to child marriage and Islamic religious practice. What then seems to be the coercive reason why child marriage persists despite these laws that binds Nigeria? The Constitution of the Federal Republic of Nigeria has deliberately remained vague on the issue of the interpretation of who a child is. Section 29(4) of the Constitution states:

any woman who is married shall be deemed to be of full age.

The word '*shall*' in legal terms means it is mandatory and leaves no room for interpretation. A child regardless of her age, once married is to be treated as an adult with the full capacity of adulthood. This is a backward integration path to clothe children, especially the girl-child in garments of adulthood. Ashiru likened child marriage to 'asking a baby who has not developed teeth to start chewing. The baby may get choked with the food and become constipated because the digestive process is not yet fully developed'.<sup>88</sup> The reproductive health hazard to the girls is described by a medical doctor, Ashiru:<sup>89</sup>

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<sup>88</sup> Jemi Ekunkunbor, Section 29(4)(b) 1999 CFRN: 'Any woman who is married shall be deemed to be of full age', Vanguard Newspaper, August 25, 2013, <https://www.vanguardngr.com/2013/08/section-294b-1999-cfrn-any-woman-who-is-married-shall-be-deemed-to-be-of-full-age/> (accessed 6 March 2022).

<sup>89</sup> Ibid, Oladipo Ashiru is a professor of Medicine and the Medical Director, Medical Art Centre, in Lagos, Nigeria.

The problem here is that the development of the pelvic bone which is the bone surrounding the birth passage where the head of the baby goes through, is not fully developed until the age of 18-21 or thereabouts...So when that pelvic bone is subjected to conception and delivery, it is not right for it physiologically and anatomically. Consequently, in the womb, the foetus would grow and descend down the birth passage, and because the passage is narrow and not mature, when it is fully expanded, it will compress on the uterus and rectum. These two passages will be linked and because of the narrowness, the girl will have obstructed labour for a long time. In instances like this, some girls die trying to deliver. Others will develop a fistula.<sup>90</sup>

Along with the health hazard several other drawbacks to girls marrying at less than 18 years of age which have been discussed in this article.

### **VIII. Assessing These Rights As Applicable To Nigeria**

The ideology behind the concept of these rights as provided in these national and international instruments is geared towards development of children such that they are able to reach their potential and contribute meaningfully to their nation's development. The various laws and instruments on the rights of the child addressed so far emphasize in summary that 'the best interests of the child shall be a prior consideration in all acts affecting any child undertaken by any authority or individual'.<sup>91</sup> Despite copious provisions in our municipal laws and international conventions on child rights, there seems to be a disparity between law and practice resulting in children's gross inability to recognize and benefit from these rights at present due to Islamic interpretation of the Holy Quran. If Saudi Arabia the origin of Islam could put the benefit of the child as paramount, Nigeria is enjoined to follow suit. Otherwise, children's sexual harassment and neglect will continue to escalate, exposing them to physical and moral vulnerability. .

Thus, the protection of children's rights, particularly the girl child as it relates to child marriage, is essential for the realization of good health, excellent wellbeing, education and economic dependence of the girl child.

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<sup>90</sup> Jemi Ekunkunbor, (note 85).

<sup>91</sup> Article. 4:1, African Charter"

## **IX. Recommendations And Conclusions**

Children should be enlightened and sensitized to speak up or to make decisions as to how they want to be treated. This means allowing them to be educated and to acquire skills that will optimize their individual development and enable them to be useful to themselves and their society. Having been equipped with skills which make them productive, they will be able to make informed decisions about marriage and give consent which is the cardinal requirement of an Islamic marriage. Having full knowledge of the hazards or effects of early marriage that leads to poverty, high health risk, poor education, will enable all children, including the girl child to make informed decision on marriage at the appropriate time. Culture and religious beliefs will not be used as a ground for them not to enjoy their right as a child. Greater political will and economic power on the government's part is required to enforce these laws in the interest of Nigerian children.

Finally, it is recommended that all stakeholders on these inalienable rights should be properly trained and enlightened. Under these rules, parents, children, communities and governments should be alert to their obligations and pay more attention to their implementation. This can be achieved through a cohesive orientation and sensitization of the tenants of the Islamic teaching as enunciated in the Holy Quran, particularly in the Northern regions where the educational rate is comparatively weaker and lower than the southern states in Nigeria. This can also be achieved through a deliberate investment in the girl-child's education. Also, it is recommended that government in the northern states of Nigeria, should be innovative and develop policies that will help to continuously encourage schooling not only for the girl child but for all children like other developed Islamic nations around the world.

There is no contradiction that under the Nigerian legal system and international instruments, child marriage is an illegal act and a breach of fundamental human rights. However, this paper shows that there appears to be an unbreakable link between belief, culture and the law that affects child marriage. Therefore, it can be claimed that the independence of the law and its functioning from culture and religion is a significant measure to be taken to prevent child marriage. Given that Islamic law upholds and mandates the bride's permission as a mandatory component before marriage, the law can efficiently use this as an instrument to avoid and put a stop to child marriage. An educated young adult is better equipped and matured enough to give informed consent for marriage at a time when they are fully aware of the import of what

marriage entails and be equally equipped to sustain the relationship, even during any type of pandemic such as Covid-19.

Conclusion on girl child marriage-Child marriage is widely considered as a violation of human rights and a form of violence against girls. The elimination of child marriage by 2030 is a target under the Sustainable Development Goals (SDGs).<sup>92</sup> Education, awareness, governmental intervention, development and legal intercession are baby steps that can be used in curbing or eradicating child marriage in Nigeria, generally and during any pandemic leading to the sustenance of the economy and socio-development of the society. Addressing a long standing issue of child marriage especially in the north –west and north-east of Nigeria has been exacerbated by Covid19. Early pregnancy and teen marriage will continue to rise in Nigeria unless there are a concerted effort by government and policy makers at all levels to collaborate with communities; traditional leaders and non – governmental organizations to avert the strangulation of the development of Nigeria’s female children.<sup>93</sup>

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<sup>92</sup> Quentin Wodon, Paula Tavares, Oliver Fiala, Alexis Le Nestour, And Lisa Wise , October 2017“Ending Child Marriage: Child Marriage and their Limitations’ 3 Oct 2017  
<https://www.savethechildren.org/content/dam/usa/reports/advocacy/ending-child-marriage.pdf> (accessed 25 February 2022)

<sup>93</sup> Joshua Yukich *et al*, Projecting the Impact of the COVID-19 Pandemic on Child Marriage, Journal of Adolescent Health 69(2021)30  
<https://reader.elsevier.com/reader/sd/pii/S1054139X21003943?token=3A6C390A1AA405D6DB234405A8826E281C24F34A2F9448B92DDF0833EA89900449F46C1E9823A79727290E0CE529A8A0&originRegion=eu-west-1&originCreation=20221115061848> accessed on 6<sup>th</sup> February,2022.