

Child Marriage in Nigeria: The Enforceability of Age Limit

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**Being a LLM Thesis written in The Faculty of Law and Submitted to the Postgraduate
College, Lead City University, Ibadan, Oyo State, Nigeria**

**In Partial Fulfillment of the Requirements for the Award of Masters of Laws (LLM)
Degree**

2023

Declaration

I declare that the work in this Long Essay titled “Child Marriage in Nigeria: The Enforceability Of Age Limit” was prepared by me in the Faculty of Law, Lead City University, Ibadan, under the supervision of Dr. Oluyemisi Abimbola. The information derived from the literature has been fully acknowledged in the text and the list of references provided. No part of this work has been provided for another degree or diploma at any institution.

Approval Page

This research is entitled “Child Marriage In Nigeria: The Enforceability Of Age Limit” written by BENSON Obiageli Christiana has been read and approved as meeting the standards of the faculty of law in partial fulfilment of the requirement for the award of the Master of Laws (L.L.M) degree of Lead City University, Ibadan.

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Dedication

This research work is dedicated to the Almighty God for giving me the strength and the grace to be able to complete this work successfully.

Acknowledgment

Firstly, I want to thank the Almighty God for his grace and strength he has bestowed upon me to be able to finish this research, I bless his Holy Name.

In addition I want to appreciate Lead City University, Ibadan, Oyo State, Nigeria, for giving me the opportunity and accepting me into the post graduate program of the school.

I want to sincerely appreciate my supervisor, Dr. Oluyemisi Abimbola, for her enthusiasm, patience, insightful comments, helpful information, practical advice and unceasing ideas that have helped me tremendously at all times in the writing of this thesis. Her immense knowledge, profound experience and professional experience in Family Law which has enabled me to complete this research successfully.

I am very grateful to these University lecturers especially Dr. Simeon Ola Oni, Dr. Aderonke Adegbite, Dr Akabiro and Dr. Adenipekun for their consistent support and assistance

I also want to appreciate all my family and friends especially Pastor O. Dare, Mrs. R. A Lawal-Oyedeji and Miss Praise Ayanlowo for their love, patience, support and understanding throughout my journey as a post graduate student, may God Almighty honour you all too.

I want to appreciate my husband Mr. Chris Benson his support and words of encouragement, my beloved children Divine Benson, Chimamanda Benson and Kamsiyochukwu Benson for their patience and understanding. Thank you all for the love, moral, emotional, financial and spiritual support during the writing of this thesis.

THANK YOU ALL.

Abstract

Child marriage is a social ill that has been on the front burner of public discourse in Nigeria for some time. Child marriage may be defined as any formal marriage or informal union between a child under the age of eighteen (18) and an adult. Despite the fact that child marriage and betrothal are prohibited by National Legislation, the Childs' Right Act 2003, the socio-cultural practice and religious backing of the issue in some sections of Nigeria makes it a necessary evil which shamefully continues to stare us in the face. Early marriage of girls below the age of 18 is still widely practiced in Nigeria. Early marriage is a violation of human rights. The right to free and full consent to a marriage is recognized in the 1948 Universal Declaration of Human Rights and in other human rights instruments. Nigeria ranks 13th among the 20 countries with the highest rate of girl child marriages with approximately 3 million child marriages, 17% married before they turn 15 and 43% married before they reach the age of 18. When considered, these are seriously disturbing figures.

The Nigerian Legislature came up with the Child Rights Act of 2003 to define the rights of the child and to curtail the menace of child abuse, violence and marriage in Nigeria but 20 years on, the issue of child marriage is still embedded in the fabrics of the Nigerian moral system. This research will critically examine the psychological, financial, physical and moral impacts the practice of child marriage has on the victim and the family/society at large, in doing so, a library-based research methodology will be employed, whilst making use of primary and secondary sources, which will include: The CRA, Violence Against Persons Prohibition Act, (VAPP), 1999 CFRN amongst others.

Keywords: child marriage, violence against women, marriageable age

Word Count: 304

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Definitions of Acronyms

Abbreviation	Meaning
CRA	Child Right Act
VAPP	Violence Against Persons Prohibition Act
CFRN	Constitution of The Federal Republic Of Nigeria 1999
CRC	Convention of The Right Of Child
CYPA	The Children and Young Persons Act
UNICEF	United Nations Children Education Fund
CEDAW	Convention on The Elimination Of Discrimination Against Women

UDHR

Universal Declaration Of Human Rights

Chapter One

Introduction

1.1. Background to the study

Nigeria, a Nation with a population of over 200million citizens, rapidly developing economically, politically and infrastructural, is still plagued with a number of social problems, the bane being child marriage.

UNICEF defines child marriage as “a formal marriage or union before 18 years of age .” Section 29 (4) of the Constitution states that the age of maturity is 18 years and above, this is also affirmed by The Child’s Rights Act 2003, which means any person below the age of 18 years is deemed a child. The victims of child marriage in Nigeria and globally, are commonly the girl child, however boys are also preyed upon and are victims, though the ratio is disproportionate. According to statistical research carried out by *GirlsNotBrides*, in Nigeria, before the age of 18, 43% of girls are already brides and 16% before they turn 15, while 3% of boys are married before the age of 18¹. In the North where Child marriage is the most prevalent, 68% of women between the age demographics of 20-49 were married before their 18th birthday. Nigeria ranks 11th for the prevalence of child marriage in the world, and the third highest absolute number of women married or in a union before the age of 18 in the world, which is 3,742,000.² This is a figure that causes unease when carefully considered.

Historically, child marriage can be traced back several decades. The Child’s Rights Act of 2003 was birthed to define and protect the rights of the child, and to curtail the menace of child abuse, violence and marriage in Nigeria. Despite this impressive legislation, child marriage is still embedded in the fabrics of the Nigerian moral system. The Child’s Right Act, though created at the Federal level of legislation, is only operational if endorsed by the State government, and has now been ratified by 34 out of 36 states. Child marriage has proved to be a contentious issue within the Nigerian politics as political figures themselves have a habit of marrying teenagers. Senator Ahmed SaniYerima, representative for Zamfara West in the Nigerian Legislature made the front-page back in 2010 when he married a 13-year-old

¹GirlsNotBrides, ‘Atlas of the Prevalence of Child Marriage: Nigeria’, accessed 18th June, 2023 at <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/nigeria/>.

²Ibid

Egyptian girl³. In 2013, he also persuaded his fellow senators to defeat a motion that would have eliminated a constitutional loophole, which he claimed to be un-Islamic, in Section 29 (4) (b), which declared that a girl child under the age of 18 reaches maturity when they marry. Thus a “5 year” old girl is elevated to the status of maturity and womanhood through marriage. (That a full age means 18 years; a woman who is married is deemed to be of full age).

Early marriage is a form of violence and violations of children's rights. Child marriage in many countries in the world is defined as formal and informal marriage before the age of 18.⁴ However, there are many countries that still legalize and allow teenagers between the age of 16-18 to get married with parental consent, which raises questions about the concept of childhood and cross-cultural marriage. Child marriage practices infringe on the rights of the child, and are themselves a consequence of violations of the rights of the child. The causes of the phenomenon of child marriage are complex and interrelated. Social, cultural, religious, and economic factors influence norms, values, and behaviour on individual, community, and society levels. The social and cultural norms in the event of early marriage are often linked to a religious doctrine. Religion is often used as a justification for the occurrence of early marriage. Parents will be willing to marry their children before the age of 18 if there are good and appropriate intentions.⁵

The detrimental effects of child marriage are unremitting and it cannot be justified for any reason. This trend must be prohibited as it perpetuates an unending circle of poverty and illiteracy and has deleterious effects on the overall development of Nigeria. Ending child marriage will help break the intergenerational cycle of poverty by allowing girls and women to participate more fully in the society. Empowered and educated girls are better able to nourish and care for their children, leading to healthier, smaller families. When girls are allowed to be girls, everybody wins.

It is interesting to state that the Nigerian legal system is characterized by the application of both statutory and customary law, which makes it a legal pluralist system. Thus, under

³Ewelike C. ‘Child Marriage in Nigeria’ (2016).
<https://www.academia.edu/31011447/Child_Marriage_in_Nigeria_by_Chidinma_Kosa_Ewelike?email_work_card=view-paper>, accessed 16th June, 2023.

⁴Wodon Q., Tavares P., Fiala O., LeNestour A., and Wise L., “Ending Child Marriage: Legal Age for Marriage, Illegal Child Marriages, and the Need for Interventions. London and Washington,” DC, 2017.

⁵Yulyani L., Kurniatii H.F. , “The Effect of Social, Cultural And Religious Aspect On The Occurrence Of Early Marriage,” 1st International Respati Health Conference (IRHC) [July 2019], pg 3.

customary laws in Nigeria,⁶ the informal system of social control renders the determination of childhood by age almost ineffective; age is not generally, a symbol of capacity in the customary setting. Childhood under the different customary laws in Nigeria is determined by circumstance rather than age.⁷ This makes childhood under Nigerian customary laws at best, an amorphous concept. Different criteria are utilized to determine childhood under customary law. Mental capacity is one of such criterion, which relates to sanctions for customary crimes and civil wrongs. This is determined by the ability of the concerned person to confront and solve problems directly without the supervision of an adult.⁸ A person is presumed to have attained adulthood if he is mentally and socially able to solve problems pertaining to issues of life without supervision. Such a person can be held responsible for violation of customary norms or commission of crimes. Other criteria for adjudging a person a child under customary law relates specifically to issues of devolution of property and symbol of authority other than determination of wrongful conduct. Different criteria such as financial independence, marriage, and initiation into age grade⁹ may determine childhood in majority of these circumstances under customary law in Nigeria. In most parts of the South Eastern Nigeria for instance, the first male child of the family is deemed to remain in childhood under customary law notwithstanding his age until the death of his father. Such persons are treated as children as long as their fathers are alive.¹⁰

It is upon this background that this study will examine the concept of child marriage in Nigeria; enforceability of age limit in Nigeria.

⁶ Customary Law embodies customs as practiced by the people which they regard as binding on them, see R. Kerridge, Parry & Kerry, *The Law of Succession*, (12th Ed. London: Sweet & Maxwell, 2009) 1. It is any system of law different from Common Law and a Law enacted by legislation, but which is enforceable and binding within Nigeria as between the parties subject to its sway, see *Kharie Zaiden v. Fatima Mohassen* UILR 1974,283 at 284; Section 258 of the Evidence Act, 2011 did not define the term customary law but it defines the word, custom as a rule which, in a particular district, has from long usage, obtained the force of law, Section 16 (1) therefore, provides that “a custom may be adopted as part of the law governing a particular set of circumstances if it can be judicially noticed or can be proved to exist by evidence”. In the same vein, Customary Court Law Cap 49, Revised Laws of Anambra state of Nigeria, 1979 defined customary law as: “A rule or body of rules regulating rights and imposing correlative duties, being a rule or body of rules which obtains and is fortified by established usage which is appropriate and applicable to any particular cause, matter, dispute, issue or question”; see also *Oyewumi Agunbiade III v Ogunesan* (1990) 3 NWLR 182 at 207.

⁷ A. O. Obilade, *The Nigerian Legal System* (London: Sweet & Maxwell, 1979) 69-81.

⁸ M. A Nwachuku, “*A Legal Analysis of the Nebulous Concept of Childhood in Nigeria*” (2016) 7 Beijing Law Review 123.

⁹ Ibid.

¹⁰ Ibid.

1.2 Statement of the Problem

Child Marriage has been identified as a menace to not only the Nigerian society, but the world at large. There have been attempts to combat this menace, especially in the northern part of Nigeria, however this has achieved next to nothing. There has been ratification of international laws and codes relating to child marriage, and Nigeria has also taken a huge leap by passing the Childs Right Act in 2003. The Child Rights Act is the most explicit legislation on the prevention of child marriage in Nigeria but it is a Federal law, which only becomes applicable and effective when it is adopted and enacted into laws on the state levels.

However, the adoption and application of this law has faced huge challenges, as most northern states are yet to enact it into law, unlike their southern counterparts. The major issue can be linked to the diverse ethnic groups and customs practiced in the north, with particular reference to the sharia'ah.¹¹ This is because the provisions of the sharia'ah with regards to marriageable age differs from what is prescribed in both the CRA and the Constitution. This particularly makes enforceability of the CRA a herculean task and makes it necessary to address these grass root issues, so that the application of the Act becomes encompassing.¹² Many child marriages are caused by poverty, due to parents trying to meet their financial needs through the bride price paid by the groom. This assists in the feeding, clothing and education of the rest of the family. This is the reason why, despite child rights laws enacted to limit the age at marriage in many countries particularly in the middle East and Africa to 18 years, "traditional marriages of girls of younger ages are still widespread."¹³ Other causes of child marriage according to a research carried out by Human Rights Watch, revealed that conflict and insecurity, as well as other crises such as natural disasters, can heighten the risk of child marriage. "In a crisis, parents may be struggling to feed and protect their children. They may see marrying a daughter off—earlier than they would have in

¹¹Human Rights Watch, 'Nigeria: Child Marriage Violates Girls' Rights' (2017) <https://www.hrw.org/news/2022/01/17/nigeria-child-marriage-violates-girls-rights>>, accessed 16th June, 2023.

¹²Braimah T., 'Child marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the protection of children against child marriage' (2014) 2 (8) *African Human Rights Law Journal* 24.

¹³Tayo-Olajubutu, O. "Effects of Cognitive Restructuring and Self-Management Strategies on Discriminatory Behaviour Against The Girl-Child Among Families in Ondo State, Nigeria". A Ph.D. dissertation Adekunle Ajasin University, Akungba-Akoko Nigeria, 2014.

peacetime—as a way to reduce their burden and make it more feasible to care for their remaining children.”¹⁴

These issues are similar to the Nigerian environment particularly the invasion of the Boko Haram terrorist group on communities in the Northern part of Nigeria.¹⁵ These and many more render the provisions of the CRA inapplicable and enforceable, and makes a mockery of the efforts being made to curb the prevalence of child marriage in Nigeria. This research will examine these issues at length, while analyzing the laws itself, in a bid to proffer novel recommendations that will aid in the enforceability of the laws.

1.3 Aim and Objectives of the Study

This paper seeks to analyze the prevalence and status of child marriage in Nigeria, review the prescribed age limit for marriage by various laws in Nigeria, and assess the enforceability of such age limit by examining the customs in different parts of the Country. It also seeks to give insights and recommendations on the enforceability of the age limit. It will also assess the flaws in the application of legislation relating to child marriage in the Northern part of Nigeria. Are there possible solutions to eradicate the practice of child marriage in this region?

The objectives of this research work are to:

- i. analyse the legal and statutory framework for child marriage in Nigeria and the enforceability of same, which includes the CFRN, VAPP, CRA, CEDAW etc.
- ii. discover lacunas in these laws and statutes and proffer working and lasting solutions
- iii. examine the effects of socio-cultural beliefs, economic factors and religious beliefs on early marriage for girls in Nigeria.
- iv. To determine the influence of external players, such as religious leaders, who are instrumental in eradicating or drastically/significantly reducing the menace of child marriage

¹⁴Fanack, “Underage Marriage in the Middle East and North Africa.” Published on September 24, 2021 <https://fanack.com/human-rights-in-the-middle-east-and-north-africa/child-rights-in-the-middle-east-and-north-africa/underage-marriage-in-the-middle-east-and-north-africa/> accessed 2nd November 2023.

