Child/Forced Marriage and Human Rights of Women in Nigeria: A Legal Anatomy

Abstract

It is a notorious fact that in patriarchal societies such as those of Nigeria, women are disadvantaged by discriminatory customary practices that assigned gender roles on them which subordinate them to men. This has mounted immense pressure on women such that they keep struggling in order to be seen in all spheres of life.[171] The most highlighted of these gender discriminatory customary practices is child/forced marriage. It is unarguable that the rights of the child all over the world are considered to be paramount, inalienable and inderogable. This is why there have been several outcries against the continued practice of child/forced marriage in most developing, underdeveloped and the Arab countries of the world. The danger associated with child/forced marriage is legion and if not urgently nipped on the bud, will reduce the women folk to mere logs of wood. Using empirical and doctrinal research methods, this work critically examined the practice of child/forced marriage in Nigeria and found out that this customary practice still thrives in Nigeria, mostly in Northern parts of Nigeria. Recommendations were made strict adherence to which shall throw this menace into the oblivion.

Keywords: Child/Forced Marriage, Customary Practices, Discriminatory Customs, Patriarchal Societies, Rights, Inalienable, Nigeria, Women

1. Introduction

It has been severally reiterated that Nigerian women face discrimination in all spheres of life due to social norms that are entrenched in cultural ideologies'.[172]These culture based norms and practices are meant to scuttle all qualities, rights and privileges women are naturally endowed with, which the patriarchal societies such as those of Nigeria, perceived as capable of placing women at par with men, are scuttled.[173] This has been the position despite the fact that it is a well accepted principle of law that human rights are the birth rights of all human beings irrespective of sex, colour, origin, status, *etce tera*. As a result, there exists social stratification,

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[171]F Adebukola,'Reflections on Educational and Girl-Child Marriage in Nigeria', *International Journal of Sociological Science Vol. 1, No. 2, September 2014,* p.1.

[172]E Ibe, 'The Protection of the Rights of Women in Africa: Challenges and Prospects', *African Customary and Religious Law Review, Vol. 2, 2021,* p. 38.

[173]S Umeh *et. al.* 'Female Genital Mutilation: 'A Socio-Religious Myth on the Rights of Nigerian Women', *African Customary and Religious Law Review'Vol. 2, 2021,* p. 89.

discrimination, prejudices and injustices against the women folk.[174] At the fore front of these obnoxious cultural practices is child/forced marriage which simply represents a brutal abuse and violence against the girl child; and which robs girls of the rights to enjoy of their childhood and adolescent lives, wellbeing and other potentials. Child/forced marriage also plunges victims into physical and emotional relationship they are not prepared/ready for; and which relationship they have little or no control over.[175]It has also been reported that child/forced marriage is a gender based violence that isolates girls and exposes them to physical, sexual and emotional abuse considering the risks associated with early pregnancy and child birth.[176] The report further stated that complications from pregnancy and child bearing are the leading causes of death among child brides between the ages of 15–19 years.[177]Several legal instruments have be articulated over the years to annihilate this menace called Child/forced marriage and indeed other forms of discriminatory cultural practices, yet, the enforcement and protection of women's human rights has not been hitch free as a result of the mythological conceptualization of women as being inferior to men.[178]Factors hindering the elimination of all forms of harmful traditional practices such as child marriage are legion and include: cultural, educational, economic, and lapses in the enforcement of extant laws.[179]

This work shall critically examine the practice of child/forced marriage, factors motivating this practice, and then conducted a legal anatomy on child marriage and human rights of women in Nigerian. Recommendations shall be made on best ways to eliminate this scourge in Nigeria.

2. CONCEPTUAL CLARIFICATION

In academic works of this nature, key concepts and terms are often used which are not easily understood without clarifications of these concepts and terms. One of these is the term 'child', a term has been defined as 'as a person who has not attained the age of eighteen'.[180] Another term worthy of definition is 'marriage', which has been defined as a formalized, binding partnership between consenting adults.[181]Marriage has also been defined as 'a society approved sexual and domestic relationship between two or more persons that are assumed to be permanent and includes mutual rights and obligations.[182]According to Agbikim, 'marriage is a socially and ritually recognized union or legal contract between spouses that establish rights and obligations

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[174] Lemechi, B. *Osu Na Ume the Igbo Untouchable Caste Systems,* (Owerri, Milestone Publishers Ltd.2011,) p.5.

[175]Save the Children, 'Still left behind: trafficking Children's Progress Against the Pledge to Leave No One Behind, 2018, available at http://resourcecentre.savethechildren.net/node/13589/pdf/still_left_behind_low_res.pdf accessed 9th October, 2021.

[176]World Health Organization, 'Causes of Death Among Adolescents: Maternal, Newborn, Child and Adolescent Health', available at http://www.who.int/maternal_child_adolescent/data/causes_death_adolescents/.accessed 25th September, 2020.

[177]*Ibid.*

[178]S Umeh *et. al.* 'Female Genital Mutilation: 'A Socio-Religious Myth on the Rights of Nigerian Women',*Op. Cit.*

[179]S Ifemeje & N Umejiaku, 'Discriminatory Cultural Practices and Women's Rights Among the Igbos of South-East Nigeria: A Critique', Journal of Law', *Policy and Globalization, Vol. 25, 2014,* p. 24.

[180]Child's Rights Act, section 277, hereinafter referred to as 'CRA'.

[181]J Myers & R Harvey, 'Breaking Vows: Early and Forced Marriage and Girls Education, 2011' available at http://plan-uk.org/file/breaking-vows-efm-3462225pdf/download?token=RIE5iobL accessed 9th October, 2021.

