

An Analysis of Child Marriage in Nigeria: a Case Study of Northern Nigeria.

Posted on [April 21, 2020](#)[April 24, 2020](#) Written By [ABUAD Law Review](#) Posted in [ABUAD Law Review](#) Tagged [Child Marriage](#), [Child Right Act](#), [Marriage](#), [Northern Nigeria](#), [Sharia Law](#)

ABSTRACT

Child marriage is one of the subtle but disturbing problems Nigeria is faced with. This problem is predominantly practiced in Northern Nigeria. The practice of child marriage has numerous effects on its victim which can be attributed to several reasons, some of which are Vesicovaginal Fistula (VVF), susceptibility to Human Immune Virus (HIV), increased infant and mother mortality, amongst others. The government is yet to take bold and concise step towards quelling this problem, there is therefore a need for the government to take deliberate steps in combating this ill because non-apprehension and prosecution of offenders will allow them to continue perpetrating this evil against humanity hiding under religion amongst other reasons. This paper is therefore aimed at analyzing the phenomenon of child marriage in Nigeria, discussing extensively its facilitating factors and the numerous effects the horrifying practice has on its victim. Special focus is given to the Northern region of Nigeria. The paper further examines the position of Sharia Law and other regulatory framework governing child marriage in Nigeria with a consideration to the effectiveness of such laws. The paper concludes by recommending the review of the laws on child marriage in Nigeria.

Keywords: Marriage, Child Marriage, Northern Nigeria, Sharia Law, Child Right Act.

Â Introduction

Marriage is almost universally defined as a social and legal union between a man and a woman. Marriage is not only statutory but can also be Customary and Islamic or Marriage under the Sharia law. United Nations International Children’s Emergency Fund (UNICEF) defined child marriage as a marriage of a girl or a boy before the age of 18 and also refers to both formal marriages and informal unions in which children under the age of 18 lives with a partner as if they were married[1]. Child marriage can be seen where a young girl under 18 years is being married to a man above the age of 18, where a young girl and a young boy under the age of 18 get married to each other, also where a young boy under the age of 18 is being married to a woman who is above the 18 years. Any of such circumstances can be categorized as child marriage. According to the United Nations 37,000 girls under 18 years of age are married each day[2]. Child Marriage affects both girls and boys, but it affects girls inexplicably, especially in Northern Nigeria. Nigeria is the 11th highest nation in the world for percentage of child marriages[3]. A study in carried out in 2007 in Nigeria shows that 43 percent of girls are married off before they turn 18 and 18.17 percent are married before they turn 15.[4] In recent times, there is a decline in the frequency of child marriage compared to the early 2000’s. In Northern Nigeria, these figures are racing where 3 out of every 4 girls are married before their 18th birthdays. As a result of the interplay of economic and social forces child marriage prevails in communities where marrying a girl child is part of their culture and norms. These communities are of the opinion that marriage accords value to girls.

The reasons for child marriages are diverse and sometimes, parents believe that through marriage they are protecting their daughters and increasing their economic opportunities, failing to consider the effect of marrying their child off at an early age. Child Marriage violates a child’s right and places them at high risk of violence, abuse, exploitation and even trafficking.

Child Marriage in Northern Nigeria

Child marriage is prevalent among the predominantly Muslim Hausa-Fulani tribe who occupy Northern Nigeria and where Sharia Law is in force. According to United Nations Funds for Population Activity, child marriage by sub-national regions in Nigeria show the Northwestern region having 72 percent, Northcentral region 37 percent and Southwest 15 percent, the South-south region reported 26 percent and Southeast region 17 percent. [5] Child marriage is interwoven in the customs and religion of the Northern Nigeria. It is a normal practice among Northern men to marry their daughters out as soon as they experience their first menstrual cycle, it is a belief that a girl child is physically mature and can get married regardless of their age.

Sharia Law as a Facilitating Factor of Child Marriage in Northern Nigeria

Sharia is a legal system that is revealed as part and parcel of the Islamic religion and practices by the prophet Mohammed (S.A.W). This laws of sharia are administered by the sharia courts.

