

Child Marriage in Nigeria under the Various Human Right Instruments and Islamic Law

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Abstract: The issue of Child Marriage, through International Law perspective, was addressed in 1945 when the United Nation Charter confirmed the basic equal human rights of men and women and encouraged respect for human rights and basic freedoms without distinction as to neither biological nor age differences. This article attempts to address the cases of child marriage under human right declarations and the Islamic contribution towards the rights and protection of child girl in our society. The approach applied here is historical and analytical; data were collected from its sources and scrutinized for possible logical conclusion. It is the customs and religious beliefs of the people that have more effects on them rather than human right instruments.

Keywords: Child, Marriage, Human Rights, Instruments, Islamic Law.

INTRODUCTION

The issue of child marriage in Nigeria and also elsewhere should not be treated as a new phenomenon, as it is a custom found in different forms and cultures throughout the history. National laws were made and international conventions enacted charters as measures and regulations for this issue for the fear of victimizing the vulnerable members of the society, so that no one would take advantage of them. The Islamic law considered marriage as an essential institution in the society and so it has made some reservations and regulations for it towards protecting the rights of the parties involved most especially in the cases of child marriage when the interest of a minor is at stake.

This article discussed the issue of child marriage under different human right conventions, charters and the Islamic Law. It also attempts to showcase the factors militating against the implementation of resolutions of those conventions, laws and charters to rescue the situation and suggest the possible solution to the problem in Nigeria and elsewhere.

Child Marriage: the Historical Perspective

The advent of child marriage could be traced to the pre-history time through men's hegemony on the affairs of the family and community in exclusion of women in decision making. Traditionally, enactment of laws and its execution rest mostly in the hands of the male in exclusion of the opposite sex. It was as if every discussion in law focuses only on women issues in exclusion of that of the men.

Laws and its explications were discriminatory towards female members of the family and also in the community, failed to appreciate the reality of women's lives and the impact such laws on lives

of women and children, and equally how such laws allowed and perpetuated the practice of gender inequality and violence against women and female children.

The Universal Declaration of Human Rights¹

This instrument promotes the dignity of gender and prohibits discrimination based on gender or age segregation.² The Universal Declaration of Human Rights contains provisions relating to Child Marriage and states as follows:

Men and women of full age...have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

Marriage shall be entered into only with the free and full consent of the intending parties.³

This Universal Declaration of Human Rights consents to a marriage with free consent and that it cannot be 'free and full' when one of the parties involved is not sufficiently mature to make an informed decision about a life partner.

Convention on the Rights of the Child⁴

This convention did not make provisions calling for abolition of child marriage but it calls for the abolishment of traditional practices prejudicial to the health of children.⁵ Moreover, other issues that attached to child marriage include: the right to express their views freely, the right to protection from all forms of abuse, and the right to be protected from harmful traditional practices are

¹ Hereinafter referred to as UDHR.

²UDHR GA Res 217 UN Doc A/810 1948, 71; Article 7

³ Article 16

⁴ Hereinafter referred to as CRC.

⁵Article 24(3) CRC 1989.

addressed by the Committee on the Rights of the Child set up by the convention.

In addition to that the CRC does not permit States or parties to give validity to a marriage between minor persons.⁶ The ‘best interests of the child’ in respect to the protection of children, principle in the CRC provides base for evaluating the laws and practices of States. As apparent evidence reveals that minors are often victims of violence, divorce, abandonment, and poverty, and so, States must take legal action to abolish child marriages in light of the ‘best interest of the child’ principle.⁷

Parents and governments are responsible for protecting their children’s health, education, development and overall wellbeing to the best of their capacities, and States also must take legal action to abolish child marriages.⁸ Since human rights activists have confirmed that child marriage harms the girl child’s health, in respect of sexual and reproductive health, which often causes maternal mortality and morbidity, States are obliged under the CRC to take all effective and adequate measures with a view to prohibit practices prejudicial to the health of children.⁹

The Convention on the Elimination of Discrimination against Women¹⁰

In its Article 16,¹¹ this document provides for the prohibition of Child Marriage, based on the fact that child marriage is one of the most frequent addressed issues by both the CRC and CEDAW Committees in their discourse with State parties.¹² The call for equality for women and girls applies to all ages. While looking at the content of CEDAW along with the context of CRC, one observes that they both provide reason for prohibiting the marriage of a minor.¹³

The violation of the minors right to attainable standard of health, life, survival and development under the principle of CRC¹⁴ and the CEDAW, dictated to the States to eliminate child

marriages.¹⁵ Other health predicaments attached to child marriage such as lack of information and awareness on sexual and reproductive health matters violate the issue of CEDAW’s entitlements that women should not lack access to the necessary education, information and means of having free consent and responsibly for spacing and determining the number of their children.¹⁶

The CEDAW Committee emphasized on the negative effects of child marriage has on the education and employment of girls, as it mostly followed by childbearing and the responsibilities of raising children, affect their access to education, employment and other things related to their personal development, and this situation imposes heavy burdens on the minor.