¹⁵DiGiuseppe, M., &Haer, R. “The wedding bells of war: The influence of armed conflict on child marriages in West Africa.” (2023) 60(3), *Journal of Peace Research* 474-488. Available at <https://doi.org/10.1177/00223433221080056>, accessed 2nd November, 2023.

- v. Evaluating the dangers of child marriage and the benefits of eradicating same

1.4 Research Questions

The following research questions will be posed and succinctly answered at the conclusion of this research:

1. Does the Nigerian Constitution conspire with Islamic law to permit child marriage in Nigeria?
2. Is there a need for the synchronisation of the provisions of the CFRN and the CRA? Should there be an overhaul or amendment of any of the laws?
3. What approaches can be employed to ensure the enforceability of the existing legislation with regards to child marriage?
4. What has been the impact of patriarchy on the prevalence of child marriage in Nigeria, especially in the north?

1.5 Methodology

The research methodology adopted for this research work is the doctrinal approach, also known as the library-based research. This research work will also consider the non-doctrinal in certain aspects. This research intends to source materials from two major sources, that is, primary and secondary sources. The primary sources will include relevant books, statutes, and case laws. The secondary sources will include journals and articles by prominent scholars, textbook writers, internet sources, and other relevant materials required to facilitate the purpose of this project.

1.6 Significance of the Study

One of the social menace that exist in Nigeria as a country is that of child marriage. There have been heated debates on the prescribed age for marriage in Nigeria. A school of thought contests that the institution of marriage should be located within the customary context. The implication of this assertion is that marriage should be regulated by the culture and norms

operating in the locality of the parties involved. On the other hand, the other school of thought contests that marriage should be regulated by a Federal law under which respective customs and culture must operate. This discourse engages with this debate and further interrogates the concept of child marriage and its diverse and multi-dimensional context in a multi-cultural society like Nigeria. It examines in general the existing legislative framework on marriage and in particular the laws regulating child marriage, with a view to assessing its adequacy in relation to prevention of child marriage. The provisions of the Marriage Act, the Child Rights Act, the Constitution of the Federal Republic of Nigeria, Regional and International Human Rights Instruments and relevant customary law and Islamic jurisprudence will be examined. The factors contributing to child marriage and its socio-legal effect on the society will also be discussed.

1.7 Scope of the Study

This research will focus on the prevalence of child marriage in Nigeria, despite the enactment and implementation of various legislations to combat this menace. It will dive deep into the practice of this culture and examine its lasting negative effects on the girl child. Socio-cultural and religious factors that aid this practice will also be examined. As the practice is more common in the north, focus of the study will tilt towards that region.

1.8 Chapter Outline

Chapter 1 is the general introduction to the research, which includes the statement of problem, aims and objectives of the research.

Chapter 2 is the literature review and conceptual framework in the course of the research

Chapter 3 will analyse the legal and statutory frameworks that regulate marriages in Nigeria, particularly those relating to the prevention and abolition of child marriages. It will review laws like the 1999 CFRN, the CRA, The VAPP, CEDAW amongst others. It will also critically analyse the major factors that contribute to the child marriage menace, the human rights violations and implications and the effects/consequences on the girl-child.

Chapter 4 will focus on the customary, religious and cultural roles in the prevalence of child marriage in Nigeria. The socio-cultural factors are the most enabling factors and need to be critically analysed in a bid to proffer reasonable and logical conclusions that will help curb

the menace. The economic factor is also pertinent to be reviewed, as poverty is a leading cause of child marriage, especially in the Northern part of Nigeria. The roles of religious leaders in the support of the movement against child marriages also needs to be examined, and it will be discussed in this chapter.

Chapter 5 will analyse the enforceability of the laws and statutes prohibiting this, specifically the CRA and VAPP, their aims and objectives, restrictions in its enforceability proffer solutions through which the lacuna will be bridged.

Chapter 6 will be the recommendations and conclusions.

Chapter Two

Literature Review and Conceptual Framework

In the course of this research, the focus on the substantial part will be a review of existing laws and regulations with regards to the subject matter. The laws to be reviewed include - Constitution Of The Federal Republic Of Nigeria, (1999), Child's Right Act (2003), Violence Against Persons Prohibition Act, (2015), African Charter On The Rights And Welfare Of The Child (African Children's Charter), (2001), Convention On The Elimination of all forms Discrimination Against Women (CEDAW), Universal Declaration of Human Rights amongst others. These laws in their individual capacity are robust in their provisions, while some have been found with lacunas, which have either been exploited or out-rightly contravened.

To further support the provisions of these laws, and to further develop this research, scholarly works on the subject matter will be reviewed. There will also be reference to case laws where and when necessary.

This chapter will also give a foundational hindsight into the subject matter. It will attempt to break down the nitty gritty of terms and concepts as it relates to the subject matter..

2.1 Overview of Child Marriage

The Oxford Dictionary of English defines a child as 'a young human being below the age of puberty or below the legal age of majority.'¹⁶ Article 1 of the Convention of the Right of Child (CRC) defines a child as 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.' The Children and Young Persons Act (CYPA) 1958 differentiates between a child and young person. Section 2 of the Act defines a child as a person under fourteen years and defines a young person as a person who has attained fourteen years but is below seventeen years. Under the Labour Act, a child

¹⁶Oxford Dictionary of English (Oxford University Press) 2015.

is a young person under the age of 12, while under the Penal Code it is 14 years; Immigration Act is below 16 years and the Matrimonial Causes Act sets maturity at 21 years of age. Under Islamic law and practices, a child is defined based on his level of physical maturity.¹⁷

McIntyre¹⁸ defines child marriage as the marriage or union between two people in which one or both parties are younger than 18 years old. The term early marriage or child marriage refers to any marriage of a child younger than 18 years old in accordance to Article on the Convention on the Rights of the child. UNICEF¹⁹ describes it as both formal marriage and informal unions in which a girl lives with a partner as if married before the age of 18. It can also be defined as any marriage carried out below the age of 18 years before the girl is physically, physiologically and psychologically ready to shoulder the responsibilities of marriage and child bearing.

Child marriage is viewed as a violation of human rights and is prohibited by a number of international conventions and other instruments, namely: Universal Declaration of Human Rights 1948; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964; African Charter on the Rights and Welfare of the Child, 1990; and the Convention on the Rights of the Child, 1989 amongst others.

Aduradola identifies the causes of marriage as Cultural and Social pressure; persecution, forced migration and slavery; financial challenges; politics and financial relationship; religion and child marriage amongst others.²⁰ Adebambo on the other hand states the causes as poverty and economic transactions; Notions of morality and honour.²¹ Underlying causes of early marriage are many and they include poverty, parental desire to prevent sexual relations outside marriage, male-child preference and the fear of rape, a lack of educational or

¹⁷Alemika E. I. and KigbuS K, 'Translating the Legal Framework of the Rights of the Child (The Child Rights Act 2003) Into Effective Practice Through Human Rights Education in Nigeria' <www.ihrec2015.org/sites/default/files/Panel%2010.%20Alemika%20-%20paper.pdf> accessed 18th October, 2023.

¹⁸ McIntyre, P. Married Adolescents: No Place of Safety Geneva: WHO (2006). <https://www.who.int/publications/i/item/9241593776> Accessed 8th August, 2023.

¹⁹ UNICEF Early Marriage: A Harmful Traditional Practice (2005). <https://data.unicef.org/resources/early-marriage-a-traditional-harmful-practice-a-statistical-exploration/> Accessed on 8 August, 2023.. Please include the website where you got this reference from and the date you accessed it.

²⁰Aduradola, A. M. "Child Marriage: Issues, Problems and Challenges. A Paper presented at a One Day Seminar organised by National Open University of Nigeria, Lagos on the 4th September 2013.

²¹Adebambo, A.V. "Cultural Influence on Child Marriage Focus on Northern Nigerians" (2010).

employment opportunities for girls, and traditional notions of the primary role of women and girls as wives and mothers.²²

In the Northern part of Nigeria, where there is a prevalence of child marriages, Erulkar and Bello discovered that the basis for acceptance of early marriages is to preserve the value of virginity, fears about premarital sexual activity, to reduce promiscuity of the girl-child, and other socio-cultural and religious norms.²³

Child marriages have lasting consequences, which includes the denial of childhood and adolescence, the curtailment of personal freedom and the lack of opportunity to develop a full sense of selfhood as well as the denial of psychosocial and emotional well-being, reproductive health and educational opportunity. Early marriage also has implications for the well-being of families, and for society as a whole. Where girls are uneducated and ill-prepared for their roles as mothers and contributors to society, there are costs to be borne at every level, from the individual household to the nation as a whole.²⁴

It is important to state that the ability of a woman to control her fertility and sexuality is fundamental to the full enjoyment of a range of human rights as seen in Section 21 and 22 of CRA which totally prohibits child marriage and betrothal. The implication of this section of the law is that whoever is accused of the offences will be prosecuted. Under Section 21 of CRA, the law expressly prohibits child marriage. In other words, any marriage with any person under the age of 18 years is null and void and of no effect whatsoever.²⁵

Section 23 prescribes the punishment for child marriage and betrothal as follows:

A Person:

- (a) Who marries a child; or
- (b) To whom a child is betrothed; or
- (c) Who promotes the marriage of a child; or
- (d) Who betroths a child,

²² United Nations Children's Fund (UNICEF) . Child Marriage and the Law, Legislative Reform Initiative Paper Series, Global Policy Section. New York (2008).

²³Erulkar, A and Bello, M. 'The Experience of Married Adolescent Girls in Northern Nigeria'. (2007).The Population Council, Inc.

²⁴Erulkar, A and Bello, M. 'The Experience of Married Adolescent Girls in Northern Nigeria'. (2007) The Population Council, Inc.

²⁵Omolade O. O, 'Family Law and Succession in Nigeria' (2021) (Princeton & Associates)

Commits an offence and is liable on conviction to a fine of N500,000 (Five Hundred Thousand Naira); or imprisonment for a term of five years or to both such fine and imprisonment with the Provision of this law, it is unimaginable that the practice of child marriage still continues unabated in some parts of country. The arguments in support of the practice are that CRA is only applicable in the states where it has re-enacted). It should be noted that child marriage is permitted in some religions.

2.2 Conceptual Clarification

Over the years, it has been observed that the people who usually engage in street begging are children, women, disabled and old men. It is important to examine the concept of child labour and street begging separately including the legal incidence of a child. Thus, the imminent task is to consider the following:

- i. The legal concept and incidence of childhood
- ii. The legal concept of Child Labour²⁶
- iii. The legal concept of Nigeria
- iv. The concept of Human Rights.
- v. The legal concept of Marriage

Upon the examination of the above concepts, the legal conception of street begging and its legality or otherwise in Nigeria will be considered.

2.2.1 The Legal Concept and Incidence of Childhood

The word “child” is a descriptive terminology for a natural person who is an offspring of another (either by birth or adoption) and may only represent any human being from the moment of birth (in a life state) until the attainment of the age of majority.²⁷ It is characterized principally by the “undeveloped” state of mind of a person, which accounts for the readiness of the society to accept and tolerate the excesses, failures and inadequacies of

²⁶ This attempt is aimed at providing a framework for the exercise in this chapter

²⁷ F.O. Aguda-Taiwo, Guardianship and Custody of Children; Customary Perspective Unpublished Paper Delivered at the Refresher Course for Judges and Kadis on 11th March, 2019 at the National Judicial Institute, Ondo State. P. 4

the person.²⁸ However, the legal concept of childhood is not defined by the psychological development of the person as much as his physical development.²⁹ Thus, in the early case of *Labinjoh v Abake*³⁰ a person ceases to be a child on the attainment of puberty under Nigerian customary law. Statutory law is also largely abstruse on the question of childhood in Nigeria.

Nwachuku³¹ explains that Nigeria already has several enactments on the rights of children (including, Infants Relief Act,³² Children and Young Persons Ordinance,³³ Children and Young Persons Laws,³⁴ Compulsory, Free Universal Basic Education Act, Matrimonial Causes Act, Trafficking in Persons (Prohibition) Law Enforcement and Administration Act,³⁵ the Criminal Code Act, the Penal Code Law, Labour Act Under statutory law, childhood is variously constituted depending on the focus of the particular law and the circumstances of each case. Under the Criminal Code Act³⁶ for instance, childhood is delimited for the purpose of conviction for unlawful carnal knowledge to the age of 12 years.³⁷ Any male person below that age, in the eyes of the law is incapable of having carnal knowledge, more so unlawfully. Section 30 of the same Act adopted the “capacity criteria” of determining childhood in respect of the commission of any crime other than “unlawful carnal knowledge” by a person under the age of 12 years. It provides that where the circumstance is the commission of any other offence, a male person under the age of 12 years cannot be convicted of the offence if it has not been proved that at the time of committing the offence, “he had the capacity to know that he ought not to commit it”. The word “capacity” is neither explained in the provision nor is it interpreted in the Act. It may, however, be interpreted to mean that a person of twelve years or below had the mental ability to know that he ought not to do the act because it is an offence, or that he had the mental ability to know that the act was wrong, improper and condemnable to do.

The Penal Code on the other hand, delimits childhood by age other than circumstances. The Code provides, for the purpose of conviction for an offence that childhood ceases at the age of 7 years. Thus, a person who commits an offence and is shown to be above 7 years is

²⁸ M.A. Nwachuku, A Legal Analysis of the Nebulous Concept of Childhood in Nigeria, (2016), (1)7, .Beijing Law Review, 128.

²⁹ Ibid.

³⁰ (1924) 5 NLR p.33

³¹ M.A. Nwachuku, The Nigerian Child and the Right to Participation: A Peep through the Window of “The Best Interest” Clause of the Child’s Rights Act, (2017), 8(2), *Beijing Law Review*, 162.

³² CAP 19, Laws of Eastern Nigeria, 1963

³³ CAP C52, LFN 2004

³⁴ CAP M7, LFN, 2004

³⁵ CAP T23, LFN, 2004

³⁶ CAP C38, Laws of the Federation of Nigeria (LFN), 2004

³⁷ Ibid. section 30

criminally liable to trial and conviction under the Code applicable in the northern part of Nigeria. Outside of the two Codes, other statutes in civil matters also provide for determination of childhood by age rather than circumstances. For instance, section 59(2) of the Nigerian Labour Act³⁸ provides for the purpose of employed in Nigeria that a person under the age of 14 years cannot be employed or allowed to work in any industrial undertaking. Even though, a proviso in the section allows such a person to work in the prohibited sector of industrial undertaking or technical schools under supervision by the Ministry of Education or corresponding Department of Government of a State, this does not introduce a new criterion of determination by circumstance. Supervision of a person in the circumstances mentioned in the Act confirms the presumption of the mental capacity of the person as a child by the law. In another sense, a child is a class of homo sapiens seen to be subject to guidance and care or custody of another person who is an adult (guardian or parent), in corollary of this, a child cannot make a decision of where he stays and whom he stays with or who has his custody, a person will cease to become a child when he is capable of deciding where he chooses to live and whom he chooses to leave with. Thus, in matrimonial cases, the court has the jurisdiction of deciding the custody of a child. However, in the case of *Febisola Okwueze V Paul Okwueze*,³⁹ Uwais JSC reviewed all the relevant provisions of the law in the definition of the word child and came to a conclusion that custody order will not be made in respect of child who has reached the age of 16. The corollary to this rule is that custody order made in respect of a child under the age of 16 will lapse or cease to be operative when that child attains the age of 16. The care, custody and welfare of children (under the age of 18) in Nigeria are strict functions of an intricate regulatory framework comprising institutions and laws; beginning naturally with the Constitution of Nigeria.⁴⁰ Section 17(3) (f) of the 1999 Nigeria Constitution imposes a non-actionable obligation on the Nigeria Government to ensure that children are adequately protected from exploitation, moral and material neglect. Under the Nigerian Child's Rights Act, 2010, a person ceases to be a child on attaining the age of 18 years⁴¹ which connotes a period of physical maturity. It appears that this Act has finally settled the statutory differences on the issue of childhood in Nigeria when it provided that the definition of the child under section 277 of the Act supersede all enactments relating to children, adoption, fostering, guardianship, approved institutions, remand centers, foster

³⁸ CAP L1, Laws of the Federation of Nigeria (LFN), 2004

³⁹ (1989) 3 NWLR Part 109 page 3

⁴⁰ Aguda-Taiwo, Worst Forms of Child Labour in Nigeria: An Appraisal of International and Local Legal Regimes, 2016, 3.