The Sharia Law does not prescribe any particular age for marriage for both boys and girls. Marriage under the Sharia Law is based on the fulfillment of certain conditions. Sharia law views age of marriage as synonymous to adulthood, this is seen in the Quran where it says:

“And test the understanding of the orphans until they attain the age of marriage, then, if you perceive in them mature judgment, deliver to them their property.”[6]

This verse does not expressly discuss the age of marriage, it talks about when a trustee should return the properties of an orphan back to him, but it is imperative from this verse that the Quran sees the age of marriage as the age of maturity, and maturity among children varies it is affected by many factors. While most children attain physical maturity before the age of 18 others mature physically after 18 years others 20.

Some other Islamic jurists see the message of this verse as duty and manner of returning an orphan's property rather than on marriage, one of this jurist said:

“What is meant by the age of marriage here (Quran 4:6) and experiencing wet dream. When children attain the age to experience wet dream, is the age of maturity. It is the status of responsibility and age when the duties of the faith are binding on the person. That is, either by having wet dreams or experiencing monthly course or by clocking the age as it is well known in the books of jurisprudence.”[\[7\]](#)

A yardstick for maturity under the Sharia Law is “*Ihtilam*” which translated to wet dreams for boys and “*Haidah*” which means menstruation for girls and these are not attained at a particular age.

The *Fauqaha*™ jurists support that the age of marriage is not fixed by the virtue of content and interpretation of Quran 65:4.

“And if you are in doubt as to the prescribed period for such of your woman 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” [\[8\]](#)

The physical growth and maturity of a child is affected by many factors, therefore it varies. Social, Cultural as well as Economic factors contribute to the choice of age of marriage. Individuals decide when a child is of marriageable age considering these factors, this is why Sharia law does not place any restriction on marriageable age, it just fixes certain conditions precedent. These conditions can be fulfilled by a child who has not attained a legal age (18 years). It is safe to say that Sharia law not placing a restriction on marriageable age allows young children to be married before attaining a legal age, which facilitates child marriage in Northern Nigeria.

The Concept of Wilayat Al-Ijbar.

The concept of “*Wilayat al-Ijbar*” also called “*Ijbar*” is a practice under the Sharia law which stipulates that a virgin’s father has the right to give his daughter out in marriage without her consent.

Ijbar is traditionally defined as “enforcing one's will on another whether he agrees or disagrees” this definition has been developed to mean a legal authority that gives a guardian or parent to dictate marriage of his ward without his or her permission or consent.[\[9\]](#)

The father has the power to marry off his young children. However, this power ends at the fulfillment of the conditions of emancipation, these conditions differ for boys and girls. According to a Maliki Jurist, Al-Dardir[\[10\]](#) a male child fulfils the condition when he attains biological and social maturity, this implies that he has attained the age of puberty. A female child is not considered to have fulfilled this condition without judicial decision that she is emancipated and thus her father can compel her to marry. Alternatively, she must marry or be subject of two reliable witness who must attest of her ability to manage her property. [\[11\]](#)

A child being a minor cannot exercise his or her right to marry. This right is in turn vested on the child’s father or guardian who is to act as a trustee on behalf of the child, thereby marrying this child off in most cases. The concept of *Ijbar* is a facilitator of Child Marriage in Northern Nigeria.

Reasons for Child Marriage in Northern Nigeria

To a great extent the reason for the rampancy of child marriage in Nigeria can be accredited to the fact that Sharia Law as well as the custom of the Northerners endorse this practice. However, other factors also contribute.

The contributing factor to child marriage in northern Nigeria is poverty. Poverty undoubtedly promotes child marriage in the Northern Nigeria. On a geo-political assessment, according to the Bureau of Statistics, the North West has 77.7 % of its population living in relative poverty while the North East came second with 76.3 % of its population living in relative poverty. The North Central States has 67.5% of its population living in relative poverty, this is an alarming rate of poverty in the North. These poor families marry their children out at a young age and passes the responsibility of that child to relief themselves of the financial responsibilities of raising that child.

Another fuel of the Child Marriage in Northern Nigeria is the belief that through marriage, family ties and relationship are strengthened. Most families in the north believe that through marriage they create a bond between families and settle feuds between conflicting families, and they believe that this can only be achieved through betrothal of children and the marriage of children at a young age to these families.