Both principle of the ‘best interest of the child’ and the ‘developing capacity’ of the girl were endorsed by the CRC.¹⁷ These two principles implied that a minor is not capable of judging issues on her own, and so, she needs adequate guidance and direction from her parents and guardians, to cope with the burdens of a new life.

Child bride does not have the ability to discuss with her husband, and no knowledge or information on how she could space or delay the birth of children as recognized in the CEDAW.¹⁸

Child Marriage under Islamic Law

Marriage as one of the most important social institutions is highly encouraged in Islam and it has been given due attention by expatiating its detailed rules and regulations in every matter relating to it.¹⁹ The Prophet was reported to have encouraged it to be done as early as possible among the Muslim youths; o young men, those who have ability to support a wife should marry, as it restrains eyes from casting evil glances, and preserves one from immorality; but he who cannot afford should observe fast for it is means of controlling the sexual desire²⁰.

It has been stated from Hadith that women are stronger in sexual urge more than men, and that has been corroborated by the following report:

⁶Article 16 (2) CRC 1989.

⁷Article 3 (1) of the CRC guarantees that ‘the best interest of child’ is considered in all circumstances; according to Article 19.1 of CRC, States is required to take appropriate measures to protect the child from all forms of maltreatments.

⁸De Silva-de-Alwis, (n. 100).

⁹CRC Article 24.3.

¹⁰Herein after referred to as: CEDAW.

¹¹Article 16, does not guarantee the invalidity of betrothal and marriage of a child.

¹²See: asiapacific.unwomen.org, accessed 23 August 2022.

¹³Ibid.

¹⁴Article 6 of the CRC see: asiapacific.unwomen.org, for more explanations on article 6.

¹⁵Article 12 of CEDAW explains the family and social rights of individuals in the society without any kind of segregation.

¹⁶Article 16 (e) of CEDAW.

¹⁷Article 5 of the Convention deals with the responsibilities of the stakeholders to provide children direction and guidance to know their rights as approved by law.

¹⁸De Silva-de-Alwis, (n 100).

¹⁹See: Shaykh Fowzan. “Islsm’s Solution for the Problems facing Today’s Youths.” Pp: 44- 48 at arsunnah.wordpress.com

²⁰Sahih of Muslim, the Book of Marriage, Hadith 3.

Imam Abu Ja'far said: 'Allah the Mighty and Glorified has created desire in ten parts; nine of these parts are in women and one part is in men. Had not Allah (SWT) given more power to her modesty than over these parts of desire, then every man would find himself with nine women attached to him'. Imam as-Sadiq said: 'Women have been blessed with ninety-nine percent of desire, however Allah has placed modesty over them'.²¹

As such, when a girl is young, this force will be even stronger in her. It is then the duty the family most especially the father, as case may be, to find suitable spouse for her daughter/s and female members of the family soon as they attain the age of puberty. It is even said of slave-masters that they should either marry their slave girls or find husband for them, and that if they fornicate, the sin will be on him.²² However, Muslims have tended to forget this teaching of the Prophet.

Based on the condition of ability mentioned in Hadith above, the education of girls should not be conserved as barrier for denying young and mature among them their spiritual and mundane rights, otherwise unnecessary pressure on them may lead to committing of fornicate subjected.

What is important to be noted is that, as girls enter adolescence, Islam cannot be used as a barrier upon them in enjoying marital and sexual urges.²³ Putting unnecessary pressure on Muslim girls, not to get marry on time, may lead to revolting against some of the Islamic customs such as the Islamic mode of dressing.

Unsatisfied sexual urge may lead to depression, frustration and deviation that could manifest itself in a variety of ways. Parents should not only allow their daughter's freedom in this regard but should actively encourage them.

The fact is that, young men and women will usually get together anyways and a young woman may very well connect with a young man whose moral and character are less than satisfactory. By families openly involving themselves in this aspect of their daughter's life from an early age, they cannot only help their daughters to quickly find what they need in terms of their love life, but also help to guide their daughters to a marriage that will be beneficial for her emotionally, physically, and spiritually.