[182]*Ibid.*

between them and their in-laws.[183] Marriage has also been defined as a partnership between two adult consenting members of opposite sex known as husband and wife. It is submitted that child/forced marriages from the definition of a valid marriage. For purposes of clarity, child marriage is the same thing with early marriage. It must however be pointed out that although child marriage and forced marriages are used interchangeably, this position is wrong because while all child marriages are forced marriages, not all forced marriages are child marriage. Ayodele clearly stated that child marriage is the same thing as early marriage simply because such marriage takes place before the age of 18 years.[184]This is why child marriage, also referred to as early marriage has expressly been defined as 'as a marriage carried out below the age of 18years, before the girl is physically, physiologically and psychologically ready to shoulder the responsibilities of marriage and childbearing.[185]On the other hand, a forced marriage can be defined as 'marriage that lacks the free and valid consent of at least one of the parties'.[186] Thus, if an adult is coerced, forced or threatened to enter into a marriage contract, such union is obviously void *ab initio* for lacking the valid consent of the parties, just as is the case with child marriage.[187]While admitting that most times, child marriage is usually arranged by the parents of the minor who is one part of the couple. There is a wrong impression that forced marriage is the same thing as arranged marriage. The two marriages are not actually the same in that in the case of an arranged marriage, both spouses are free to choose whether or not they wish to enter into a marriage contract i.e., in cases where they have attained majority. On the contrary, in a forced marriage, this consent is lacking for one or both spouses.[188]

As shall be canvassed in this work, child/forced marriage is a discriminatory concept of customary law against women; same is not just an abuse of God's gift but also of human rights.[189]The term 'discrimination against women' has been defined as 'any distinction, exclusion, or restriction made on the basis of sex in the political, economic, social, cultural, civil or any field.[190] This term has also been defined as 'anything that can bring about unequal treatment between men and women while carrying out their livelihood'.[191]

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[183]N Agbikim, 'An Exegetico–Theological Interpretation of Genesis 2: 23–24 and its Implication for Christian Marriage', *Niger Delta Journal of Religious Studies, Vol. 2, Iss. 1,* p. 128.

[184] J Ayodele: The Socio-Economic Effect of Marriage in North-West Nigeria' *Medi Terraneam Journal of Social Sciences, Volume 5, Article 14, 2013,* p. 583.

[185] C Ugwu *et. al.* 'Gender-Based Violence in Nigeria: The Trends & Ways Forward', *Specialty Journal of Politics and Law, 2016, Vol. 1, No.1.* Pp.76.

[186]B Itebiye, 'Forced and Early Marriages: Moral Failure vs. Religious Nuances', *European Scientific Journal, June 2016 Editions, Vol. 12, No. 17,* P. 305.

[187]*Ibid.*

[188]*Ibid.*

[189]O Adeyemi, 'Early and Forced Marriages in African System: 'An Appraisal of the Rights of the Child in Nigeria',
Nigerian Journal of Family Law, Vol. 4, Iss. 2, 2013, p. 27 – 33.

[190]Article 1, Convention of the Elimination of all Forms of Discrimination Against Women, 1979 (hereinafter referred to as 'CEDAW'; Article 1; United Nations Convention on the Rights of the Child,1989 defines a child as 'a human being below the age of 18'.

[191]S Ifemeje & R Itsueli, 'Divorce and Maintenance Under Islamic Marriages in Nigeria: The Need to Safeguard the Rights of Women and Children', *African Customary and Religious Law Review Vol.* 2, 2021, p. 25.

(i). Child/Forced Marriage

It has been stated that the major purpose of engaging in marriage contracts is for procreation and as such, a girl who starts bearing children at a very early stage of life has a high probability of bearing many children.[192] This is the major reason behind the practice of child marriage in Nigeria, although Ogunniran stated that historically, it was the cultural trend to use child marriage among different factors or states as a method of securing and cementing political ties between them.[193]It must however be noted that child marriage is not restricted to girl children, but includes boys. As a matter of fact, child marriage occurs when one or both spouses are below the age of 18 years.[194]It has been lamented that incidence of child marriage has become a global phenomenon, particularly in Sub-Saharan Africa and Southern Asia.[195] It has been estimated that one hundred and thirty-four million girls between 2018 and 2030, and almost ten million will marry in 2030alone, two million of them are under aged.[196] It has been confirmed that one third of the world girls are married before the age of eighteen.[197] In fact, one in nine girls married before the age of fifteen.[198] As at the year 2010, sixty-seven million women representing 20%–25% of women around the world had been married before the age of eighteen.[199]Adebukola had estimated that over one hundred and forty-two girls got married before their eighteenth birthday from 2010–2020.[200]It has further been estimated that if the attemptto curb child marriage failsby 2030, it will cost the world economy trillions of dollars.[201]

Driving back home, it is pertinent to note that Nigeria is not only the most populous African nation, but a multi ethnic, multi religious and a Federal State.[202]As such, child/forced marriage is fully supported and practiced under the customary laws of Nigerian societies.[203]These customary laws not only failed to prescribe the minimum age for contracting customary law marriages, but parental consent to validate a marriage for girls is a prerequisite, whether or not these girls may be well over the age of twenty-one.[204]The explanation for this customary practice is that unless the parents consent, there will be no proper person to accept the dowry, which is the basic element in customary law marriage.[205] However, there is no formal evidence

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[192]C Chukwu *et. al.* 'Violence against Women in Igboland, South–East, Nigeria: A Critical Quest for Change', *International Journal of Sociology and Anthropology Vol. 6(2), 2014*, p.54.