Furthermore, the high level of illiteracy in Northern Nigeria is also a facilitator in this evil of child marriage. According to the National Bureau of Statistics, the states where majority of people can neither read nor write are those in the Northwest, Northeast and Northcentral. Showing that Yobe State has only 7.23% literacy level, which is the lowest in the country, followed by Zamfara 19%, Kastina 10.36%, Sokoto 15.01%, Bauchi 19.26%, Kebbi 20.51 %, and Niger 22.8% respectively[\[12\]](#) Only Taraba is an exception salvaging the North with 72% literacy[\[13\]](#). These statistics shows the backward nature of northern Nigeria in Education. With this high level of illiteracy, the northerners most times do not know the dangers of child marriage, they are not fully educated as to the ills of this plague called child marriage. Child marriage is rampant amongst the illiterate society.

Additionally, Marriage is seen as a means of preserving the virtue of girls, the northerners believe that the practice of child marriage will preserve the virginity of girls and also to ensure that they do not get pregnant outside matrimony. This practice is also believed to eradicate promiscuity among young girls.[\[14\]](#)

Gender inequality also causes early marriage in northern Nigeria. Women and girls are seen as the inferior gender and

are most times deprived of their right and ability to play equal role as their male counterparts as well as fulfill their ambitions and potential, their voices are not heard and the opinion on marriage does not really count.

Effect of Child Marriage on Children in Northern Nigeria.

While there have been some arguments in favor of child marriage, the dangerous effects of this malevolent act outweighs the positive effect of child marriage. One of the adverse effects is Vesico Vaginal Fistula (VVF) which is an abnormal duct between the vagina wall and the bladder. There is a high level of VVF in Northern Nigeria. According to the study in Kano state, 120 patients were admitted in two months, in some other states such as Bornu there were 241 patients in two years. Jos and Sokoto had 932 cases in seven and a half years and 31 cases in one year respectively. [\[15\]](#)

Children are not physically designed to give birth, when this happens, it puts the mother's life at risk. A study carried out by Girls Not Bride, a non-governmental organization shows that the likelihood of the baby of a girl under 18 dying is 60% and girls under 15 years are five times more likely to die than women in their twenties. [\[16\]](#) 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. Risks extend to infants too, if a mother is under age 18, her baby's chance of dying in the first year of life is 60 percent greater than that of a baby born to a mother older than 19. [\[17\]](#)

Child brides also are at far greater risk of contracting HIV than their counterparts who marry later. Often they are married to older, more sexually experienced men with whom it is difficult to negotiate safe sexual behaviors, especially when under pressure to bear children [\[18\]](#). A common belief is that child marriage protects girls from promiscuity and, therefore, disease; the reality is quite different. Married girls are more likely than unmarried girls to become infected with STDs, in particular HIV and Human Papilloma Virus (HPV). In Sub-Saharan Africa, girls ages 15-19 years are 8 times more likely than boys of the same age to become infected with HIV. The risk of acquiring HIV from a single act of unprotected vaginal intercourse is 3 times greater for women than men. Globally, the prevalence of HIV infections among women is highest from ages 15 to 24, the risk for men peaks 10 years later. [\[19\]](#)

The Legal Framework on Child Marriage

The Child Right Act

The Child Right Act [\[20\]](#) was enacted in 2003, it signified the deliberate effort of Nigeria to protect and preserve the right of a child. The CRA was enacted not only to protect the best interest of a child, it provides some obligations and duties of a child's parent, the government and other organizations towards children. The CRA shows the domestication of the Convention of Rights of a Child [\[21\]](#) and the African Charter on the Rights and Welfare of a Child [\[22\]](#).