When the parents refuse to help however, they are leaving their daughter to her own devices in finding a path to dealing with her sexuality. She may restrain herself until her family allows her to marry, or she may not. But at that stage, the family will not play any role in that decision one way or the other.²⁴

It is also the obligation of the family to make it easy for a man to marry the daughter by not placing absurd demands upon the prospective husband. Filled by love for materialism, many families will only marry out their daughters to rich men and higher degree holders or men with several degrees in engineering or what have you.

This, even more than the restrictions they placed on their own daughters, create a terrible barrier on a young woman getting married, as it makes it impossible for her to find somebody similar in age. Enormous dowry is another source of problem in this regard, and this practice has been condemned in the hadith where the Prophet (SAW) said: 'The best dowry is the lowest one'.²⁵

Based on the Hadith mentioned above, large dowry is discouraged though not *haram* (forbidden). However, because it is almost always done for the sake of show inside the community, which is a form of *shirk*²⁶ that is most condemned in Islam. We see that, tragically, many families are willing to sacrifice the happiness of their daughter during her adolescence for the sake of their appearance in the community.

In most cases of huge dowry, it is not based on the demand of the daughter but it is the family that steps in and demands thousands upon thousands amount of money in dowry and then forces the daughter to make a decision between her husband-to-be and her family.

Usually she will choose the family, especially since the family will make all manner of threats about what will happen if she goes ahead with a marriage they don't approve. It has been observed that some '*ulama* have been very strong in condemning this practice, for they have seen that it is harmful to the spiritual state of the youth'.²⁷

If the young girls cannot receive the blessing and assistance of their parents in this regard, then, it is

²¹ Al-kafi, vol. 21, 78 .

²² Hammudah Abdul Ati: The Family Structure in Islam, Lagos, Islamic Publication Bureau, 1982, p 52

²³ Al-kafi, vol. 21, 78 .

²⁴ <https://binbaz.org.sa>. The Ruling on ExcessiveDowries and Feasting.

²⁵ Ibn Hajaral-Asqalani, Bulugu al-Maram mi adilal al-Ahkam, Hadith, 1068

²⁶ Associating partner(s) with Allah.

²⁷ <https://binbaz.org.sa>. The Ruling on ExcessiveDowries and Feasting

their duty to rebel against this pressure. The fact has been stated that, it is not obligatory for a mature girl to seek the permission of her parents to marry, but merely recommended. It is the right of every mature and sound-minded person to marry, and marriage is one of the greatest blessings in Islam. If the older generations are not willing to accept this fact, then, it is upon the younger generation to break the chains that have been set upon them.²⁸

Marriageable Age under Islamic Law

In Islamic law, the signs of maturity are not the same in the case of a male and female, it is known in male by having sweet dream and menstruation in case of female. The custom of the people and their geographical locations may also play an important role in determining readiness for marriage, so the signs of maturity mentioned may not a determinant factor for readiness for marriage,

The Legality of Child Marriage under Islamic Law

Islam has permitted the marriage of a child whether she has attained the age of maturity or not. This proposition can be substantiated with the following narration: that Ubay bin Ka'b asked the Prophet and said: O messenger of Allah, some women are left out on the case of the period of waiting in case of a divorced woman, the minor, the pregnant and those that have entered menopause? The verse was revealed as answer to the question '...If you are in doubt as to the prescribed period for such women as have despaired of monthly courses, then know that the prescribed period for them is three months and also for such as do not have their monthly courses yet...'²⁹. This implies the legality of the marriage of minors because divorce and *Iddah* only occasion after marriage.

Imam Bukhari opened a chapter in his authentic book stating that, marrying off one's minor child is the saying of the Almighty: 'And those who do not menstruate' and he made their waiting period three months before they attain the age of maturity.

The Hadith of Aisha that she was married to the Prophet at the age of six and he consummated the marriage at the age nine is another evidence that the age of marriage is not limited and that the custom of the people plays role in it.³⁰

²⁸ <https://binbaz.org.sa>. The Ruling on Excessive Dowries and Feasting. Q 65:4.

³⁰ Muhammad Ismail Bukhari. "Saheehul-Bukhari." *Lebanon: Darul-Arabiyyah* 3 (1991): 5133.