[193]I Ogunniram, 'Child Bride and Child Sex: Combating Child Marriages in Nigeria', available at https:/www.ajol.into/index.php/naujilj/article/view/82389/72544 accessed 15th October, 2021. p.8.

[194]*Ibid.*

[195]*Ibid.*

[196]Save the Children and Human Rights Centre UC Berkeley School of Law, 'Towards an End to Child, Marriage– Lessons from Research and Practice in Development and Humanitarian Sector',2018, available at http://resourcecentre.savethechildren.net/node/13485/pdf/childmarriage_report_june2018.pdf accessed 11th October, 2019.

[197] Children's and Women's Rights in Nigeria: National Planning Commission, Abuja and UNICEF, 'A Wake-up Call, Situation Assessment and Analysis', 2001, p.5.

[198]*Ibid.*

[199]*Ibid.*

[200]F Adebukola, 'Reflections on the Education and Girl Child Marriage in Nigeria', *Op. Cit.* P.9.

[201]*Ibid.*

[202] S Umeh *et.al.* 'Females' Succession Rights under the Native Laws and Customs of Nigerian Societies: An Affront to Justice', *Madonna University, Nigeria Faculty of Law Journal, Vol. 7, June, 2021,* p.85.

[203]B Itebiye, 'Forced and Early Marriages: Moral Failure vs. Religious Nuances',*Op. Cit.*

[204]*Ibid.*

[205]*Ibid.*

to the effect that parental consent is requiredto validate marriages for men. Similarly, it appears that bridal consent is immaterial to the validity of Islamic law marriage as is the case of native customary marriages. This is because according to the *Maliki* law, a father may contract a valid marriage on behalf of his virgin daughter without her consent, irrespective of her age.[206]It is also undisputed that under both native customary laws and Islamic laws, betrothal is legal and protected.[207] Most often, forced marriage in Nigeria starts with the betrothal of the girl child awaiting the maturity of the bride and payment of dowry.[208] She is then given out in marriage to her husband who is most times twelve years older than her, between the ages of seven to nine, definitely before puberty.[209]It has been estimated that fourteen million Nigeria girls are married before eighteen years.[210]This represents a national average of 39% and 16% of girls married before the age of fifteen years. [211]

It must however be stated that the prevalence of child marriage varies wildly among Nigerian regions, with figures ranging from 76% in the Northwest to 10% in the Southeast.[212]It has been reported that 44% of girls in Nigeria are married before celebrating their eighteenth birthday, while18% of girls are married before the age of fifteen.[213]It has also been reported that in 26.5% of couples in Nigeria, there is an age difference of fifteen or more years between the husband and wife.[214] A research has shown that the median age of marriage in South-East and South-West geo–political zones of Nigeria stands at 20.2 years, as against those of the North-East and North-West Geo–political Zones of Nigeria which is put at 15.0 years and 14.6 years respectively.[215]The afore mentionedresearch concluded that there is a large zonal variation in the mean age of marriage with females in Northern Nigeria marrying on averages of five years earlier than their counterparts in the aforementioned two Southern geo–political zones.[216]

It must also be pointed out that the timing of marriage varies considerably by region and area of residence.[217]It hasbeen discovered that rural girls are more likely to engage in early marriage than urban girls.[218]For instance, while 29% of urban girls in North-West get married at age 15, 65% of rural girls in the same geo–political zone are married at the same age.[219.] However, this is not the position in Southern part of Nigeria where girls marry far later than in Northern

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[206] O Ipaye, 'Some aspects of Women and the Law: the Nigerian Experience', (1995) *Journal of Human Rights Law and Practice, Volume 5. Number 1,* p. 60-61.

[207]M Lawan, '*Sharia–based Reservations and the Convention on the Elimination of All forms of Discriminations Against Women,* (*Supra*), p. 137.

[208]Nwogugu, E, *Family Law in Nigeria,* (Ibadan, Claverianum Press, 1996) p. 20.

[209]*Ibid.*

[210]F Adebukola, 'Reflections on the Education and Girl Child Marriage in Nigeria' *Op. Cit.* p.6.

[211]*Ibid.*

[212] Home Office, Country Background Note Nigeria Version 2.0, January 2020, p.19, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856368/Nigeria_-_Background_-_CCPIN_-_v2.O_January_2020_gov.uk.pdf accessed 17th October, 2021.

[213]*Ibid.*

[214] National Planning Commission, Abuja and UNICEF, 'Children's and Women's Rights in Nigeria: A Wake-up Call, Situation Assessment and Analysis', 2001, p. 200.

[215]*Ibid.*

[216]*Ibid.*

[217]I Ogunniram, 'Child Bride and Child Sex: Combating Child Marriages in Nigeria'*Op. Cit.* P. 89.

[218]*Ibid.*

[219]*Ibid.*

Nigeria.[220]This further confirms that there is a higher incidence of child marriage in Northern Nigeria than in Southern Nigeria.[221]

3. FactorsMotivating Child/forced Marriage in Nigeria

As stated earlier,child/forced marriage in Nigeria has been going on unabated and without meeting any meaningful form of resistance. No doubt, no meaningful result shall be made in the fight against this practice without first of all identifying the root causes of this practice and the factors fueling same. These factorsshall be discussed in the next few sub topics below.