⁴¹ See Section 277, Child Rights Act, 2003.

institutions, and any other matter pertaining to children already provided for in other enactments.⁴² This is so for several reasons. First, the Act is a federal legislation, which directly borders on the rights of the child in Nigeria. Therefore, the legislature must have taken into consideration the provisions on the limits of childhood in the different legal instruments before enacting the Act to protect the child from abuse. Secondly, as a federal legislation enacted within the concurrent legislative powers of the National Assembly, the Act takes precedence over states legislations on the same legislative matter; this is the doctrine of covering the field.⁴³ Any state legislation on the definition of a child for the purpose of application of principles of law that is inconsistent with the Child's Right Act may be void and inapplicable. Thirdly, many state legislative houses in Nigeria have adopted the Child's Right Act into state law, thereby bringing the application of the Act into force in such states.

The Nigerian legal system is characterized by the application of both statutory and customary law, which makes it a legal pluralist system. Thus, under customary laws in Nigeria,⁴⁴ the informal system of social control renders the determination of childhood by age almost ineffective; age is not generally, a symbol of capacity in the customary setting. Childhood under the different customary laws in Nigeria is determined by circumstance rather than age.⁴⁵ This makes childhood under Nigerian customary laws at best, an amorphous concept. Different criteria are utilized to determine childhood under customary law. Mental capacity is one of such criterion, which relates to sanctions for customary crimes and civil wrongs. This is determined by the ability of the concerned person to confront and solve problems directly without the supervision of an adult.⁴⁶ A person is presumed to have attained adulthood if he is mentally and socially able to solve problem pertaining to issues of life without supervision.

⁴² Ibid. section 274 (1) (a), Child Rights Act, 2003.

⁴³ See section 4 (5), Constitution of the Federal Republic of Nigeria, (CFRN), 1999.

⁴⁴ Customary Law embodies customs as practiced by the people which they regard as binding on them, see R. Kerridge, Parry & Kerry, *The Law of Succession*, 12th Ed. London: Sweet & Maxwell, (2009) Pg.1. It is any system of law different from Common Law and a Law enacted by legislation, but which is enforceable and binding within Nigeria as between the parties subject to its sway, see *Kharie Zaiden v. Fatima Mohassen* UILR 1974,283 at 284; Section 258 of the Evidence Act, 2011 did not define the term customary law but it defines the word, custom as a rule which, in a particular district, has from long usage, obtained the force of law, Section 16 (1) therefore, provides that "a custom may be adopted as part of the law governing a particular set of circumstances if it can be judicially noticed or can be proved to exist by evidence". In the same vein, Customary Court Law Cap 49, Revised Laws of Anambra State of Nigeria, 1979 defined customary law as: "A rule or body of rules regulating rights and imposing correlative duties, being a rule or body of rules which obtains and is fortified by established usage which is appropriate and applicable to any particular cause, matter, dispute, issue or question"; see also *Oyewumi Agunbiade III v Ogunsean* (1990) 3 NWLR 182 at 207.

⁴⁵ A. O. Obilade, *The Nigerian Legal System* (London: Sweet & Maxwell, 1979), 69-81.

⁴⁶ Nwachuku Op. cit, p. 124.

Such a person can be held responsible for violation of customary norms or commission of crimes. Other criteria for adjudging a person a child under customary law relates specifically to issues of devolution of property and symbol of authority other than determination of wrongful conduct. Different criteria such as financial independence, marriage, and initiation into age grade⁴⁷ may determine childhood in majority of these circumstances under customary law in Nigeria. In most parts of the South Eastern Nigeria for instance, the first male child of the family is deemed to remain in childhood under customary law notwithstanding his age until the death of his father. Such persons are treated as children as long as their fathers are alive.⁴⁸

Thus, for instance, the court in the case of *Labinjoh v. Abake*⁴⁹ has held that childhood ceases at the attainment of puberty in the Yoruba native law and custom. In that case, the defendant (a girl aged about 18 years and still living with her parent) bought some goods for trading purposes from the plaintiff. The plaintiff sued for the sum of £48: 18s: 8d being the value of the goods sold and supplied to the defendant. The defendant resisted the suit arguing that she was an infant and by virtue of the provisions of the Infants Relief Act, 1874 (a statute of general application), she was not bound to pay since the contract was for trading purposes and not for necessaries. The Police Magistrate Court sitting at Lagos agreed with the defendant and dismissed the plaintiff's claim, reasoning that since the Act applied and did not define an infant, an infant for the purpose of contract should be ascribed the meaning of a person below 21 years as under the common law. The plaintiff appealed to the Divisional Court (an equivalent of High Court), that the transaction was not governed by the Act but by customary law (since both parties were natives) and that the defendant was liable to pay, being an adult for reason of having attained puberty. The court held that the Act was applicable but that since the Act did not state who an infant is, the test to determine the issue should be under customary law i.e., a person who has not attained puberty. The court entered judgment for the plaintiff because the defendant had attained puberty. The defendant appealed to the Full Court (equivalent of Supreme Court) that gave a unanimous judgment remitting the case to the trial court to find out whether there was any native law and custom applicable to the subject matter of litigation and if so, what the customary law was. The point of emphasis in this Full Court did not overrule the decision of the Divisional Court that infancy or childhood ceases on attainment of puberty under customary law in Nigeria.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ *supra*

Although, this decision has gone a long way to clarify the notion of childhood under Nigerian customary law, it did not solve the problem of lack of common definition of the concept under all native laws and customs in Nigeria. This is in addition to the fact that the criterion of “puberty” as a yardstick for determining adulthood is variable, depending on individual development and sex of the person.

It will also be important to state that a child is a person who cannot be recognized in law as having a legal personality, he cannot be heard bringing or defending an action before a court. As a general rule, only natural persons, that is to say human beings and juristic or artificial persons such as bodies corporate are competent to sue and be sued before any law court. In other words no action can be brought by or against any party other than a natural person or persons unless such a party has been given by the statute expressly or impliedly or by common law either a legal personality under the name by which it is sued or it sued or a right to sue by that name.⁵⁰ This is the law because the suit is in essence, the determination of legal rights and obligations in any given situation. Therefore, only such natural / juristic persons in whom the rights and obligations can be vested are capable of being proper parties to law suits before courts of law. Following this general rule, where either of the parties is not a legal person capable of exercising legal and obligations under the law, the other party may raise this fact as a preliminary objection which if upheld, normally leads in the action being struck out.⁵¹ In the same vein, a person who is a child can only sue or be sued through his guardian.⁵² Also, a child does not enjoy the freedom of contract under the Nigerian law owing to the fact that he is one of such persons who is vulnerable to some forms of unconscionable bargain.⁵³ Contracts however, entered into by an infant is either out rightly void or voidable depending on the circumstances of each case⁵⁴ except for contract for necessities which may include contract for things necessary for the development of the child.⁵⁵

2.2.2 The Legal Concept of Child Labour

⁵⁰ See *Fawehinmi V Nigeria Bar Association* (NO.2) (1989) 2 NWLR (PT. 105) 558 AT 595.

⁵¹ See *Shittu V Ligali* (1941) 16NLR 21; *Olu Of Warri V Esi And Anor* (1958) 3 FSC 94; *Agbonmagbe Bank V General Manager G. B Olivant Ltd And Anor* (1961) ALL NLR 116; (1961)2 SCNLR 317.

⁵² See Order 11, Rule 9, High Court Civil Procedure Rules of Lagos State, 2019.

⁵³ See I.E Sagay, *Nigerian Law of Contract*, (Ibadan: Spectrum Publishers, second edition 2012), 20.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

Labour means work of any type, or work of wages as opposed to profits⁵⁶. It also connotes to work especially with great exertion.

Child labour contemplates that a child should be involved in some manner of work⁵⁷. It could be domestic, income generating there is dignity in labour. A child has to be employed in labour, and the Child Rights Act that only prohibits ‘forced or exploitative labour’, and by implication never prohibits child labour in its entirety.

A child is a person below 18years of age from the provision of section 277 of Nigeria’s Child’s Rights Act and other International instruments have also recognized a child as a person below 18years of age⁵⁸. Also, the world has condemned forced or exploitative labour of a child, for the obvious reason of the adverse physical, psychological, mental and emotional effect of it on children. What is condemned is not child labour per se, but child forced or exploitative labour.

Child labour prohibits any work that is forced or exploitative labour. Child labour is not synonymous with “forced or exploitative labour. The law only prohibits child labour that is “forced or exploitative”. This type of child labour is sometimes referred to as “bad” child labour, in contract distinction from the one that is not “bad” and therefore allowed. This study emphasizes that in Nigeria, what the law prohibits is child forced or exploitative labour, sometimes known as bad labour, not any labour not falling within forced or exploitative or bad. This emphasis is important because beyond, people talk of prohibition of child labour when they mean, prohibition of bad child labour. In the words of Christiaan Grootaert and Ravi Kanbur:⁵⁹

" when most people talk of child labour, they mean “bad” child labor such as prostitution, or scavenging or backbreaking work on construction site, or long hours in a carpet factory, etc.

⁵⁶ B. A. Garner, *Black’s Law Dictionary*, (9th Ed. United States: Thomson Reuters Publishing Company 2009), 952.

⁵⁷ M. A. Anjanwachukwu, A Critical Review of Child Labour in Nigeria and The Case for Child Entrepreneurship; https://www.researchgate.net/publication/313867930_A_Critical_Review_of_Child_Labour_in_Nigeria_and_The_Case_for_Child_Entrepreneurship 28 Accessed 6th December, 2024.

⁵⁸ Article II, African Charter on the Rights and Welfare of the Child, 1989 and Article I, United Nations Convention on the Rights of the Child, 1990.

⁵⁹ Christiaan Grootaert and Ravi Kanbur, “Child Labor: A Review”, The World Bank, (1994), 12.

Such “bad” child labor can be part child can both engage in schooling and in “bad” child labour”

Furthermore, child labour means any work that deprives a child of its childhood and right to education or is detrimental to the physical, mental, moral and social well-being of the child.⁶⁰

Accordingly, a work amounts to child labour if it is inimical to the health and progress of the child; it is exploitative and/or injurious to any aspect of the developing personality of the child. In order to determine when a child is involved in child labour, the United Nations Children Emergency Fund (UNICEF) provided a list of indices to be considered to wit⁶¹:

- 1) Starting full-time work at too early an age;
- 2) Too many hours spent on work within or outside the family leading to excessive fatigue;
- 3) Depriving children of their rights to education where schools are available or interfering with their education;
- 4) Participating in work that results in excessive physical, social and psychological strains on the child;
- 5) Too much responsibility for a child;
- 6) Low wage; and
- 7) Work that does not facilitate the psychological development of the child for example, dull repetitive tasks which do not stimulate a child’s creative abilities etc.

However, child labour is not the same thing as “light work” done by children. Light work means any work that does not interfere with the child’s health and development and its regular school attendance. Light work includes domestic chores such as washing of utensils, cloths, supervised training and artistic undertakings. In all these, the age of the child should be the paramount consideration.

2.2.3 The concept of “Nigeria”

The prevailing schism in the country began with the creation and administration of the country as two distinct colonies – Northern Nigeria and Southern Nigeria. The preference for the North by the British colonial administrators favoured the territorial and political interests of the North at the expense of the South. In spite of the amalgamation of 1914, the North

⁶⁰ N. Anthony N. Nwazuoke, and Chinedu A. Igwe; Worst Forms of Child Labour in Nigeria: An Appraisal of International and Local Legal Regimes, (2016), 3 available at https://www.researchgate.net/publication/299413161_Worst_Forms_of_Child_Labour_in_Nigeria_An_Appraisal_of_International_and_Local_Legal_Regimes Accessed 6th December, 2024.

⁶¹ Ibid.

South polarity continued with the attendant disparity in social and economic development resulting to mutual distrust and suspicions.⁶²

It is quite disconcerting to note that after over a century of amalgamation, the 1914 ‘matrimony’ is still faulted and cited as an alibi for national discord and conflicts. Sa’ad Abubakar aptly captured this view thus:

With regard to the 1914 amalgamation various groups both in the north and south, perceived it from different angles based on essentially on the premise of a purportedly fundamental dichotomy between the two merged entities each of which was inhabited by distinct ‘supposedly monolithic’ ethnic groups that had been in existence for several Millenia. The amalgam of the two, it was said, portended serious conflicts and competition, because of hypothetical antipathy between the North and South and between Muslims and Christians.⁶³

Although Abubakar agreed that the amalgamation was “a unilateral act by a colonial power to serve its interest, no more, no less”, he held the view that the amalgamation was not a ‘mistake’ as declared by Ahmadu Bello. He further expressed that the problem is that Nigerians have not been able to exploit the opportunities presented by the amalgamation.

Abubakar expressed this thus:

...while for the British the amalgamation was certainly not a mistake, for

Nigerians perhaps the mistake is to the extent that the opportunities amalgamation provided for us to build a strong virile and united black nation had never been seized upon to make it a reality, nearly a century later.⁶⁴

Even after over five decades of independence, it is worrisome that Nigeria is still grappling with the problems of nation-building. The people of Nigeria see themselves more as Igbo,

⁶² G.A. Akinola, *Monograph Series No. 1: Leadership and the Postcolonial Nigerian Predicament*. (Ibadan: University of Ibadan Press Ltd., 2009) 4.

⁶³ Sa’ad Abubakar, “The Challenges of Nation-Building: Nigeria, Which Way Forward?” in Yakubu A. Ochefu, Okpe O. Okpe and Wilfred T. Uji (eds) *Historical Consciousness, Social Engineering and Nation-Building in Nigeria* (Makurdi: Aboki Publishers) 23.

⁶⁴ *Ibid*, 24-25.

Yoruba, Hausa, Ibibio, Efik, Nupe and so on than citizens of Nigeria. In other words, ethnic and regional identity comes first before national identity in Nigeria.