The CRC protected various rights of a child but failed to include an explicit provision on child marriage, [\[23\]](#) however it had some provisions which could apply to child marriage some of which were Protection of Child from physical and mental violence, neglect or negligent treatment, injury or abuse, maltreatment [\[24\]](#)

The ACRWC was not like the CRC, it had a vivid and concise instrument that deals with child marriage, it sets the age of childhood below 18 years, [\[25\]](#) by implication child marriage does not contravene Article 1 of the CRC but it contravenes Article 1 of the ACRWC directly. The ACRWC frowns directly on child marriage where it states:

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 18 years and make registration of all marriages in the registry compulsory. [\[26\]](#)

Nigeria being a signatory to both the CRC AND ACRWC still domesticated both instrument to show the desire to protect the right of a child. But before the CRA was enacted, it went through some vigorous debate, especially in Northern Nigeria as the view the CRA as contrary to their religious and traditional values. The objection raised by the northerners towards this law was the fact that the Act placed a restriction on marriage age as 18 years, which the Northerners were not used to. A special committee was organized to harmonize the children's bill with Nigerians Religious and Contrary Beliefs [\[27\]](#), and also to prompt the senate to reconsider the bill. About ten years later the CRA was born in July 2003 and was in force in September 2003.

The CRA clearly and explicitly prohibits the marriage of a child where it states that:

No person under the age of 18 years is capable of contracting a valid marriage, and accordingly, a marriage so contracted is null and void of no effect whatsoever. [\[28\]](#)

Ordinarily, a way out of this section is to say that a child is not capable of contracting a valid marriage but a marriage can be contracted on his behalf. But section 22 of the CRA prohibits the betrothal of a child, where it states:

- No parent, guardian or any other person shall betroth a child to any person.
- A betrothal in contravention of subsection (1) of this section is null and void.

The CRA frowns at any marriage of a child done through any means, and prescribes a punishment of five hundred thousand naira or an imprisonment for a term of five years, or both. For such a grievous and unscrupulous offence like child marriage, this punishment seems too mild on offenders.

Problems of the Child Right Act

The major problem of the CRA is the fact that states have not domesticated this Act as state laws, this is because the matters relating to children are not in the Exclusive List. Thus even though the CRA prohibits child marriage and betrothal, before it can be enforceable in a state in Nigeria, it has to be enacted in state laws.[29] The CRA was enacted in 2003, however asides Enugu, 11 Northern states are yet to pass it to law[30]. This is no surprise because the CRA is in contradiction of the religious and cultural beliefs of the Northerners. Jigawa State is the only Northern state to re-enact the CRA in Nigeria. The Jigawa State Child Right Law, 2006[31] which is essentially a reproduction except for certain modifications.[32] The CRL defined the age of marriage as the age of puberty and the age of puberty is the age which a person can physically and psychologically consummate a marriage.[33] In effect, in states where the CRA has not been domesticated, children might have no right and can be married off before their 18th birthday.

Conclusion and Recommendation

Child marriage is a cultural issue, but it is also a social justice issue and a national health issue in Nigeria. We need to work as a society to figure out ways to give the most vulnerable members of our society a positive control over their future. It is a national health issue in Nigeria because these children are subject to continual sexual abuse, and possible physical violence by their supposed spouses.[34]

The enactment of the Child Right Act was supposed to put an end to child marriage, but we can see that this evil is still on going and rampant particularly in Northern Nigeria. Perpetrators of this act hide under some loopholes in the law. As long as Sharia Law is being administered in Northern Nigeria, Child marriage will continue to be promoted. As noted earlier, Sharia Law is an enabling factor of child marriage. It does not see anything wrong with the marriage of a minor, when a person commits this offence in the North, the Sharia law will shield such person from punishment. It has also been seen that failure of most Northern states to domesticate the CRA also fuels this practice, because by implication child marriage is not a crime in this states.

This writer recommends that the Federal Government takes bold and concise step in putting an end to child marriage by amending the constitution to place an embargo on the marriage of children specifically stating the marriageable age as 18 years. As we all know the constitution supersedes all laws in Nigeria and will be binding on all states and any cultural, religious or whatsoever law in contravention to the constitution will be void. The constitution needs no domestication unlike the CRA.

The National Assembly should enact “Child Marriage Prohibition Act” this act will deal with child marriage specifically, making sure that child marriage is completely eradicated in the country, covering every loophole where perpetrators of child marriage can be spared.

Finally, it would be a welcome development that there be in addition to Ministry of Women Affairs, a Ministry of Children affairs existing as “Ministry of Women and Children Affairs”. This would create a structured avenue for the protection of the rights of a child not only on child marriage but frowning on other violation of a child’s right.

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