(i). Culture

As stated earlier in this work, Nigeria is a multi ethnic state and its societies operate divergent sets of customary laws. It is a notorious fact that child/forced marriage existing in Nigeria till date is as a result of adherence to mundane cultures and diverse customary laws operating in Nigerian societies.[222] These cultures greatly value virginity such that early marriage, especially at puberty, is seen as a measure that helps preserve a girl's virginity; as shame will be cast on the family if a girl is not a virgin at the point of marriage.[223]Thus, a girl is usually forced into marriage for the maintenance of family honours and for the preservation of her virginity.[224]It is firmly believed under these customs that girls married at tender ages are less exposed to promiscuity.[225]There is also this belief that child marriage strengthens existing bonds between families.[226]

It must be acknowledged that while in Southern Nigerian societies practice native laws and customary practices and in some cases, Islamic law; most societies in Southern Nigeria are predominantly Christians.[227]It has been observed that although the Holy Bible which serves as the grand norm of the Christian faith promotes and protects betrothal, virginity and total abstinence from pre marital sex, especially on the part of girls, it does not provide for child/forced marriage.[228]This may be accountable for the low prevalence of child/forced marriagein Southern Nigeria as stated earlier in this work. Conversely, it has been reported that there is high incidence of child marriage in Northern Nigeria, possibly because of the practice of Islamic religion which is prevalent thereat and which according to Junaid, was introduced in Nigeria alongside its distinctive legal system around 11th century in parts of what is now known as North-East Nigeria.[229] In the 19th century, Fulani jihadists led by Uthman Danfodio

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[220]*Ibid.*
[221]F Adebukola, 'Reflections on the Education and Girl Child Marriage in Nigeria'*Op. Cit.* P.5.
[222]*Ibid.*
[223] Arinze-Umobi, C*. Domestic Violence Against Women in Nigeria: A Legal Anatomy,* (Onitsha, Fo/Mech. Printing Publishing Co. Ltd, 2008) p. 92.
[224] F Adebukola, 'Reflections on the Education and Girl Child Marriage in Nigeria'*Op. Cit.*
[225]*Ibid.*
[226]*Ibid.*
[227]*Ibid.*
[228] Mathew 1 verse 18 (King James Version hereiafter referred to as 'KJV').
[229] O Junaid, 'The Sharia System in Nigeria: A Historic Survey', in C Momoh & S Awonusi (ed.), *Nigeria Initiative Discourses, Volume 1, Sharia University of Lagos, Nigeria, 2005*, p. 234–235.

succeeded in firmly establishing the influence of Islam and Islamic Legal System throughout Northern Nigeria and beyond.[230]The British colonialists allowed the practice of Islam and the continued existence of Sharia Legal System as the native laws and customsthroughout Northern Nigerians.[231] Sharia law has even been recognized by the Nigerian Constitution as an existing law.[232] In 2002, Zamfara state officially adopted the Sharia Legal System.[233]Since then, eleven other Northern States have followed suit, namely: Yobe, Sokoto, Kebbi, Kastina, Kano, Kaduna, Jigawa, Gombe, Borno, Bauchi and Niger.[234]As stated earlier in this work, both native and Islamic law do not specify marriageable age. However, the court held in *Labinjo v. Labake*[235] that contractual capacity begins at puberty under customary law. While agreeing that the above mentioned conditions are not attained at any particular age, Ambali submitted that age of marriage is determined by a combination of other factors, namely, environmental, climatic conditions, and physical growth.[236]Unfortunately, the four Sunni schools namely Hanifi, Malik, Shafi'l and Hanbali are all in agreement with the position that there is no limit to the number of years that a girl must attain before entering into marriage life.[237]The above discussed position of Islamic law is not the only pitfall inherent in this law as Ifemeje & Ikpeze have lamented that 'Sharia Law as operates exclusively in Northern Nigeria is fraught with a lot of discrimination against women'.[238] This is because under Islamic law, the consent of the child is dispensed with in cases of child marriage, and her parents are permitted to enter into the agreement on her behalf.[239] In the same vein, fathers are allowed to contract marriages for their virgin daughters irrespective of their ages, just as a girl's guardian, whose presence cannot be dispensed with and who also has the power to compel the girl into marriage.[240] This kind of marriage without the consent of the bride in Islam is called the "*Ijabar*.[241]Most recently, there was report that the Senator now representing Zamfara West senatorial zone in the Red Chambers, Senator Yerima Ahmed Sani, married an Egyptian girl aged thirteen while he himself was fifty years old.[242]The said Senator had married a fifteen year old girl as his fourth wife sometime in 2006 while he was Governor of Zamfara State, whom he divorced while she was seventeen years old and while she was nursing her child, just to enable him marry the said Egyptian bride.[243]

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[230]*Ibid.*

[231]S Farbanise, 'The Introduction of Sharia Legal System in Nigeria: Problems and Prospects' in A Ibidapo-Obe & T
Yerima (eds.), *International Law, Human Rights and Development, Essay in Honour of Professor Akintunle Oyebode*, *University of Ado Ekiti Faculty of Law, Nigeria, 2004,* p. 380.

[232]1999 constitution of the Federal Republic of Nigeria (as amended), section 315, hereinafter referred to as 'CFRN'.

[233]S Farbanise, 'The Introduction of Sharia Legal System in Nigeria: Problems and Prospects', *Op.Cit* P. 375.

[234]CFRN, section 315.

[235](1924) 5 N.L.R. p.33.

[236]Ambali M, *The Practice of Muslim Family Law in Nigeria* (Tamaza Publishing C. Ltd, Zaria, 2003) p. 154–155.

[237]*Ibid.*

[238]S Ifemeje & O Ikpeze, Global Trend towards Gender Equality: Nigeria's Experience in Focus Kuwait Chapter of Arabian Journal of Business and Management Review, Vol. 2, No. 3, Nov. 2012, p. 55, available at http://arabianjbmr.com/pdfs/KD_VOL_2_3/6.pdf accessed 5th October, 2021.