Perhaps, the regionalism introduced by the 1951 constitution, and the ensuing regional party politics that characterized pre- and post-independence Nigeria were cataclysmic to nation-building. The constitution created three regions: North, East and West. These regions were dominated by Hausa, Igbo and Yoruba respectively. The struggle for political control in the regions and the centre conceivably sowed the seeds of discord that has grown wild among Nigerians today.⁶⁵

The Yoruba people (IRAN YORUBA) also known as “Awon Omo kaaro Ojire” (children of Yoruba) is one of the main ethnic groups of Nigeria, located in South West, North-Central as well as Southern and Central Benin, making up 21% of the country’s population.⁶⁶ The Yoruba homeland is roughly the size of England and comprises a number of sub-ethno cultural groups which include; Ife, Igbomina, Egba, Ondo, Ilaje, Abeokuta, Ikale, Idare, Ekiti, Ibadan, Owo Oyo, Ijebu, Ijesha, Egbado, Ifonyin, etc. The Yoruba are usually thought to be unique in number and size of their towns because of their tendency to form into a large city group instead of small village groups. The Yoruba customary law of inheritance and succession appears to be general among the sub-ethno cultural groups. For example, among the Ijesha people, mode of inheritance is bilineal, among the Ijebus it is patrilineal (although women can inherit) and for the Ilaje and Idanre people of Ondo State, it is bilineal.⁶⁷

The Igbo tribe is one of the three major tribes in Nigeria and like the other two tribes has its own distinctive culture. The Igbo People can be found in the South-eastern part of Nigeria and are spread across states such as Enugu, Ebonyi, Anambra, Abia, Imo and Delta State⁶⁸.

Also, Hausa people can be sighted in the Northern part of Nigeria. They are majorly from the North Central and North east.

⁶⁵ R. A. Joseph, S. D. Taylor, and A. Agbaje “Nigeria” in W.A. Joseph, M. Kesselman and J. Krieger, *Third World Politics at the Crossroads* (Lexington: D. C. Heath and Company, 1996) 276-277 and 302-303.

⁶⁶ A. Atsenua; "Customs and Customary Law: Nigerian Courts and promises for Women's Rights", contemporary Issues in the Administration of justice: Essays in Honour of Justice Atinuke Ige (Treasure Hall Consult Rehoboth pub, 2019). 24.

⁶⁷ B.A Oni, “Discriminatory property inheritance Rights under Yoruba and Igbo Customary Law in Nigeria: The Need for Reforms” (2019), 19 (2), *IOSR Journal of Humanities and Social Science*, 8.

⁶⁸ I. E Sagay, *Nigerian Law of Succession*, (Lagos: Malthouse press limited), 257.

2.2.4 The concept of the “Judiciary”

In Nigeria, the duty of the judiciary or court is *jus dicere et non jus dare* (that is to state the law as it is and not to give the law). It also follows that it is not the duty of the judges to make law, but to interpret and apply law the way it is enacted. Therefore, judicial legislation is frowned against in Nigeria. Nowadays, what obtains universally is that where there is a gap in the law, it is not for the courts to lay down the law, but for the legislature to amend and reform the law. The roles of judiciary in Nigeria are essentially to apply and interpret the law made by the legislature as in Section 6 of the 1999 CFRN as amended. This is in line with positive school of thought that law as it is should be applied as it is and not ought to be therefore, as interpreters of the law, a court is not to assign meanings to the clear, plain and unambiguous provisions of a statute so as to make it conform with the courts own view of the meaning or what it ought to be. In the case of *Okumagba v. Egbe*⁶⁹, the trial court interpreted the words ‘another candidate’ to mean any candidate. The court held:

‘it may be unfortunate that the drafts man used the words ‘another candidate’ but they are the words which the legislature enacted. The magistrate replaced it with any candidate. And thus, enable himself to punish the appellants. The court frowned at judicial legislation.

Thus, a court must be careful so that a statute made by the legislature with the best intention does not become an instrument of injustice and confusion. A court is a place of justice must however, balance equally the delicate scale of justice, so that justice, truth and judicial boldness or radicalism to do justice are not destroyed or trod into the dust. On the other hand, the courts must be careful too, not to be used willy nilly as tools for the implementation of a manifestly unjust statute. It behooves on the courts to interpret the provisions of a statute narrowly and very strictly. Indeed, courts must frown at unjust laws and recommend that such laws be reformed. In *Guardian Newspaper, Ltd v. A.G Federation*⁷⁰, the court of appeal dealt blow on the draconian law inhibiting the fundamental human rights.

Also, it is the duty of the court to protect the fundamental human rights of the people jealously. In *Fawehinmi v. Gen Sanni Abacha and others, Mustapha JCA*⁷¹ was of the view that:

‘Where the freedom of an individual is curtailed or abridged, it must be shown that such act is brought within the confines of the law.

⁶⁹ (1964) LCN/1185(SC)

⁷⁰ (1999) All N.L.R. 1.

⁷¹ (2000) 6 NWLR 228

Also, the case law popularly known as judicial precedents is made by the courts and it is necessary to emphasize the certainty of those precedents and flexibility at the same time so that certainty will not lead to rigidity if the law. While the flexibility also will not lead to certainty. However, judicial precedents have helped Nigerian Legal System most especially in the aspect of last seen theory and consent provisions under the land use Act.

Therefore, the roles of judiciary in the interpreting the statute according to Lord Bacon is to state the law and not usurp the function of the legislature by giving the law.

2.2.5 The concept of Human Rights

According to the Black's Law Dictionary,⁷² A right is -

That which is proper under law, morality, or ethics. 2. Something that is due to a person by just claim, legal guarantee, or moral principle 3. A power, privilege, or immunity secured to a person by law 4. A legally enforceable claim that another will do or will not do a given act; a recognized and protected interest the violation of which is a wrong.

The word "right" possesses an ordinary and technical meaning. In the ordinary sense, it means the standard of permitted action within a certain sphere. In legal parlance "a right" is a legally protected interest. A right in its legal parlance thus correlates with a duty but the converse is not necessarily true as there may be duties without rights.⁷³

Human Rights are inherent and inalienable rights which belong to every human being, regardless of their race, nationality, religion, sex or any other status. Ibrahim et al, further emphasized the inherent nature of human rights when they posited that "the existence of human rights does not depend on any legal or constitutional authority, and it is for this fact that men could still enjoy them in their legitimate and authentic claims without there being any officially enacted authority. However, human rights are better and easily enforced when positively prescribed in a social compact".⁷⁴

The most banal statement on the concept of human rights is that it is the modern name for what have been traditionally known as natural rights. These rights may be defined as moral

⁷² B. A. Garner, *Black's Law Dictionary*, (9th Ed. United States: Thomson Reuters Publishing Company 2009), 1436.

⁷³In order for a duty to create a right, it must be a duty to act or forbear. It maybe our duty to love our neighbor, but he has no right to our love. John Chipman Gray, *The Nature and Sources of the Law* 8-9 (2d ed. 1921).

⁷⁴ Ibrahim Eletu and Hanafi A. Hammed, "The Fundamental Rights of Fetus under Islamic Law: A Critique", (2012) 4 (1), Kogi State University, Bi-Annual Journal of Public Law), 296.

rights which every human being everywhere at all times ought to have simply because of the fact that, in contradistinction with other being, he is rational and moral.⁷⁵

Thus, fundamental rights are rights derived from natural or fundamental or constitutional law.⁷⁶ They are rights which remain in the realm of domestic law, which are recognized, entrenched and guaranteed in the constitution of a country or any other legal instrument such as the African Charter on Human and Peoples' Rights. In the Nigerian instance, a human right is said to be fundamental when the law declares it as such, the provisions of Chapter IV declares certain rights as Fundamental Human Rights.

These rights relate to the things which an individual cannot be reasonably expected to live without, they are fundamental because they take precedence over all other provisions in our law. The concept of fundamental human rights looks like a universal concept; hence, the protection of Fundamental Human Rights is seen as the responsibility of the entire people of the United Nations. Thus, the UDHR provides that "Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms".⁷⁷

2.2.6 The Legal Concept and Incidence of Childhood

The word "child" is a descriptive terminology for a natural person who is an offspring of another (either by birth or adoption) and may only represent any human being from the moment of birth (in a life state) until the attainment of the age of majority.⁷⁸ It is characterized principally by the "undeveloped" state of mind of a person, which accounts for the readiness of the society to accept and tolerate the excesses, failures and inadequacies of the person.⁷⁹ However, the legal concept of childhood is not defined by the psychological development of the person as much as his physical development.⁸⁰ Thus, in the early case of *Labinjoh v Abake*⁸¹ a person ceases to be a child on the attainment of puberty under Nigerian customary law. Statutory law is also largely abstruse on the question of childhood in Nigeria.

⁷⁵ G Ezejiolor. "The Development of the Concept of Human Rights: Definition and Philosophical Foundation" in A. Obilade, C. Nwankwo and A. Tunde – Olowu (eds) Text for Human Rights Teaching in school. Constitutional Rights Project, Lagos, (1999), 23.

⁷⁶ Chief Francis Igwe & Ors v. Mr. Goddy Eze Anochu & ors. (2010) 7 NWLR pt. 1192 p. 84-85

⁷⁷ See the Preamble, Universal Declaration of Human Rights, 1948.

⁷⁸ F O Aguda-Taiwo, 'Guardianship and Custody of Children; Customary Perspective' Unpublished Paper Delivered at the Refresher Course for Judges And Kadis on 11th March, 2019 at the National Judicial Institute, Ondo State 4.

⁷⁹ M A Ajanwachuku, 'A Legal Analysis of the Nebulous Concept of Childhood in Nigeria' (2016) 7 *Beijing Law Review* 123.

⁸⁰ Ibid.

⁸¹ (1924) 5 NLR p.33.

Nwachuku⁸² explains that Nigeria already has several enactments on the rights of children (including, Infants Relief Act,⁸³ Children and Young Persons Ordinance,⁸⁴ Children and Young Persons Laws,⁸⁵ Compulsory, Free Universal Basic Education Act, Matrimonial Causes Act, Trafficking in Persons (Prohibition) Law Enforcement and Administration Act,⁸⁶ the Criminal Code Act, the Penal Code Law, Labour Act Under statutory law, childhood is variously constituted depending on the focus of the particular law and the circumstances of each case. Under the Criminal Code Act⁸⁷ for instance, childhood is delimited for the purpose of conviction for unlawful carnal knowledge to the age of 12 years.⁸⁸ Any male person below that age, in the eyes of the law is incapable of having carnal knowledge, more so unlawfully. Section 30 of the same Act adopted the “capacity criteria” of determining childhood in respect of the commission of any crime other than “unlawful carnal knowledge” by a person under the age of 12 years. It provides that where the circumstance is the commission of any other offence, a male person under the age of 12 years cannot be convicted of the offence if it has not been proved that at the time of committing the offence, “he had the capacity to know that he ought not to commit it”. The word “capacity” is neither explained in the provision nor is it interpreted in the Act. It may however, be interpreted to mean that a person of twelve years or below had the mental ability to know that he ought not to do the act because it is an offence, or that he had the mental ability to know that the act was wrong, improper and condemnable to do⁸⁹.

The Penal Code on the other hand, delimits childhood by age other than circumstances. The Code provides, for the purpose of conviction for an offence that childhood ceases at the age of 7 years. Thus, a person who commits an offence and is shown to be above 7 years is criminally liable to trial and conviction under the Code applicable in the northern part of Nigeria. Outside of the two Codes, other statutes in civil matters also provide for determination of childhood by age rather than circumstances. For instance, section 59(2) of the Nigerian Labour Act⁹⁰ provides for the purpose of employed in Nigeria that a person under the age of 14 years cannot be employed or allowed to work in any industrial

⁸² M A Ajanwachuku, ‘A Legal Analysis of the Nebulous Concept of Childhood in Nigeria’ (2016) 7 *Beijing Law Review* 126.

⁸³ CAP 19, Laws of Eastern Nigeria, 1963.

⁸⁴ CAP C52, LFN 2004.

⁸⁵ CAP M7, LFN, 2004.

⁸⁶ CAP T23, LFN, 2004.

⁸⁷ CAP C38, Laws of the Federation of Nigeria (LFN), 2004.

⁸⁸ *Ibid*, section 30.

⁸⁹ M A Ajanwachuku, ‘A Legal Analysis of the Nebulous Concept of Childhood in Nigeria’ (2016) 7 *Beijing Law Review* 167.

⁹⁰ CAP L1, Laws of the Federation of Nigeria (LFN), 2004.

undertaking. Even though, a proviso in the section allows such a person to work in the prohibited sector of industrial undertaking or technical schools under supervision by the Ministry of Education or corresponding Department of Government of a State, this does not introduce a new criteria of determination by circumstance. Supervision of a person in the circumstances mentioned in the Act confirms the presumption of the mental capacity of the person as a child by the law⁹¹. In another sense, a child is a class of homo sapiens seen to be subject to guidance and care or custody of another person who is an adult (guardian or parent), in corollary of this, a child cannot make a decision of where he stays and whom he stays with or who has his custody, a person will cease to become a child when he is capable of deciding where he chooses to live and whom he chooses to live with. Thus, in matrimonial cases, the court has the jurisdiction of deciding the custody of a child. However, in the case of *Febisola Okwueze v Paul Okwueze*,⁹² Uwais JSC reviewed all the relevant provisions of the law in the definition of the word ‘child’ and came to a conclusion that custody order will not be made in respect of a child who has reached the age of 16. The corollary to this rule is that custody order made in respect of a child under the age of 16 will lapse or cease to be operative when that child attains the age of 16. The care, custody and welfare of children (under the age of 18) in Nigeria are strict functions of an intricate regulatory framework comprising institutions and laws; beginning naturally with the Constitution of Nigeria.⁹³ Section 17(3) (f) of the 1999 Nigeria Constitution imposes a non-actionable obligation on the Nigeria Government to ensure that children are adequately protected from exploitation, moral and material neglect. Under the Nigerian Child’s Rights Act, 2010, a person ceases to be a child on attaining the age of 18 years⁹⁴ which connotes a period of physical maturity. It appears that this Act has finally settled the statutory differences on the issue of childhood in Nigeria when it provided that the definition of the child under section 277 of the Act supersede all enactments relating to children, adoption, fostering, guardianship, approved institutions, remand centers, borstal institutions, and any other matter pertaining to children already provided for in other enactments.⁹⁵ This is so for several reasons. First, the Act is a federal legislation, which directly covers the rights of the child in Nigeria. Therefore, the legislature must have taken into consideration the provisions on the limits of childhood in the different legal instruments

⁹¹ Ibid.

⁹² (1989) 3 NWLR Part 109 page 3.

⁹³ F O Aguda-Taiwo, ‘Guardianship and Custody of Children; Customary Perspective’ Unpublished Paper Delivered at the Refresher Course for Judges and Kadis on 11th March, 2019 at the National Judicial Institute, Ondo State. 5.

⁹⁴ See Section 277, Child Rights Act, 2003.