Ibn Hajr opined that this *Hadith* envisaged that marriage of minor before the age of maturity is permissible. Al-Mua'lab also said: 'The scholars have unanimously agreed for the father to marry off his minor even if consummation cannot take place'.³¹

Conversely, Ibn Hazm reported from the son of Shibrima that it is not legally permissible for the father to marry off her minor until she attains puberty and her consent must be sought and they posit that the narration of Aisha (RA) was part and parcel of the legal peculiarities of the Prophet i.e. (*Khususiyat*).³²

The above assertion could not hold water because for a person to assert that a particular legal act is part and parcel of peculiarities of Apostle of Allah must be proved. Thus, it is an argument in futility because if it is a peculiarity of the Prophet (SAW) the companions would not have practiced that. Ahmad on the authority of Aisha (RA) narrated that: 'A minor who has reached 10years is mature'.³³

Another proof substantiating the legality of the marriage of a minor can be deciphered as thus: Umar (R.A) sought the hand of Ummul-Khul-Thuum for marriage after the death of her father³⁴ through Aisha. By then she has already delivered a baby with her first husband while she was less than 10 years and delivered after the death of her father. The leadership of Umar lasted for 10years. But she resisted Umar's offer and got married to Dalhatu Ibn Ubaidullah and no critic criticized her marriage below the age of 10 years.³⁵

This also indicates the unanimity regarding the legality of marriage of a minor before maturity. Ibn Qudama reported that for the marriage of a minor, there is no any dissenting opinion concerning the legality of her marriage. The jurists are unanimously agreed that the permissibility of a father to marry off her minor even if she dislikes and the sayings of Almighty has legalized marriage.³⁶

Allah made the *Iddah* of a girl who has not yet menstruate to be three months and the waiting period could not occasion except after divorce or

³¹ Al-Haafiz Ibn Hajr. "Fat'hul-Bariy Lishar'hi-Saheehil-Bukhari." *Cairo: Darul Bayanil-Hadeethiyah* 9 (2003): 108.

³² *Ibid*.

³³ 'Abdullah Ahmad and Abu Umar. "Al-Mugni Was-shar'hul-Kabeer." *Cairo: Darul-Hadeeth* 9 (2004): 173-174.

³⁴ Abubakar as-Siddiq

³⁵ Abu-Nu'aym al-Asbahani. "Akhbarul-As'bahaaniy." vol. 2, P-273.

³⁶ *Ibid*.

annulment.³⁷ Narrated Al-Athram that Qadama, the son of Maz'hoon married the daughter of Zubair when she experienced the blood of confinement and he said: 'if I die, she is among my legal heirs and if I survive, she is my wife'.³⁸

But for a girl who has attained maturity, her consent is indispensable. This can be depicted from the Hadith reported by *Bukhari* on the authority of Khansaa, the daughter of Khidhaam (Medinian) that her father got her married to who she dislikes. Then, she complained to the Apostle of Allah and the marriage was repudiated.³⁹

The above portrays the indispensability of the consent of a mature girl and this is the opinion of Abubakar, Al-auzaaiy, Al-Thauriy, *As-haabur-ra'y* and Ibnul Mundhir while others canvassed that her consent is not necessary. The exponents of this view are Malik, Ibn Abi-Lailah, Shafi'i and Ishaq bn Rahuyyah.⁴⁰

The aforementioned proofs indicated that there is no minimum age laid down by *Shari'ah* for marriage. However, Shafi'i stipulated 15years.⁴¹

CONCLUSION

The human conventions did not consider the biological structure of female that varies based on the geographical locations, so to put certain number of years for a girl in case of her marriage or as a marriageable age may be an error.

No Human right Instrument could categorically prohibit child marriage, but it could only appeal to the conscience of the parents and guardians to consider the interest of their children and wards respectively. The reason is that this type of marriage is generally based on the cultural and religious beliefs of various human societies.

Though Islam allows this type of marriage, the welfare and interest of a child girl are also paramount to Islam. Therefore, Islam has laid down rules and regulations to protect the child girl interest. It is also observed that Islam remains the only religion that explains this issue and laid down procedure for its validity or otherwise.

The Sharia Law also made it possible for a girl to rescind this type of contract when she reached the age of puberty and realized that the marriage was made in contradiction with her interest. Those

conventions mentioned above have no effect on the cultural values of the people like the effect of religious beliefs on their actions inactions, interactions and social life. It is an early marriage that is encouraged by Islam but not child marriage.

³⁷ 'Abdallah Ahmad and Abu Umar, (n 36), 169.

³⁸ Yabagi, A.A., (n 37), 296.

³⁹ Al-Haafiz Ibn Hajr, (n 34), 114.

⁴⁰ 'Abdallah Ahmad and Abu Umar, (n 36), 170.

⁴¹ Yabagi, A.A., (n 37), 297.

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