[239]*Ibid.*

[240]*Ibid.*

[241]*Ibid.*

[242]Sunday Punch of 18th April, 2010, p. 10.

[243]I Ogunniram, 'Child Bride and Child Sex: Combating Child Marriages in Nigeria'*Op.Cit.* P. 89,

(ii). Poverty

One of the major underpinning factors behind the continued practice of child/forced marriage in Nigeria is poverty.[244]Statistics have shown that the rate of poverty in Nigeria is put at 67%.[245]It must be specifically stated that poverty level in the Nigeria is higher in the Northern in Nigeria, with poverty rate in North-East and North-West geo-political zones put at 76.3% and 77.7% respectively, as far back as 2014.[246]It is a fact that 70% of the Nigerian population is living below poverty line and as such, most parents cannot afford the high rate of fees charged in schools especially private schools.[247] Consequently, parents prefer sending their male children to school simply because they will continue their family, while girls are given out in marriage at tender ages to relieve their parents of the burden of catering for these girls. [248]

(iii). Family Pressure

Child/forced marriage most often entails extreme pressure from family members in order to maintain family honour.[249]According to Adeyemo, family members often employ physical emotional violence and even blackmail in order to pressure theiryoung girls to engage in child marriages.[250]These girls are usually threatened that their failure to marry the husbands approved by their families will bring shame to victims' families, and as such erring victims stand disowned, or live without parental care/support.[251] Family members also use religion to lure victims to engage in child marriage threatening that their religion forbids such victims from refusing to marry men approved by their respective families.[252] It has also been reported that young girls are sometimes taken abroad and tricked into child/forced marriage to their great dismay.[253] Usually, these girls are denied access to funds, tickets or passport, in order to ensure they do not return to their land of nativity, or to stop victims from reporting the forced marriage to the appropriate authorities.[254]There have been confirmed reports that parents usually engage their minor daughters in child marriage for fear of them engaging in homosexuality. [255] To these parents, homophobia is enough reason to force their young daughters into heterosexual

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[244]National Bureau of Statistics Report of 2014, quoted by T Braimah, 'Child Marriage in Northern Nigeria: Section 61 of part 1 of the 1999 Constitution and the Protection of Children Against Child Marriage'*, African Human Right Law Journal, Vol. 14, 1ss. 2, 2014,* p. 481.

[245]T Braimah, 'Child Marriage in Northern Nigeria: Section 61 of part 1 of the 1999 Constitution and the Protection of Children Against Child Marriage'*, Op.Cit.* P. 481.

[246]*Ibid.*

[247]J Audi, 'Child Custody (Hadannah) Under Islamic Law in Nigeria: Looking at the Best Interest of the Child' *Journal of Private and Corporative Law Vol. 1, ISS. 1, 2006,* p. 218.

[248]*Ibid.*

[249]*Ibid.*

[250] O Adeyemi, 'Early and Forced Marriages in African System: 'An Appraisal of the Rights of the Child in Nigeria'
Op.Cit.

[251]*Ibid.*

[252]T Braimah, 'Child Marriage in Northern Nigeria: Section 61 of part 1 of the 1999 Constitution and the Protection of Children Against Child Marriage'*, Op.Cit.*

[253]*Ibid.*

[254]*Ibid.*

[255]B Itebiye 'Forced and Early Marriages: Moral Failure vs. Religious Nuances'*Op.Cit.*

marriages.[256] Apart from this reason, there are instances where child marriages are organized to maintain and strengthen family and community links.[257] It has also been reported that child/forced marriage is usually motivated by immigration and citizenship purposes.[258] As such, child/forced marriages are usually organized to enable family and community members resident abroad to remember home and move back to their lands of nativity.[259]

(iv). Illiteracy

Another factor behind the continued practice of marriage in Nigeria is illiteracy. Illiterates who are usually unaware of the negative consequences of child marriage have on the society perpetuate this cultural practice without much ado.[260]Research has shown that 82% of women with no education were married before their 18th birthdays as opposed to 13% of women who had at least finished secondary school.[261]It has even been reported that out of the ten million, five hundred thousand out of school children in Nigeria, 60% of them are mostly girls in Northern Nigeria. [262] This lends credence to the report issued by the United States Embassy in Nigeria to the effect that non-school attendance is highest among Northern Nigeria geopolitical zones of North-East and North-West.[263]As a matter of fact, 72% of children within the primary school age do not attended school in Borno State alone.[264]

(v). Other Factors

Apart from the above mentions factors fueling the practice of child/forced marriage in Nigeria, there are other factors that need to be discussed herein. Firstly, Nigeria operates a complex and complicated legal system that afford some measures of variable for federating states in Nigeria. This has led to conflict in the misinterpretation of laws made by the federal government and state laws on the one hand, and between national laws, regional, continental or international legal instruments, on the other hand. For instance, section 18 marriage Act states that a girl below the age of twenty-one years can get married if the consent of her parents is obtained; which provision is in conflict with the provision of section 21 of Childs Rights Acts. The aforementioned conflict of laws was reflected in the recent constitutional amendment debate by the Nigerian Senate where Senator Ahmad Sani Yerima pushed for a second vote on the matter arguing that under Islamic law, a woman becomes of age once she gets married and that Nigeria cannot legislate on marriages under Islamic law, including matrimonial causes.[265]
Another force behind the practice of child/forced marriage is fear of deadly venereal and infectious diseases such Human Immuno Virus. This has forced men to seek the hands of young