⁹⁵ Ibid. section 274 (1) (a).

before enacting the Act to protect the child from abuse. Secondly, as a federal legislation enacted within the concurrent legislative powers of the National Assembly, the Act takes precedence over states legislations on the same legislative matter; this is the doctrine of covering the field.⁹⁶ Any state legislation on the definition of a child for the purpose of application of principles of law that is inconsistent with the Child's Right Act may be void and inapplicable⁹⁷. Thirdly, many state legislative houses in Nigeria have adopted the Child's Right Act into state law, thereby bringing the application of the Act into force in such states⁹⁸. Other criteria for adjudging a person a child under customary law relates specifically to issues of devolution of property and symbol of authority other than determination of wrongful conduct. Different criteria such as financial independence, marriage, and initiation into age grade⁹⁹ may determine childhood in majority of these circumstances under customary law in Nigeria. In most parts of the South Eastern Nigeria for instance, the first male child of the family is deemed to remain in childhood under customary law notwithstanding his age until the death of his father. Such persons are treated as children as long as their fathers are alive.¹⁰⁰

Thus, for instance, the court in the case of *Labinjoh v. Abake*¹⁰¹ has held that childhood ceases at the attainment of puberty in the Yoruba native law and custom. In that case, the defendant (a girl aged about 18 years and still living with her parent) bought some goods for trading purposes from the plaintiff. The plaintiff sued for the sum of £48: 18s: 8d being the value of the goods sold and supplied to the defendant. The defendant resisted the suit arguing that she was an infant and by virtue of the provisions of the Infants Relief Act, 1874 (a statute of general application), she was not bound to pay since the contract was for trading purposes and not for necessaries. The Police Magistrate Court sitting at Lagos agreed with the defendant and dismissed the plaintiff's claim, reasoning that since the Act applied and did not define an infant, an infant for the purpose of contract should be ascribed the meaning of a person below 21 years as under the common law. The plaintiff appealed to the Divisional Court (an equivalent of High Court), that the transaction was not governed by the Act but by customary law (since both parties were natives) and that the defendant was liable to pay, being an adult for reason of having attained puberty. The court held that the Act was

⁹⁶ See section 4 (5), Constitution of the Federal Republic of Nigeria, (CFRN), 1999.

⁹⁷ This is unconnected with the fact that where the Act of the National Assembly has covered a particular field, any inconsistency from the related legislation from the state is inferior to the Act of the National Assembly.

⁹⁸ Like Oyo, Lagos and other states now have their Child Rights Law.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ *Supra*.

applicable but that since the Act did not state who an infant is, the test to determine the issue should be under customary law i.e. a person who has not attained puberty. The court entered judgment for the plaintiff because the defendant had attained puberty. The defendant appealed to the Full Court (equivalent of Supreme Court) that gave a unanimous judgment remitting the case to the trial court to find out whether there was any native law and custom applicable to the subject matter of litigation and if so, what the customary law was. The point of emphasis in this Full Court did not overrule the decision of the Divisional Court that infancy or childhood ceases on attainment of puberty under customary law in Nigeria. Although, this decision has gone a long way to clarify the notion of childhood under Nigerian customary law, it did not solve the problem of lack of common definition of the concept under all native laws and customs in Nigeria. This is in addition to the fact that the criterion of “puberty” as a yardstick for determining adulthood is variable, depending on individual development and sex of the person.

It will also be important to state that a child is a person who cannot be recognized in law as having a legal personality, he cannot be heard bringing or defending an action before a court¹⁰². As a general rule, only natural persons, that is to say human beings and juristic or artificial persons such as bodies corporate are competent to sue and be sued before any law court¹⁰³. In other words no action can be brought by or against any party other than a natural person or persons unless such a party has been given by the statute expressly or impliedly or by common law either a legal personality under the name by which it is sued or it sued or a right to sue by that name.¹⁰⁴ This is the law because the suit is in essence, the determination of legal rights and obligations in any given situation¹⁰⁵. Therefore only such natural / juristic persons in whom the rights and obligations can be vested are capable of being proper parties to law suits before courts of law¹⁰⁶. Following this general rule, where either of the parties is not a legal person capable of exercising legal and obligations under the law, the other party may raise this fact as a preliminary objection which if upheld, normally leads in the action being struck out.¹⁰⁷ In the same vein, a person who is a child can only sue or be sued through his guardian.¹⁰⁸ Also, a child does not enjoy the freedom of contract under the Nigerian law owing to the fact that he is one of such persons who vulnerable to some forms of

¹⁰² J N. Egwummuo, *Focus on Law and Jurisprudence* (Enugu: Academic Publishing Company, 2007) 236.

¹⁰³ Ibid.

¹⁰⁴ Fawehinmi v. Nigeria Bar Association (NO.2) (1989) 2 NWLR (PT. 105) 558 AT 595.

¹⁰⁵ F Daramola, *Jurisprudence* (4th Ed., Durban: Lexisnexis Butterworths, 2008) 167.

¹⁰⁶ Ibid.

¹⁰⁷ Shittu v Ligali (1941) 16NLR 21; Olu Of Warri v Esi And Anor (1958) 3 FSC 94; Agbonmagbe Bank v General Manager G. B Olivant Ltd And Anor (1961) ALL NLR 116; (1961)2 SCNLR 317.

¹⁰⁸ Order 11, Rule 9, High Court Civil Procedure Rules of Lagos State, 2019.

unconscionable bargain.¹⁰⁹ Contracts however, entered into by an infant is either out rightly void or voidable depending on the circumstances of each case¹¹⁰ except for contract for necessities which may include contract for things necessary for the development of the child.¹¹¹

2.2.7 The Legal Concept of Marriage

Under our indigenous customary laws, marriage is essentially a union of a man and a woman for the duration of their lives, involving a wider association between two families or sets of families¹¹². In Nigeria, polygamy is a customary law institution. So legally speaking, every customary law marriage is potentially polygamous. Our traditional African societies permit the practice of polygamy¹¹³. The essential requirements for a valid customary marriage may be classified under four broad heads. These are:

- a. Consents
- b. Capacity
- c. Bride Price or Dowry and
- d. Formal Giving Away.

The requirements are in turn discussed *ad seriatim*

2.2.7a Consents

There are two consents involved, the consent of the family (parental consent) and the consent of the prospective spouses themselves. In modern times, family consent is now synonymous with parental consent.¹¹⁴ Here the parent may be the actual parents or the guardian. As for the wider family, their consent is no longer required as a general rule.¹¹⁵ A father may still consult with his wider family before he gives or withholds his consent to his children's marriage; but this is a matter of courtesy and not of necessity. However in the case of a man, parental consent can be dispensed with if the man is of age.¹¹⁶ An adult male has a right to conduct all the necessary negotiations for his marriage without the consent of his parents,

¹⁰⁹ I E Sagay, *Nigerian Law of Contract* (2nd ed., Ibadan: Spectrum Publishers, 2012) 20.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² M C Onokah, *Family Law in Nigeria* (Ibadan; Spectrum Law Series, 2012) 7.

¹¹³ Ibid.

¹¹⁴ Ibid, 83.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

though this is quite unwise and may prove problematic.¹¹⁷ The consent of the spouses themselves is a key factor. In traditional society, the consent of the spouses was deemed irrelevant. Parents were known to have contracted marriages on behalf of their infant children. Meanwhile, some of those marriages contracted without the consent of the spouses have proved problematic.¹¹⁸ In modern society, the practice is to ask for the consent of the prospective spouses.¹¹⁹ Most marriages in fact start with the agreement between the spouses; their parents come into the picture later on. So vital is the issue of consent that it is a criminal offence for any person to take away or detain or cause a female to be so dealt with against her will, for the purpose of marriage.¹²⁰ The offence is a felony which attracts imprisonment for seven years.

2.2.7b Capacity

In relation to marriage, capacity has two aspects. These are:

- i. capacity to marry on the part of each prospective spouse; and
- ii. capacity to inter-marry i.e. to marry each other.

At customary law, a person may lack the capacity to marry if he is under age depending on the particular custom.¹²¹ However, under customary law, a woman who is lawfully married cannot marry another man. The practice of polyandry or marriage with more than one husband is not allowed under any custom in Nigeria.¹²² Furthermore, even though polygamy is allowed, a man who is already married to a woman under the Act cannot marry another woman under customary law. Under every custom, there are certain prohibited degrees of marital relationship. For example, a man may not marry a woman who belongs to his father or mother's family. Also a man may not marry two full sisters at the same time. Of course, marriage between siblings is prohibited.¹²³

2.2.7c Bride Price or Dowry

¹¹⁷ P A Akhiero, 'An Abridgement of Nigerian Matrimonial Laws and The Church' Unpublished Paper Presented at The Seminar Organized for the Members of the Marriage Committee of the Deeper Life Bible Church, 2017, 4.

¹¹⁸ M C Onokah, *Family Law in Nigeria* (Ibadan; Spectrum Law Series, 2012) 73.

¹¹⁹ Ibid.

¹²⁰ See section 361, Criminal Code Act.

¹²¹ M C Onokah, *Family Law in Nigeria* (Ibadan; Spectrum Law Series, 2012) 74.

¹²² Ibid.

¹²³ Ibid.

The two terms “bride price” and “dowry” are used interchangeably¹²⁴. They mean “a customary gift made by a husband to or in respect of a woman at or before marriage¹²⁵.” The dowry can be paid by the husband or by his parents, guardian or by his lawful representatives. The amount of bride price may be fixed by a particular custom or it may be subject to individual bargaining and a host of factors such as the status of the bride, or family etc.¹²⁶ Though the bride price is an essential element in customary marriage, it is perfectly proper for the bride’s family to waive it or take a token sum¹²⁷. Essentially, the bride is not for sale. Generally, the bride price is payable to the parents of the bride. Part of the bride price is distributed to other members of the family such as uncles, aunties and the siblings of the bride¹²⁸.

2.2.7d Giving away the bride

The conclusion of the customary marriage ceremony is the handing over of the bride by her parent or guardian to the bride groom or his representative¹²⁹. In some societies, the ‘giving away’ ceremony is done in the home of the bride or some other place chosen by her family. In other societies, the ceremony is conducted in the bridegroom’s place, the bride being escorted there for this purpose by members of her family¹³⁰.

2.2.8 Statutory Marriage

Statutorily, Lord Penzance in the English celebrated case of *Hyde v Hyde*¹³¹ declared statutory marriage as the voluntary union for life of one man and one woman to the exclusion of all others. In other words, a statutory marriage is a monogamous marriage. The phrase union for life in the definition does not translate to the indissolubility of marriage. What it infers is that parties contracting this type of marriage must have the intention to have the union last for a lifetime that is until the death of either of the parties.¹³² Statutory marriage in Nigeria upholds the definition of the English statutory marriage as per the dictum of Lord Penzance earlier given. The word voluntary contained in the definition given means consent. Parties to the marriage must give free consent and not consent obtained through fraud,

¹²⁴ Ibid 91.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid 90.

¹³⁰ Ibid

¹³¹ (1860) L.R.I. PD. 130.

¹³² E I Nwogugu, *Family law in Nigeria* (Ibadan: claverianum Press, 1996) IXXXi.

mistake or duress. Affirming this assertion, Section 3 (1) (d) Matrimonial causes Act 1970 declares:

subject to the provision of this section, a marriage that takes place after the commencement of this Act is void in any of the following cases....where-

- i. It was obtained by duress or fraud; or
- ii. That party is mistaken as to identify of the other party, or as to the nature of the ceremony performed; or
- iii. That party is mentally incapable of understanding the nature of the marriage contract.¹³³

Under the Marriage Act, minors cannot give consent as Section 18 of the Act reads:

If either party to an intended marriage, not being a widower or widow, is under twenty-one years of age, the written consent of the father, or if he be dead or of unsound mind or absent for Nigeria, of the guardian of such party, must be produced

In the Nigerian case of *Ugboma v. Morah*,¹³⁴ the court held that a minor is not bound by his promise to marry anyone. In Nigeria, parties to a statutory marriage may celebrate their marriage either in a marriage registry or in a licensed place of worship. To do so however, there must be compliance with Section 7 of the Marriage Act which provides that whenever any person desires to marry, one of the parties to the intended marriage shall sign and give to the registrar of the district in which the marriage is intended to take place a notice. Upon this notice, the registrar shall enter the notice in the Marriage Notice Book which shall be open for inspection for twenty-one days. After twenty-one days and where there is no objection to the notice of marriage, the registrar shall give clearance for the marriage to be celebrated. Such clearance in form of certificate shall be issued by the registrar before the expiration of three months.¹³⁵ The Marriage Act also provides at section 12 that if the marriage shall not take place within three months after the date of the notice, the notice and all proceedings consequent there upon shall be void and fresh notice shall be given before the parties can lawfully marry.

¹³³ Matrimonial causes Act & Rules. Cap. 220 Laws of the Federation 2004.

¹³⁴ (1940) 15 NLR 78.

¹³⁵ Section 11 Marriage Act, 2004.

Without the precondition of obtaining the registrar's certificates, any marriage celebrated in the registry or a church is invalid and not a statutory marriage.¹³⁶ Requirements of statutory marriage in Nigeria can be grouped into two, namely: formal requirements; and essential requirements. According to Sagay:

Failure to comply with most of the formal requirements, does not in any way affect the validity of a marriage. For example, failure to reside in the marriage district for 15 days before the granting of a marriage certificate, or to obtain the necessary consent does not affect the validity of a marriage...¹³⁷

Unlike the formal requirements, failure to comply with essential requirements, or lack of capacity on the part of one of the parties, will render a marriage void.¹³⁸ The essential requirements set out by Sagay include:

- i. Consents of the parties
- ii. Consanguinity and affinity
- iii. Prior marriage by a party
- iv. Any marriage entered into by a person below the marriage age

2.2.9 Child Marriage

Early child marriage has been seen as mostly a forceful kind of marriage since it is conceived that a minor does not have the requisite mental capacity to give consent to a complicated subject like marriage and as such, it has been seen as a form of domestic violence¹³⁹. In whatever situations, it is obvious from the above clarifications that marriage is meant to be between adults who have the capacity to give consents and not a consent obtained by fraud, duress, unconscionable bargain or a consent not obtained at all¹⁴⁰. In any of the cases of lack of consent, any marriage contracted is *void ab initio*.¹⁴¹ It is apposite to also state that even under customary law, the consent of both spouse as well as that of the family of the spouse is also required.¹⁴² If consent is seen as a prerequisite to valid marriage, it then goes to say that if properly read, the choice of marriage will be brought under the right to freedom of thought,

¹³⁶ Obiekwe v. Obiekwe (1963) 7 E.N.L.R. 196 at page 199; Ejikeme v. Eejikeme unreported Suit No E/100/7 I of 3/7/72; Maraizu v. Maraizu (1993) E.C.S.N.L.R. 671.

¹³⁷ I E Sagay, *Nigerian Family Law Principles, Cases, Statutes & Commentaries* (Ikeja: Malthouse Press Limited. 1999) 50.

¹³⁸ Ibid. p. 51.

¹³⁹ K O Fayokun, 'Legality of Child Marriage in Nigeria and Inhibitions against Realization of Education Rights' (2015) 12 *US-China Law Review* 812.

¹⁴⁰ I E Sagay, *Nigerian Family Law Principles, Cases, Statutes & Commentaries* (Ikeja: Malthouse Press Limited. 1999) 50.

¹⁴¹ Mbonu v. Mbonu (1976) F.N.L.R 57; see also, Section 3 (1) (d), Matrimonial Causes Act (MCA), 1970.

¹⁴² M C Onokah, *Family Law in Nigeria* (Ibadan; Spectrum Law Series, 2012) 90.

conscience and religion as guaranteed by the Constitution of the Federal Republic of Nigeria (CFRN), 1999. Section 38(1) of the Constitution provides as follows

Every person shall be entitled to freedom of thought, conscience and religion, including freedom (either alone or in community with others, and in public or private) to manifest and propagate his religion or belief in worship, teaching practice and observance.