[256]*Ibid.*
[257]*Ibid.*
[258]J Williamson, 'Child Marriage: Causes, Effects and Interventions', quoted by B Itebiye*Op.Cit.*
[259]*Ibid.*
[260]T Braimah, 'Child Marriage in Northern Nigeria: Section 61 of part 1 of the 1999 Constitution and the Protection of Children Against Child Marriage'*, Op.Cit.*
[261]*Ibid.*
[262]*Ibid.*
[263]'Child Education: Daughter is Gold', Tell Magazine of March 25, 2013, p. 50 – 56.
[264]*Ibid.*
[265]Akande J, *Miscellany at Law and Gender Relations Op.Cit.*

virgins in marriage just because it is envisaged that these girls are not likely to be infected with venereal deceases.[266]It is also a common knowledge that the high level of insecurity has heightened child/forced marriage. For instance, there is Boko Haram insurgencyin the North-East and a high level banditry in parts of North-Central and North-West. These criminals are in the habit of abducting women whom they forcefully marry. An example of this is the case of Miss Leah Sharibu who was abducted and married off by members of Boko Haram. Other factors aiding the practice of child/forced marriage include; poor enforcement mechanism of laws and policies relating to the protection of women's rights; lack of awareness of the consequences and dangers associated with child/forced marriage; non adoption and domestication of Child Rights Act, 2003 by some federating states of Nigeria; corruption, bad governance, as well as ineffective Judicial system/processes.

4. Consequences of Child/forced Marriage

The consequences of child marriage are legion and include medical and psychological consequences. For instance, one of the major medical consequences of child marriage is Vesico -Vaginal Fistula[267] which is a form of deformity inflicted on women during childbirth through incisions made by local midwives to cut off membrane in the vaginal region during labour.[268]Usually, there is an extension of the cut to the anal and urethral area, thereby damaging the muscles that control passage of urine.[269]This ailment results to uncontrolled leakage of urine from bladder into the vagina[270] and in extreme cases, this leads to Rector Vaginal Fistula.[271]VVF causes serious problems which may lead to inability to bear more children, despite the young ages of patients of VVF.[272] On the other hand, patients with Obstetric fistula can have frequent bladder infections, incontinence of urine and stool.[273] They may be further be disposed to health related problems like urinary tract infections which are the leading causes of gram-negative bactereia of which the predominant pathogens are *Escherichia coli*, *Klebsiella* species, *Pseudomonas* species, *Proteus*species, and *Serratia* species.[274]It must be pointed out that the incidence of VVF in Nigeria is estimated at two per one thousand deliveries.[275]According to Arinze-Umeobi, the number of cases of VVF and RVF is estimated to be between eighty thousand and one hundred and fifty thousand, with about seventy percent occurrence in the Northern part of Nigeria.[276]

It has been reported that babies born by child brides are more likely to suffer from malnutrition and underdevelopment.[277]Furthermore, child marriage usually leads to frequent and

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[266]*Ibid.*

[267]Hereinafter referred to as 'VVF'.

[268]C Chukwu *et. al.* 'Violence against Women in Igboland, South–East, Nigeria: A Critical Quest for Change', *Op.Cit.*

[269]*Ibid.*

[270] M Murphy, 'Social Consequences Vesico–Vaginal Fistula' quoted by Chukwu *et al,Op.Cit.*P. 54.

[271] Hereinafter referred to as 'RVF'.

[272] M Murphy, 'Social Consequences Vesico–Vaginal Fistula' *Op.Cit.*P. 54.

[273]*Ibid.*

[274]*Ibid.*

[275]*Ibid.*

[276]Arinze-Umobi,C, *Domestic Violence Against Women in Nigeria : A legal Anatomy,Op.Cit.*

[277] World Health Organization, 'Causes of Death Among Adolescents: Maternal, Newborn, Child and Adolescent

numerouschild bearing and production of deformed children.[278]It has also been stated that victims who are usually unequipped for their roles as mothers may be uninformed about hygiene, dietary values, epidemic and poor nutrition.[279]Uneducated child brides are unaware of the use of condom and thus exposed toHuman Immuno Virus and Acquired Immune Deficiency Syndrome and other sexually transmitted diseases.[280]

Apart from these medical consequences of child marriage enumerated above, victims of child marriage arealso exposed to psychological trauma. It is a notorious fact that sexual experience at a very early age is usually traumatic and often leads to fixations all through the girl's life; as such marriage is not contracted out of love and affection.[281]Child marriage can make a victim unequipped for her roles as a mother because she may be uninformed about hygiene, dietary values, epidemic and poor nutrition.[282]Furthermore, under aged mothers may not be well equipped to handle the pressure of running a home in addition to social responsibilities demanded of them by the society.[283]Obviously, this will lead also lead to loss of self confidence and self identity, especially where victims are disorganized, confused, feel trapped and deprived.[284] Such victimsare bound to sufferinferiority complex and acquired low self esteem.[285] This is so because, once victims expectations in such marriage are not met, they are most likely to desert theirmatrimonial homes and find solace in prostitution.[286]Furthermore, victims of child marriagemost oftenresort to prostitution instead of marrying by force, a man they do not love.[287]It has also been discovered that many victims of child/forced marriages suffer prolonged domestic violence, but may not be able to walk out of the marriage as a result of economic, pressure, lack of family support and other social circumstances.[288] This development most time forces these young brides to engage in self-harm and suicide.[289]It has also been shown that child/forced marriage often results into wife abandonment, separation and divorce.[290] This maybe as a result of violent/cruel behaviour such as coercive sex, indulged in by the brides' husbands.[291] These play major roles in marital break down and as such, young girls who involve

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Health', available at http://www.who.int/maternal_child_adolescent/data/causes_death_adolescents/.accessed 25th September, 2020.