On the other hand, the delineation of the concept of child is for the purpose of enforcement and entrenchment of fundamental human right and protection of dignity of every person from servitude of all forms, Section 17 (2) (b) of the Constitution further states that “the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced”. Section 17 (3) (f) of the same Constitution states that children; young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect. The Convention on the Right of the Child, which was adopted and was opened for signature on 20 November 1989, is the first legally-binding international instrument that deals with a full range of human rights issues pertaining to children. Due to the range of children's rights protected, ranging from civil to political rights. Article 1 of the said convention provides that

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

While the convention defines a child as a person under the age of 18, the provision 'unless under the law applicable to the child, majority is attained earlier', contradicts this and does not help to eradicate child marriage.¹⁴³ For instance, in Northern Nigeria, where traditional and cultural practices are heavily influenced by Islam and laws derived from Shari'a, the age of majority for girls is attained pre-puberty. Therefore, the provision of the convention is problematic in terms of not adequately stating the age when a child becomes an adult. Regionally, the African Children's Charter has a more water-tight provision relating to the age of children, unlike Convention on the Right of the Child, the African Children's Charter in Article 1 sets the age of childhood below 18 years, without affording states the opportunity to prescribe otherwise. The prohibition of child marriage is included in the African Children's Charter under article 21 (2), which states:

¹⁴³ L Askari, 'The Convention on the Rights of the Child: The necessity of adding a provision to ban child marriages' (1999) 5 *ILSA Journal of International and Comparative Law* 124.

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 an official registry compulsory.

Similar to the African Children's Charter, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol), which defines women as including girls, stipulates 18 years¹⁴⁴ as the minimum age of marriage for women.¹⁴⁵ Under article 21 of the African Children's Charter, state parties are urged to:

... take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

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

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

By virtue of Section 29 (4) (1) of the Child Rights Act, 2003, 'full age' means the age of eighteen years and above' while the Child Rights Act states that the age of marriage shall be 18 years, the Immigration Act states that any person below 16 years is a minor. Section 3(1) (e) of the Matrimonial Causes Act, 2004, states a marriage is null and void if either of the parties is not of a marriageable age. The Nigerian Electoral Act 2010 under Section 12 (1) states that a person shall be qualified to be registered as a voter if such a person is a citizen of Nigeria and has attained the age of 18 years. The question of marriageable age has been in existence for a period of time before the 21st century, this is even recognized in the Universal Declaration of Human Rights, 1948. Article 16¹⁴⁶ has the effect that that 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. The Declaration further provides that marriage shall be entered into only with the free and full consent of the intending parties.¹⁴⁷ The United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964, provides in Article 1 that No marriage shall be legally

¹⁴⁴ African Women's Protocol, Article 1.

¹⁴⁵ Ibid, Article 6.

¹⁴⁶ Universal Declaration of Human Rights, 1948.

¹⁴⁷ Ibid, Article 16 (2).

entered into without the full and free consent of both parties, such consent to be expressed by them in person as prescribed by law. Article 2 of the same convention further provides that States Parties to the convention shall specify a minimum age for marriage (not less than 15 years according to the nonbinding recommendation accompanying the Convention). No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age for serious reasons, in the interests of the intending spouses¹⁴⁸.

Early marriage is the act of giving out a female child for marriage at a very tender age, mostly when the girl knows nothing about her rights¹⁴⁹. In Nigeria and indeed some parts of Africa, early marriage comes in the form of child betrothal; this may even involve marrying out a girl child immediately after she is delivered.¹⁵⁰ While forced marriage on the other hand is simply marrying out a girl against her wish, it could also be referred to as induced marriage. In some cases, the girls are withdrawn from school or even denied access to education. There are cases in which parents have forced their grown daughters into marriages against their wishes either due to cultural, social, economic or political reasons. Early marriage of girls is most common in Sub-Saharan Africa and south Asia.¹⁵¹ Official data on very early marriage under age (13) is limited, but studies indicate that in parts of East and West Africa, for example, marriage at age 7 or 8 is not uncommon. In some parts of Northern Nigeria, the average age of marriage is 11 years.¹⁵² The National Demographic Health Survey reported that in 26.5% of couple there is an age difference of 15 years between husband and wife.¹⁵³ This difference in age contributes to a woman's powerlessness with respect to sexuality and reproductive health decisions. In this situation of unequal power, resistance to a husband's demand many lead to violence. An adolescent girl with a much older spouse is much less likely to be able to participate in decisions about when to have children, to be able to negotiate the use of birth control and less able to protect herself from HIV/AIDS, exploitation and maltreatment.¹⁵⁴

¹⁴⁸ I E Sagay, *Nigerian Family Law Principles, Cases, Statutes & Commentaries* (Ikeja: Malthouse Press Limited, 1999) 50.

¹⁴⁹ Y. Olomjobi, *Medical & Health Law: 'The Right to Health'* (Ikeja: Princeton & Associates Publishing Co. Ltd, 2019) 215.

¹⁵⁰ S Aaron, 'Beast of Burden', *Action Women Quarterly* 1 Women's Aid Collective (WACOL), 2003.

¹⁵¹ Ibid.

¹⁵² United Nations Children's Fund (UNICEF) 2001 "Children's and women's rights in Nigeria. A wake up call: Assessment and Analysis". WRAPA Newsletter.

¹⁵³ Nigerian Demographic and Health Survey, 1998.

¹⁵⁴ Ibid.

Early/forced marriage limits educational and other opportunities for girls and often leads to early child bearing and increased health risks. Girls under 13 years of age are five times more likely to die in child birth than women in their twenties.¹⁵⁵ They are also higher to obstetric fistula, which can result from prolonged and obstructed labour. In a study by Utulu to determine the total direct and indirect effect of traditional practices on the educational development of the girl-child, she found that the highest direct effect was as a result of forced marriage when compared to other forms of practices with a correlation coefficient of 0.1.¹⁵⁶

2.2.10 Factors Responsible for Child Marriage

Child marriage, generally defined as marriage before age 18, is not limited to any one country or continent¹⁵⁷. For example, a study conducted in 2005 shows that girls living in rural areas marry earlier than girls in urban areas. In rural areas of Nigeria, for example, 21 percent of young women, who are now 20 to 24, were married by, age 15, as compared to 8 percent in urban areas.¹⁵⁸ According to Aduradola,¹⁵⁹ the followings are the causes of Child Marriage: Cultural and Social pressure; persecution, forced migration and slavery; financial challenges; politics and financial relationship; religion and child marriage. Poverty and economic transactions; Notions of morality and honour are also major causes of Child Marriage. Underlying causes of early marriage are many and include poverty, parental desire to prevent sexual relations outside marriage and the fear of rape, a lack of educational or employment opportunities for girls, and traditional notions of the primary role of women and girls as wives and mothers. Poverty, weak legislative frameworks and enforcement, harmful traditional practices, gender discrimination and lack of alternative opportunities for girls (especially education) are all major drivers of child marriage¹⁶⁰.

The concept of child marriage has been discussed above and as such, it is important to consider that factors responsible for the perpetration of the said concept in Nigeria, in this section, the task ahead is to identify the factors which support child marriage and make it more tenable in the society. Sequel to this, this section will discuss the following:

¹⁵⁵ Ibid.

¹⁵⁶ R. E Utulu, 'The impact of traditional practices on the psychological and educational development of the girl-child in Nigeria'. Ph.D Thesis University of Ibadan – Nigeria, 2000.

¹⁵⁷ Child Rights Act, Laws of the Federation of Nigeria, 2004; Convention on the Right of a Child, 1989.

¹⁵⁸ OMCT; The Centre For Law Enforcement Education: Rights of the Child in Nigeria, A Report on the implementation of the Convention on the Rights of the Child by Nigeria, 2005, 15 cited in N. C. Okafor and I. Oyakhiromen, Nigeria and Child Marriage: Legal Issues, Complications, Implications, Prospects and Solutions, , (2014) 29 *Journal of Law, Policy and Globalization* 122.

¹⁵⁹ A M Aduradola, 'Child Marriage: Issues, Problems and Challenges', A Paper presented at a One Day Seminar organized by National Open University of Nigeria, Lagos on the 4th September, 2013

¹⁶⁰ Ibid.

- i. Child Marriage and the Nigerian Legal Framework
- ii. Child Marriage and Culture
- iii. Prevalence of Child Marriage

This is to say that the menace complained of is rooted in certain cultures as exemplified by the customary laws of such society; it also has something to do with the dominant religious practices in the society and the effect of these factors directly rock the root of other areas of life including labour relations, political participation, education and other important aspects of life.¹⁶¹ For instance, it will first be introduced that Nigeria is a multi-ethnic state and the cultures of the various ethnic groups in the country are diverse and heterogenic. Thus, the approaches of the various ethnic cultures towards the menace differ. It is also important here to explore the facts of religion in relation to the rights of child since each religion has its own stance towards the issue of marriage. Meanwhile, it will be important to state that the dominant religions in Nigeria are Islamic beliefs, Christianity and the traditional beliefs.

2.2.10.1 Child Marriage and the Nigerian Legal Framework

The section will consider the legal framework relating to child marriage in Nigeria. It will be said that the law that covers the field in relation to the protection of children is the Child Rights Act, 2003 which prescribes the age of childhood below 18. Also, the Child Rights Act prohibits child marriage. However, for the purpose of customary law and Islamic marriages, the age of childhood prescribed by the Act is ineffective. This is made so by virtue of Item 61 of Part 1 of the Second Schedule to the 1999 Constitution which removes the matters relating to the formation of Islamic and customary marriage from the jurisdiction of the National Assembly. Hence, the minimum age of marriage can only be prescribed by the states houses of Assembly. Therefore, this explains why there is no unified marriageable age in Nigeria. Consequently, when a person marries a child under Islamic law in Northern Nigeria and is consequently in contravention of the Child Rights Act, such a person cannot be prosecuted because the federal government would be interfering with an Islamic marriage and would be in violation of Part 1 item 61 of the 1999 Constitution. Therefore, in relation to child marriage, Part 1 Section 61 of the 1999 Constitution renders the Child Rights Act useless, as

¹⁶¹ A Imam, 'Enhancing DFID's Response to gender inequalities in order to accelerate progress towards the achievement of the Millennium Development Goals in Northern Nigeria' (2008), cited in E.J Otive-Igbuzor, Analysis of the Structural and Systemic Causes of Gender Inequality in Nigeria, (2010) *Voices For Change Report of the Department for International Development* 9.

the 1999 Constitution serves as the supreme law of the land in Nigeria, overriding all other legislation.¹⁶²

Thus, each state in its Child Rights Law prescribes the marriageable age, for instance, section 15(1) of the Jigawa State CRL 2006 prohibits child marriage but defines a child in section 2(1) of that Law as a person below the age of puberty. Accordingly, it would be correct to state that Jigawa State criminalizes child marriage to the extent that a girl has not reached puberty. This is possible because puberty is defined in section 2 of the Jigawa Law as the age at which a person is physically and physiologically capable of consummating a marriage. In addition, a court is to determine according to the provisions of section 15(1) the puberty of the child bride according to the circumstances of each case. It is submitted that laws like this have not been precise enough as to the minimum age of marriage and the lack of appropriate legislation immunizes Islamic or customary marriages from the Bill of Rights.

It would be seen from the above that the weakness of the legal framework is the absence of a specified minimum age. Thus, the court has developed tests in determining whether a child could be said to be ripe enough for marriage. The court has always been guided by the best interest of the child. For instance, the cases of *Williams v Williams*¹⁶³ and *Odogwu v Odogwu*,¹⁶⁴ are also relevant in determining an appropriate minimum age for child marriage. In the *Odogwu's* case, the Nigerian Supreme Court recognized the happiness and psychological development of a child as crucial in determining custody. It seems appropriate that the same considerations also apply in cases of child marriage. It is entirely possible that a child between the ages of 15 and 18 years could be happily married.¹⁶⁵ The legality of the under-aged marriage is a dispute between the right to freedom of religion, privacy and family life.¹⁶⁶ The substance of Islamic and customary marriages depends on rights which, in their interaction with other rights, may be found to be unconstitutional. In *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo*,¹⁶⁷ the Nigerian Supreme Court determined the limited scope of the right to freedom of religion and the right to privacy and held that:

The right of freedom of thought, conscience or religion implies a right not to be prevented, without lawful justification, from choosing the course of one's life, fashioned on what one believes in, and a right not to be coerced into

¹⁶² Section 1 (3), Constitution of the Federal Republic of Nigeria, 1999; *Momoh v Senate of the National Assembly* [1981] 1 NCLR 21; *Attorney General of Bendel State v Attorney General of the Federation*.

¹⁶³ [1976] Ch 278, CA.

¹⁶⁴ (1992) JELR 43170 (SC).

¹⁶⁵ *Otive-Igbuzor*, Op. cit. p. 13.

¹⁶⁶ Chapter IV, Constitution of the Federal Republic of Nigeria, 1999.

¹⁶⁷ (2001) 6 NWLR (Pt. 710) 2.

acting contrary to one's religious belief. The limits of these freedoms in all cases are where they impinge on the rights of others or where they put the welfare of society or public health in jeopardy.

From the foregoing, it will be inferred that although, there are legal frameworks against the menace of early child marriage. However, the problem is that these legal provisions are weak enough to allow this menace to perpetuate itself.

2.2.10.2 Child Marriage and Culture

Historically, the aristocracy of some culture tends to use child marriage among different factions or states as a method to secure political ties between them.¹⁶⁸ The son or daughter of a royal family of a weaker family would sometimes arrange to marry into the royal family of a stronger neighbouring power, thus preventing itself from being assimilated. In the lower classes if they were fortunate, families could use child marriage as a means to gain financial ties with wealthier people ensuring their successions.¹⁶⁹ Fayokun explains that Child marriage is rooted in the cultural traditions of the Hausa-Fulani communities in Northwest Nigeria.¹⁷⁰ Child brides often come from patriarchal societies where parents and elders play very significant or domineering roles in selecting spouses for their children. Strong cultural norms place emphasis on a girl's virginity, which is closely tied to a family honour.¹⁷¹ Parents are disposed to marrying off their daughters at a very tender age to ensure they marry as virgins and retain the family honour. The practice of child marriage is also strongly followed as a way of protecting the girl child from sexual assault and unwanted out-of-wedlock pregnancies. Another instance added to this early child marriage among the Hausa –Fulani people is the aspect of forced marriage, the young brides are arranged into these marriages without their consent, and this was seen as a religious dictate fused into the culture of the people. However, under Shari'a law, a woman cannot be given away in marriage without her consent, except in the case of a minor.¹⁷² Meanwhile, under the Maliki School of law, practiced in Northern Nigeria, the choice of husband by a Muslim woman is subject to the *ijbar*, or over-ruling power, of her father or guardian. *Ijbar* allows a father or guardian to

¹⁶⁸ I Ogunniran, 'Child Bride and Child Sex: Combating Child Marriages in Nigeria' (unpublished) 85, available at www.ajol.info Accessed 28th June, 2022.

¹⁶⁹ Ibid at p. 86.

¹⁷⁰ K O Fayokun, 'Legality of Child Marriage in Nigeria and Inhibitions against Realization of Education Rights' (2015) 12 *US-China Law Review* 812.

¹⁷¹ Ibid.

¹⁷² O Bamgbose, 'Customary Law Practices and Violence against Women: The Position under the Nigerian Legal System' Paper presented at 8th International Interdisciplinary Congress on Women hosted by Department of Women and Gender Studies, University of Makerere. July 2002, 7.

select a husband for his daughter based on her "wider interests".¹⁷³ One source, however, noted "it is not unusual to find forced marriage ... made out of monetary or other consideration in contemporary Hausa society"¹⁷⁴

The prevalence of child marriage in Hausa-Fulani communities in Northwest Nigeria also lies along religious lines. Most child brides are from Mohammedan homes.¹⁷⁵ To a large extent, the marriage culture is dictated by Islamic religious norms¹⁷⁶. Prepubescent marriage is the norm. The man is said to promise not to touch the girl until she reaches puberty and that this practice is in line with Prophet Mohammed's marriage to Aisha.¹⁷⁷ The domineering influence of the parents and elders within the context of strong religious norms based on an interpretation of Islamic marital code fuels the belief that a girl child is fully matured for marriage and should be married off before or upon reaching puberty, the sure sign of which is the commencement of the menstrual period¹⁷⁸. It is believed that early marriage for a girl child maximizes her childbearing potential. Within that Islamic culture, the new bride is often absorbed into a large harem where she is confined to strictly domestic roles. As Islam has permeated the socio-cultural life of the Hausa-Fulani, so has Islamic law and jurisprudence become assimilated into the native law and custom especially on issues of personal law relating to marriage and family life.¹⁷⁹

However, there are no available materials on the cultural stance of the Yoruba people and the Ibo people on child marriage except that there are various customs in the Ibo traditional system enabling the practice of forced marriage¹⁸⁰.

2.2.10.3 Why Child Marriage persists in Nigeria

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid at p. 462.

¹⁷⁶ Ibid.

¹⁷⁷ Sunan Abu Dawud 49:4917; in *Sahih Al-Bukhari*, Volume 5, Book 58, Number 234, Aisha narrated: The Prophet engaged me when I was a girl of six (years). We went to Medina and stayed at the home of Bani-al-Harith bin Khazraj. Then I got ill and my hair fell down. Later on my hair grew (again) and my mother, Um Ruman, came to me while I was playing in a swing with some of my girlfriends. She called me, and I went to her, not knowing what she wanted to do to me. She caught me by the hand and made me stand at the door of the house. I was breathless then, and when my breathing became all right, she took some water and rubbed my face and head with it. Then she took me into the house. There in the house I saw some Ansari women who said, "Best wishes and Allah's Blessing and a good luck." Then she entrusted me to them and they prepared me (for the marriage). Unexpectedly Allah's Apostle came to me in the forenoon and my mother handed me over to him, and at that time I was a girl of nine years of age.

¹⁷⁸ K O Fayokun, 'Legality of Child Marriage in Nigeria and Inhibitions against Realization of Education Rights' (2015) 12 *US-China Law Review* 812.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

The practice of child marriage in Nigeria is not only prevalent but also persisting¹⁸¹. This is so because Nigeria is very much divided on religious grounds. The South is mainly Christian and the North is principally Islam. So, even though the country as a whole is loosely 'bound' by Federal Law¹⁸² and the Nigerian Constitution¹⁸³, while the Northern states in Nigeria predominantly subscribe to Sharia law, which is an integral part of customary law in Nigeria.

In Nigeria, the federal law prohibits the marriage of persons that are below eighteen¹⁸⁴. However, the states in Nigeria that implements Sharia law do not prohibit child marriage. This tends to create a clash of laws and principles, but not to the point where the federal government feels the need to intervene. Child marriage is simply a traditional convention that has been allowed to subsist within Nigeria.

The authors of this study submits with respect that poverty, ignorance and social instability are other factors why early marriage exists in the society most especially in the Northern part of Nigeria.

2.3 Literature Review

Fayokun¹⁸⁵ explains that child marriage is seen as a fundamental violation of human rights, he also posited that many young girls are married without their free and full consent. The existence of many laws relating to age of a child and adult in Nigeria is quite conflicting leading to complications in adjudication in Child Marriage¹⁸⁶. The effect is the complications in legal issues and difficulty in determining and reconciling vis-à-vis fixing the marriageable age of a girl-child. The author further stressed the problems and prevalence of early child marriage in Nigeria. Fayokun further explains that the rights contained in Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999, as amended encompass the issues that raise concern in the child marriage cases. In the institution of child marriage, the girl child's life is threatened by early pregnancy, her dignity and respect as a person is compromised by the lack of consent and relationship in the age gap between herself and her husband. Thereby, concluding that the right to human dignity, private life which is significant in terms of the right to marry and establish a family are wide enough to void the menace of child marriage.

¹⁸¹ Ibid.

¹⁸² Child Rights Act, 2003, Matrimonial Causes Act, 2004; Electoral Act, 2010.

¹⁸³ Constitution of the Federal Republic of Nigeria, (CFRN), 1999.

¹⁸⁴ Section 24, Child Rights Act, 2003, Section 12, Electoral Act, 2010.

¹⁸⁵ K O Fayokun, 'Legality of Child Marriage in Nigeria and Inhibitions against Realization of Education Rights' (2015) 12 *US-China Law Review* 812.

¹⁸⁶ Ibid.

Furthermore, Fayokun adumbrated the provisions of the Constitution of the Federal Republic of Nigeria in Section 17 (3) (f) and states that the state policy must be directed towards ensuring that children and young persons are protected against any exploitation whatsoever. However, this provision is only contained in the section of the Constitution which is not justiciable¹⁸⁷.

Adeniyi¹⁸⁸ explains that the rights contained in Chapter IV of the constitution encompass the issues that raise concern in the child marriage cases. In the institution of child marriage, the girl child's life is threatened by the early pregnancy, her dignity and respect as a person is compromised by the lack of consent and relationship in the age gap between her and her husband. Thereby, concluding that the right to human dignity, private life which is significant in terms of the right to marry and establish a family are wide enough to void the menace of child marriage. Furthermore, Adeniyi adumbrated the provisions of the Constitution of the Federal Republic of Nigeria in Section 17 (3) (f) and states that the state policy must be directed towards ensuring that children and young persons are protected against any exploitation whatsoever. However, this provision is only contained in the aspect of the law which is not justiciable.¹⁸⁹ Meanwhile, the Author did not explain how the provisions of the law in relation to education of a girl-child under the Chapter Two of the Constitution of the Federal Republic of Nigeria can become justiciable and this study will fill in the gap.

Nwauche¹⁹⁰ argues that where a state fails to domesticate the Child Rights Act, recourse can be sought in the domesticated African Charter on Human and People's Rights through the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act Cap 10 of the Laws of the Federation of Nigeria 1990 for protection of the girl child against child marriage. This is because of the fact that where the requirement of Section 12 (1) of the Constitution is met in relation to an international treaty, such treaty will no longer be treated as international law, it is rather a domestic law.¹⁹¹

Yinka Olomjobi¹⁹² described human rights as rights that are inherent in man. They are inviolable and cannot be derogated upon. Meanwhile, Olomjobi was unable to describe

¹⁸⁷ Chapter Two of the 1999 Constitution of the Federal Republic of Nigeria, as amended.

¹⁸⁸ O O Adeniyi "Legal Protection of the Girl Child against Child Marriage (Aure Yarinya) in Nigeria" (Unpublished) LLD thesis Submitted in the Faculty of Law University of Pretoria (2016) 123.

¹⁸⁹ Ibid, Section 6 (6) (c) of the 1999 Constitution Federal Republic of Nigeria, as amended.

¹⁹⁰ E S Nwauche, 'Civil Questions Involving Customary Law as the Basis of Appellate Jurisdiction in Nigeria (2015) 11 (1) *Acta Universitatis Danubius. Juridica*' 48.

¹⁹¹ Ibid; *Abacha v Fawehinmi* [2001] 51 W.R.N. 29.

¹⁹² Y Olomjobi, *Medical & Health law: 'The Right to Health* (Lagos: Princeton & Associates Publishing Co. Ltd, 2019) 3.

further whether or not these rights are qualified or absolute and it in this vacuum that this study seeks to fill. This is necessary as to discuss the importance of a girl-child rights to make personal decision and rights to education etc.

A renowned Professor of Law, Professor Umozuruike also attempted to define what human right is. He posited that¹⁹³:

Human rights are claim which are invariably supported by law, made on society, especially on its official managers, by individuals or groups on the basis of their humanity. They apply regardless of race, colour, sex or other distinction and may not be withdrawn or denied by governments, people or individuals... they are also rights which every individual claims or aspires to enjoy irrespective of his colour, race, religion or status in life.

Furthermore, Osita Eze posits that¹⁹⁴:

Human rights represents demands or claims which individuals or groups make on society, while some of which are protected by law and have become part of *lex lata* while others remain aspirations to be attained in the future.

It is interesting to observe that the definition of human rights as propounded by Professor Osita Eze is in line with the provisions of the Constitution.¹⁹⁵ Rights protected by law and enforceable can be seen in chapter four while those to become enforceable in the nearest future is expressly provided for in chapter two of the constitution. These ones are not justiciable by virtue of section 6 (3) of the 1999 Constitution of the Federal Republic of Nigeria as amended. As encompassing as this definition is, the scholar did not state how rights to be attained in the future can become enforceable if read together with the ones enforceable. It is in this light that this study will examine the enforceability of the rights justiciable and those unjusticiable under the Nigerian law. This right is apposite because of the vulnerability of a girl-child.

¹⁹³ U O Umozuruike, *The African Charter on Human and People's Rights* (Lagos: Martinus Nijhoff Publishers, 1979) 4.

¹⁹⁴ O Eze cited in O K, Alimi, 'Enforcement of Fundamental Human Rights in Nigeria' (unpublished) LL.B Long Essay Submitted to the Faculty of Law, Lead City University, Ibadan, p. 56.

¹⁹⁵ 1999 Constitution of the Federal Republic of Nigeria, as amended.

Eva Brems¹⁹⁶ also observed that:

When a legally protected interest takes the shape of a fundamental right, a society expresses a desire to grant this interest priority over other interests as a matter of principle. Human rights are as a rule included in constitutions and international treaties and as a result stand on the top of the hierarchy of legal sources. This does not mean that human rights are absolute. Their exercise can be subjected to restrictions that are imposed for the protection of other general or individual interests. The priority of human rights that holds in principle does not hold in every concrete case. A special situation occurs when the right or interest colliding with a certain human right is itself a human right. Such situations are not exceptional.” The question is what states (and international judges) should do when human rights obligations (apparently) collide with each other. How, if at all, can these conflicts be solved? One of the conflicts that is prominent in the literature is the perceived conflict between women’s rights and religious freedom. And what if human rights considerations are perceived to conflict with other important considerations (which in themselves can also be related to human rights) such as considerations pertaining to environmental protection or collective security? When engaging in human rights work – be that practical, scholarly or policy-oriented work – it needs to be kept in mind that human rights obligations can conflict with each other.

The above position of Eze identifies the nexus between women’s right and right to freedom of religion and this nexus shall be examined in the course of this study.

Ayoola¹⁹⁷once observed thus:

The constitution is an organic document, which must be treated as speaking from time to time. It can therefore only describe the fundamental rights and freedoms it guarantees in broad terms. It is for the courts to fill the fundamental rights such as would fulfil their purpose and infuse them with life. A narrow and literal construction of human rights provisions in our constitution can only make the constitution arid in the sphere of human rights. Such approach will retard the realizations, enjoyment and protection of those rights and freedoms, and is unacceptable”. Also, it must be stated that Cicero’s

¹⁹⁶ E Brem (2004) cited in A. Timmer, ‘Concepts of Human Rights, Democracy and Rule of Law’ (unpublished) (2015) 214.

¹⁹⁷ In the case of Fort Royal Homes Ltd and anor. v. EFCC and Anor (2017) LPELR-42807.

immutable natural law gave birth to human rights which down the ages up to the present day have been the hall mark of constitutional provisions on fundamental human rights in different countries¹⁹⁸.

Furthermore, Aguda-Taiwo sees a child as a natural person who is an offspring of another (either by birth or adoption) and may only represent any human being from the moment of birth (in a life state) until the attainment of the age of majority.¹⁹⁹ For instance, the Nigerian Child Rights Act²⁰⁰ is an Act seeking to protect the rights of a child. It is unfortunate that the natural inclination to protect the vulnerable or the innocent such as a child has had to be codified into laws and conventions²⁰¹ mainly because of the violations of children in a manner that destroys the psychological, mental and physical health of a child. These violations include child trafficking, child pornography, child labour and in particular child marriage.

Nwachuku also posited that the legal concept of childhood is not defined by the psychological development of the person as much as his physical development²⁰². For instance, a prima facie evidence of the age of a child is the birth certificate. Thus, in order to determine whether a girl is qualified to be referred to as a child, her age must be considered.

According to Obilade, childhood under the different customary laws in Nigeria is determined by circumstance rather than age.²⁰³ This makes childhood under Nigerian customary laws at best, an amorphous concept. Different criteria are utilized to determine childhood under customary law. Mental capacity is one of such criterion, which relates to sanctions for customary crimes and civil wrongs. This is determined by the ability of the concerned person to confront and solve problems directly without the supervision of an adult²⁰⁴.

Utulu also states that to determine the total direct and indirect effect of traditional practices on the educational development of the girl-child, she found that the highest direct effect was as a result of forced marriage when compared to other forms of unhealthy practices.²⁰⁵ A Research conducted at Al Azhar University in Cairo, has worked to separate specific harmful

¹⁹⁸ Cicero cited in Egwummuo, *Focus on Law and Jurisprudence*, (Enugu: Academic publishing ltd, 2018) 4.

¹⁹⁹ F O Aguda-Taiwo, 'Guardianship and Custody of Children; Customary Perspective' Unpublished Paper Delivered at the Refresher Course for Judges and Kadis on 11th March, 2019 at the National Judicial Institute, Ondo State, 4.

²⁰⁰ Child Rights Act, Laws of the Federation of Nigeria, 2004.

²⁰¹ Convention on the Rights of the Child, 1989.

²⁰² M A Ajanwachuku, 'A Legal Analysis of the Nebulous Concept of Childhood in Nigeria' (2016) 7 *Beijing Law Review* 123.

²⁰³ A O Obilade, *The Nigerian Legal System* (London: Sweet & Maxwell, 1979) 69-81.

²⁰⁴ Ibid.

²⁰⁵ R. E Utulu, 'The impact of traditional practices on the psychological and educational development of the girl-child in Nigeria'. Ph.D Thesis University of Ibadan, Nigeria, (2000) 12.

practices from the assertion that they have their roots in Islam. Al Azhar, a leading center of Islamic teaching, has declared unconditionally that female genital mutilation, for example, has never been part of Islam. and therefore, the concept of child marriage may not go with the position of islam. Meanwhile, this position is more of personal opinion as it has no empirical analysis²⁰⁶.

As Archbishop Desmond Tutu²⁰⁷ has noted, some customs described as religious are not part of religion at all that is, child marriage is not a religious practice it is a tradition. There are many good traditions that bind communities together. But traditions are also not static, they evolve. Traditions that are harmful, that have outlived their purpose, must be challenged²⁰⁸.

Sanusi²⁰⁹ also explains that when girls drop out of school to get married, there is a knock-on effect for the community as a whole, and for future generations. Evidence suggests that children of young, uneducated mothers are less likely to have a good start to their education, do well in class or continue beyond the minimum schooling. Their daughters especially are likely to drop out, marry young and begin the cycle again. Sanusi was also of the view that the school dropout girls in Nigeria somehow become fully dependent on their husband and cannot be self-reliant. It legitimizes the process in which girls gradually lose their ability to make choices in their lives due to having lack of education. Moreover, the way both boys and girls are getting socialized is still problematic in this 21st century because it promotes the gender hierarchies where the sex role socialization of the girls often keep them lagging behind²¹⁰.