[278]*Ibid.*

[279]*Ibid.*

[280]'Sharia & Women's Human Rights in Nigeria: Strategies for Action', proceedings of a Conference organized by WARD C, Lagos and WACOL, Enugu, from 27th—30th October, 2002, p. 55 available at http//www.boellnigeria.org/documents/Sharia%20and20women%27s%20Humans%20Rights%20Nigeria%20-%20stratagies%20%for%20Action.pdf accessed 10th October, 2017.

[281]Nwankwo, O, *Child marriage as child abuse, Enugu*(Nigeria,Civil Resources Development and Documentation Centre, 2001) p. 3.

[282]*Ibid.*

[283]*Ibid.*

[284]M Dereje *et. al.* 'Urinary Tract Infection among Fistula Patients Admitted at Hamlin Fistula Hospital, Addis Ababa, Ethiopia'*Op.Cit.*

[285]*Ibid.*

[286]*Ibid.*

[287]*Ibid.*

[288]V Mlambo, 'Implications of Child Marriages and their Developmental Effects on Young Girls/Women in Sub-Sharia Africa', African Renaissance, Vol. 16, No. 2, June, 2019, p.78,

[289]*Ibid.*

[290]*Ibid*

[291]G Kyari & J Ayodele, 'The Socio–Economic Effects of Early Marriage in North-Western Nigeria',

in child marriage are three time more likely to be divorced that those who marry as adults.

5. Child/Forced Marriage and Human Rights of Women in Nigeria: A Legal Anatomy

Child/forced marriage has been described as one of the ills that have eaten deep into the marrows of the third world countries including Nigeria.[292] As a matter of fact, child marriage is a violation of children's rights, a serious form of child abuse and a violation of extant human rights laws.It is adiscriminatory act which deprives a spouse of her right to choose a spouse of her choice and to enter into marriage with her free and full consent. It also robs girls of their childhood, wellbeing and potentials; and thereby exposes victims to physical, emotional and medical dire consequences.[293]As a matter of fact, there is an international legal instrument that includes in the institutions and practices similar to slavery, any institution or practice whereby a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, family, etc.[294]Child marriage also violates the human rights constitutionally guaranteed to Nigerian women which include; right to life, right to dignity of human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to peaceful assembly and association, right to freedom of movement, and right to freedom from discrimination.[295]

However, there have been dynamic changes in recent times which have ushered in improvements in the conditions of women, nationality, regionally, continentally, and globally. This culminated into the articulation of a good number of Human Rights Instruments that lay down norms to be applied to marriage as regards consent, age, and equality within marriage; and personal and property rights of women. For instance, Universal Declaration of Human Rightsprovides that men and women of full age have the rights to marry and found a family.[296] Accordingly, married couples are entitled to equal rights as to marriage, during marriage and its dissolution.[297]What the above stated provision implies is that marriage must be contracted only upon the full and free consents of the intending couples. Furthermore, it has been globally agreed that no marriage shall be legally entered into without the full and free consent of both parties, and that such consent must be expressed by the parties as prescribed by law.[298] The Convention mandates state parties to specify through local legislation age of marriage not below fifteen years; and to ensure that all marriages be registered.[299]In the same vein, another

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Mediterranean Journal of Social Sciences, Vol. 5, No. 14, July, 2014, p. 588.

[292] T Jamabo, 'A Discourse on the Development Effects of Child Marriage' *African Journal of Social Sciences, Vol. 2, No. 3, 2012,* p. 135.

[293]Save the children, 'Still left behind: trafficking Children's Progress Against the Pledge to Leave No One Behind, 2018, http://resourcecentre.savethechildren.net/node/13589/pdf/still_left_behind_low_res.pdfaccessed 12th October, 2021.

[294]Article 1 (C) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to slavery, 1956.

[295]CFRN, sections 33-42.

[296]*Ibid.* Article 16.

[297] UNICEF, 'Early Marriage: Child Spouses', *Innocenti Research Centre, Florence, Italy, No. 7–March, 2001,* p.3, available at https://www.unicef-irc>.org.> accessed 20th October, 2021.

[298] Convention on consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964, Article 1.

[299]*Ibid.* Articles 2 & 3.

international Convention gives spouses equal rights to enter into marriage and the right to freely choose a spouse.[300]It equally outlaws betrothal and child marriage.[301]In the same vein, African states have agreed that betrothal of boys and girls be prohibited.[302]Member states to African Charter are urged to specify the minimum age of marriage to be eighteen years.[303]However, it seems the most important instrument that relates to the rights of the child is the Convention on the Rights of the Child, 1989. Nigeria has ratified this instrument and has domesticated same *via* the passing into law the Childs right Actwhich fixes marriageable age at eighteen.[304] In furtherance of its resolve to nip violence against women, Nigeria has signed into law an Act that has included child Marriage amongst harmful traditional practices, and punishes same with a term of imprisonment not exceeding four years or a fine not exceeding N500,000 or both.[305]This Act also criminalizes the causing of emotional, verbal or psychological abuse on women or any attempt to do so.[306]

It is submitted that for meaningful progress to be made in the fight against child/forced marriage in Nigeria, there is need for federal government to compel federating States of Nigeria domesticate CRA within the shortest possible mean time. It is however noted that only twenty-five states have domesticated this Act. It is therefore commendable that Imo State has not only domesticate CRA but has gone ahead to pass a Law which states that the minimum age of marriage in all circumstances be 18; and equally declared that betrothal and marriage of a woman under the age of 18 shall have no legal effect'.[307]It is commendable that Imo State has passed a Law thatbans all forms of gender based discrimination, inequalities and other matters incidental thereto.[308] Imo State has also enacted a Law that prohibits obnoxious customary practices and all humiliating or degrading treatment against women, especially widows.[309]

While commending the bold steps taken so for in the bid to recognize and enforce women's rights, it is submitted that there is need to recognize supremacy of the constitution particularly section 29 (4a) of the 1999 Constitution that recognizes the age of maturity as 18 years. It is therefore necessary invoke the relevant provision of theConstitution to declare any other law that is inconsistent with the Constitution void to the extent of its inconsistency.[310]In the same vein,the Marriage Act which provides in its section 18 that a girl below the age of 21 years can get married if the consent of her parents are obtained,should be expunged *via* immediate amendment of the Act, for being in conflict with the provisions of the afore mentioned Constitution, as well as the provisions of section 21 of Child Rights Acts.There is also need to expunge section 29 (4b) of same Constitution which tends supports child's marriage by

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[300] Article 16 (1) Convention of the Elimination of all Forms of Discrimination Against Women, 1979, (hereinafter referred to as 'CEDAW'.

[301]*Ibid.*

[302] African Charter on the Rights and Welfare of the Child, 1990, Article XXI.

[303]*Ibid.*

[304] Section 21, CRA.

[305] Sections 46, Violence Against Persons (Prohibition) Act, 2015.

[306]*Ibid.*

[307]Section 17 (b), Gender and Equal Opportunities L.aw Number 7 of Imo State, 2007.

[308]*Ibid.*Sections 6 & 23.

[309] Widows (Protection) Law (W.P.L.), Law Number 12 of Imo State, 2003, sections 1-3.

[310] CFRN, sections 1-3.

providing that 'any woman who is married shall be deemed to be of full age'. As a matter of urgency, the relevant customary and Sharia laws that support child/forced marriage should be declared null and void by the court.

6.Conclusion

It is concluded that child/forced marriage is a physical assault in the form of sexual intercourse, as well as torture. It is also concluded that till date, child/forced marriage is rampantly practiced in Nigeriadue to the fact that Nigerian traditional societies tend to have traditional attitudes deeply entrenched in customs, which are not easily altered by external influences.There is therefore need to harmonize the principles of natural justice with these customary laws prevalent in Nigerian societies in order to throw this practice into oblivion.[311]This action is necessary especially now that gender based violence has received increased international focus since afterthe Fourth World Conference on Women held in Beijing in 1995, and the International Conference on Population and Development held in Cairoin 1999. If necessary actions are not initiated as a follow up to the above mention steps, the human rights of women will remain a mirage.

7. Recommendations

In order to totally eradicate child/forced marriage in Nigeria, certain steps need be taken.
Firstly, there is need to create public awareness and sensitization on the dangers associated with child/forced marriage.There is need for government to collaborate with religious andtraditional rulers, Town Unions, youth groups, faith-based organizational, Non–Government Organizationsand other stakeholders. There is also need for government to introduce Human Rights as a course in the curricula of Primary/Secondary and Tertiary education in Nigeria to enable pupils and students be conversant with their human rights and the way of enforcing those rights. There is further need to sensitize the populace through radio and television programmes, social media, conferences and seminars.

Secondly, there is need for the thirty-six federating states of Nigeria to domesticate the Child Rights Acts, 2003 and collaboration of Security Agencies in Nigeriawith a view to strictly enforce this Act. Federal and State governments should collaborate with law enforcement agencies in Nigeria to ensure that CRA and its domesticated version are strictly enforced.

Thirdly, there is need for Nigerian government to alleviate poverty in Nigeria. This will enable parents take proper care of their families and give them qualitative education instead of engaging them in child marriages. There is need to empower womenthrough access to credit facilities, education and gainful employment. It is obvious that if women should be allowed to join politics and to hold key elective positions in Nigeria such as President, Vice President, Senate President, Speakers, they will influence positive changes and sponsor bills geared towards the eradication of child/forced marriage.

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[311]R Onuoha, 'Discriminatory Property Inheritance under Customary Law in Nigeria: NGOs to Rescue', *The International Journal of Not-for-Profit Law, Volume 10, Issue 2, April, 2008,* available at http/www.icnl.org/KNOWLEDGE/ijnl/vo110iss2/art_4.htm last accessed on 24th October, 2021.

Fourthly, there is need to maintain good governance and institutionalize effective judicial system in Nigeria. This will make citizens believe in their leaders and obey the laws made by them. Good governance will further guarantee access to a corrupt free judiciary that discharges its duties without fear or favour.

DOCTRINE OF EXCLUSION AND LIMITATIONCLAUSES IN AN AGREEMENT: APPROACHFROM THE CONTRACT OF CARRIAGE BY AIR

Abstract

The cardinal principle of law of contract is that, right from the point of entering into an agreement, parties are and should be allowed to exercise their free will to bargain in any form of contract they wish to enter into. This is called doctrine of consensus ad idem. It is the consequence of this doctrine that gives life to the contractual elements thereby validates all the exclusionary and/or limiting clauses inserted in the agreement between the parties. Be that as it may, Air carrier and passenger(s) are allowed to insert any of the clauses provided they will act within the general principle of law of contract and the various international and domestic instruments guiding the contract of carriage by air. Adopting various interpretations of Montreal Convention 1999 by the Nigerian courts, the paper therefore explores how the doctrine of exclusion and limitation clauses are being applied to the contract of carriage by air and