V.A Aduayi and O.S Aduayi, O.A Olasode²¹¹ see child marriage as rooted in the cultural traditions of the Hausa-Fulani communities in Northwest Nigeria. Child brides often come from patriarchal societies where parents and elders play very significant or domineering roles in selecting spouses for their children. Strong cultural norms place emphasis on a girl's virginity, which is closely tied to a family honour. Parents are disposed to marrying off their daughters at a very tender age to ensure they marry as virgins and retain the family honour. The practice of child marriage is also strongly followed as a way of protecting the girl child from sexual assault and unwanted extra-marital or teenage pregnancies. That is, given the

²⁰⁶ Ibid.

²⁰⁷ Desmond Tutu cited in R. E Utulu, 'The impact of traditional practices on the psychological and educational development of the girl-child in Nigeria'. Ph.D Thesis University of Ibadan, Nigeria (2000) 23.

²⁰⁸ Ibid.

²⁰⁹ L. Sanusi, National Commission for Mass Literacy, Adult and Non-formal Education (2013) 2 (2) *Nigerian Social Science Journal* 4.

²¹⁰ Ibid.

²¹¹ V A Aduayi and O S Aduayi and O A Olasode, 'Sexual coercion and violence among young women in Nigeria: a northern and southern comparison' (2016) 20 (4) *African Journal of Reproductive Health* 37-43.

facts regarding sexual activities among unmarried children as young as 10 years old. Meanwhile, it is pertinent to note from statistics presented by the former Central Bank Governor, Lamido, that in the part of Nigeria where Wasila comes from, as many as 93% of girls are being denied access to secondary education and up to 70% of women in the twenties (i.e., 20 - 29 years old) are unable to read²¹². Further, among the 7% that enroll in secondary school, it is less than half that completes.

According to Aduradola,²¹³ the followings are the causes of child marriage: Cultural and Social pressure; persecution, forced migration and slavery; financial challenges; politics and financial relationship; religion and child marriage. Poverty and economic transactions; Notions of morality and honour are also major causes of child marriage. Underlying causes of early marriage are many and include poverty, parental desire to prevent sexual relations outside marriage and the fear of rape, a lack of educational or employment opportunities for girls, and traditional notions of the primary role of women and girls as wives and mothers. Poverty, weak legislative frameworks and enforcement, harmful traditional practices, gender discrimination and lack of alternative opportunities for girls (especially education) are all major drivers of child marriage. He further identified weak legislative frameworks and enforcement as one of the major drivers of child marriage²¹⁴.

Amanuel²¹⁵ also opined that for many households, girls are considered a treasure or an option in the fight for survival in such a downing season – by giving a girl in marriage to a rich man that pays well the family can be sustained. This situation can potentially reverse the positive gains towards improved protection of children and a realization of their rights, including the elimination of early, child and forced marriage. Is child marriage that complex? Why does it take so long to eliminate it? Where and how do we break the multigenerational cycle of child marriage?²¹⁶ There must be something that we should do differently or better. Child marriage is not just a social or cultural issue. It is much bigger than that – it is a human rights, survival and development issue. It is not only about the current, but also the future generation. It is rooted in persistent gender inequalities, exacerbated by a recurring cycle of poverty. For

²¹² Ibid.

²¹³ A M Aduradola, 'Child Marriage: Issues, Problems and Challenges' A Paper presented at a One Day Seminar organized by National Open University of Nigeria, Lagos on the 4th September, 2013.

²¹⁴ Ibid.

²¹⁵ Amanuel Teferi Mamo, 'An incisive diagnosis of Child Marriage in Nigeria' published in September 2021 www.savethechildren.org Accessed 15th May, 2022.

²¹⁶ Ibid.

some, a taboo unable to be discussed in public²¹⁷. It is not only a legal matter but also a family and community practice, and gender-inequitable behaviors, norms and attitudes, dictating how girls are treated in society, and impacting on their chances to thrive, survive and be protected²¹⁸. Child marriage is a multi-sectoral and multi-dimensional issue that requires a holistic approach so that an end can be brought to this silent killer of dreams and potentials of millions of girls around the world²¹⁹. This report confirms our previous analysis that child marriage is both a cause and result of poor education of girls in Nigeria, with 10+ million out-of school children in the country, of which over 60% are girls. If a girl is out of school, the likelihood of getting married at an early age is very high. When a girl is married young, she is robbed of her childhood and opportunities to realize her full potential. She has an increased risk of poor health outcomes, having children at a younger age, dropping out of school, experiencing ongoing violence in the home, being restricted in her mobility, left with limited decision-making ability, and earning less over her lifetime²²⁰. Girls in Nigeria are more impacted by inequality and discrimination than boys, and their rights to survive, learn and be protected are unfulfilled and blatantly ignored²²¹.

Envulado²²² also discovers that child marriage in Nigeria is prevalent because of poverty. He used plateau state as a case study. He stressed further that the indicators like level of education of parents, place of residence, religion, father's employment and number of siblings. The author conducted a primary research by distributing questionnaires to school girls. 46% of the girls identify that they were forced by their parents to get married before 18. This is the case for most girls that get married before age 18. Most girls forced into early marriage end up having to care for children when they are still growing. This can lead to a negative ripple effect on mother and child²²³.

Furthermore, According to Musa, Odey and Alhaj,²²⁴they believe that the Covid-19 pandemic serves as one of the major factors contributing to the prevalence of child marriage in Nigeria. The authors in their paper stressed further that unfortunately, in Nigeria, structure and culture

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Ibid.

²²² E Envuladu cited in Eyesan Oyomi Joy, 'the determinant factors for underage in Nigeria', a paper presented to the department of Economics, University of Ottawa, LLM. (unpublished), (2020) 28.

²²³ Ibid.

²²⁴ S S Musa, and Others, 'Early Marriage and Teenage pregnancy: The UNSPOKEN consequences of COVID-19 pandemic in Nigeria' (2021) 2(4) [*Public Health in Practice*](#) 152.

are intertwined, and the ambiguity of the Nigerian Constitution encourages the practice of child marriage. Many factors have been associated with early marriage in Nigeria. Poverty and underdevelopment have been identified as enablers of this deplorable practice, and child marriage is more than twice as likely to occur in rural areas and over three times more common among the poorest demographic: 80% of young women from the poorest families marry in childhood as compared to 10% from the richest²²⁵.

Nigeria's constitution bans child marriages²²⁶, yet also protects religious freedom. According to Sharia law, an individual reaches adulthood at puberty and can be contracted into marriage – advantageous for poor families in rural areas and reducing family responsibilities for the short-term. Cultural norms in northern Nigeria associate a girl's virginity with family honour and suggest early marriages prevent sexual assault, out-of-wedlock pregnancies and family dishonour dominant in patriarchal societies like the Nigerian Islamic Hausa-Fulani tribe that practices Sharia law.

The practice of early marriage is found to be prevalent in Nigeria even before the COVID-19 pandemic. Nigeria has the largest number of child brides in West and Central Africa, at 22 million, accounting for 40% of all child brides in the region, with 18% married by age 15 and 44% married by age 18²²⁷.

Early marriages are common among the North- West Region of Nigeria with more cases in the South-South on the rise as well. Nigeria's child marriage is most prevalent in the North, where the poverty rate is highest, averaging 77%, where child marriage is most prevalent²²⁸. In North-eastern and North-western Nigeria where child marriage is most prevalent, poor educational outcomes, a high rate of out-of-school girls, poverty, insecurity and an anti-Western insurgency encourage the practice.

COVID-19 has made an already difficult situation for millions of girls even worse. Shuttered schools, isolation from friends and support networks, and rising poverty have added fuel to the world was already struggling to put out. While the actual number of girls that have been married since the beginning of the crisis is unknown, pre-COVID data can be used to predict the impact of the pandemic on child marriage in the near future. Women and girls have greatly been affected with the fact that statistics shows increase in rate of pregnancy

²²⁵ Ibid.

²²⁶ Sections 17 (3) (f) and 38 of the 1999 Constitution of the Federal of Nigeria, as amended.

²²⁷ S S Musa, and Others, 'Early Marriage and Teenage pregnancy: The UNSPOKEN consequences of COVID-19 pandemic in Nigeria' (2021) 2(4) *Public Health in Practice* 152.

²²⁸ Ibid.

during the pandemic period, owing largely to the fact that everyone was on lock-down and had nothing doing.

Meanwhile, as lofty as the above position is, the authors were unable to provide a palpable and probable answer as to who impregnated the girls during the pandemic and as to whether they are impregnated by their family members or outsiders during the pandemic. It is these unanswered questions that this study seeks to fill.

Also, Adediran²²⁹ asserts that it is obvious that gender inequality is a major cause when it comes to child marriage issues and if this is overlooked there is a greater risk that more girls will be forced to marry at even tender age. So, it is important that inequality issues are addressed and that girls are taught how to discover and develop their full potential. Parents or people who are cultural or traditional orientated need to get educated on why it is important for equal education between male and female. Any gender role that serves as a limitation for girls needs to be eliminated that way girls can start thinking about fending for themselves in the future rather than depending on a male figure as a source of financial aid. Barriers such as “accessing essential health, economic livelihoods, nutrition and education services”

Jaiyeola and Choga²³⁰, posited that early child marriage is caused by poverty. According to the authors, the highest rate of poverty in Nigeria is seen in the North. Sokoto state has the highest percentage with 86.4%. In the North East the rate is about 77.7% and 76.3% North West and in the Central zone of the North the percentage is on 67.5%. The increase in the rate of unemployment is high in the Northern part of Nigeria because most of the elderly people and high percent of adults are uneducated and the major source of living is farming. That is why scholars have spoken about how the government of Nigeria are allocating the country’s fund and how the system has failed its people. When the country suffers from poor economy, the rate in poverty increases and research has shown that there is over 100 million Nigerians who are surviving on 1 USD per day²³¹.

That is a little over the average population of Nigeria. The inability for families to live an adequate standard of living is part of the major factors enabling early marriage. For poor

²²⁹ O.A. Adediran, ‘Abolition of Child Marriage practice in Nigeria: A case study of girl bride in the Northern part of Nigeria’ (2021) Department of Global Political Studies Bachelor’s in human Rights 21.

²³⁰ Afeez Olalekan and Jaiyeola and Ireen Choga, ‘Assessment of poverty incidence in Northern Nigeria’ (2021) 25(2) *Journal of Poverty* 155.

²³¹ Ibid.

families who are yet to have a three-square meal, it is even harder to provide accommodation, clothing, payment for education materials, health care and so on. These poor families are left with little or no option than to opt for other means without thinking long term of the damage the child might suffer. Poverty not only put strain on people, but it also as well weakens the enforcement of laws and promotes negative traditional practices²³².

According to Alabi²³³, “being born and growing up as a girl in a developing society like Nigeria is almost like a curse due to contempt and ignominy treatment received from the family, the school and the society at large”. It is of very common thinking in Nigeria, and it is safe to say that in most African countries, that women are seen or stereotyped to the private sphere, that is: in the house doing laundry, taking care of the children, cleaning and all other household chores available. Alabi also posited further that education stands in favour of the boys-child than the girls-child due to gender inequality. In the North East and North West of Nigeria, when the primary net attendance for girls was checked, it was discovered that about half of these girls are not enrolled. Although poverty is always seen as a major factor for this, it is important to know that socio-cultural values and negative traditions prevent girls from getting education as well²³⁴ even after getting educated, most companies prefer to employ male staffs compare to females because they believe that women will also take family as priority and pregnancy might lead to leave of absence from work²³⁵. Research has also shown that some companies will only employ females who are ready to ‘woo’ customers with their bodies for the advancement of their business and the act is called “corporate prostitution” It is sad to see that in some societies, women are still seen and treated as objects to solve problems, to multiply the family fold, to take care of the private sphere and are denied the chance at better opportunities rather than for them to be given equal access to what aids the development of humans²³⁶.

2.4 Theoretical Framework

The theories on the subject matter include the following:

The conflict theory is adopted as the theoretical base line for this paper. Child marriage as a social phenomenon is a social problem, menace, and deviant in nature as their activities

²³² Ibid.

²³³ T Alabi and M Bahah, and S O Alabi. The girl-child: ‘A sociological view on the problems of girl-child education in Nigeria’ (2014) 10(2) *European Scientific Journal* 18.

²³⁴ Ibid.

²³⁵ Ibid.

²³⁶ Ibid.

diverge to the behavioural expectations set by the society. This is why the conflict theory emerged to oppose the argument propagated by the functionalist theory which posits that girls who married early are functional in the role they performed for the survival and continuity of the society.

2.4.1 The Conflict Theory

The Conflict theory is a theory that is useful in analyzing child marriage in Nigeria²³⁷. Early child marriage as a special phenomenon is a social problem, menace, and deviant in nature as their activities diverge to the behavioural expectations set by the society. This is why the conflict theory emerged to oppose the argument propagated by the functionalist theory which posits that girls who married early are functional in the role they performed for life survival and continuity of the society.

Marxism, an offshoot of the conflict theory will provide a philosophical starting point on which the conflict theory rest. The basic argument of the Marxian perspective is that poverty in capitalist society is an expression of a system of inequality which is an innate feature of capitalism.

Marx contended seriously that in a capitalist society, wealth, and fame are connected in the few bourgeoisies while the greater part happened to be the proletariat classes are forced to sale their labour and gain salary in return. Dahrendorf²³⁸ adopted Karl Marx idea of class conflict and Max Weber approval of power as an important constituent of stratification come up with his idea of modern capitalism which he argued that top executive at the helm of government and private organizations are also powerful groups of exploiters that can facilitate inequality in the society.

Gent and Mills²³⁹ employed the Marxist approaches to explain how social stratification influences social behaviours such as early child marriage in the society. They also contended that early child marriage is the outcome of the differential in opportunities and life change people experience in the society. Meaning, the inability of the society to provide equal access to opportunities for all to make available for themselves the material goods and positive

²³⁷ Yusuf Rakiya, Street Begging Practices in Nigeria: A Conceptual Review, https://www.researchgate.net/publication/357909135_STREET_BEGGING_PRACTICES_IN_NIGERIA_A_CONCEPTUAL_REVIEW Accessed 25th December. 2022.

²³⁸ Dahrendorf cited in Haralambos and Holborn, *Sociology: Themes and Perspectives* (London: HaperCollins Publishers Limited, 2004), 22.

²³⁹ Cited in A.O. Fawole, D. Ogunkan et al, The Menace of Begging in Nigeria Cities: A sociological Analysis. (2011) 3, (1), *International Journal of Sociology and Anthropology*, 9-14.

living result to early child marriage. By implication, the existence of early child marriage in Nigeria is the aftermath of inequality generated by the political elite.

2.4.2 Radical feminist theory²⁴⁰

The basic tenets of this theory are somewhat reminiscent of Second-Wave Feminists' ideology of the early 1960s, with the pioneer work of Betty Friedan titled 'The Feminine Mystique', forming the foundation to radical feminist thoughts.²⁴¹

Although both perspectives advocate the necessity for women emancipation and redemption of crime and its etiologies, radical feminist theory emerged in the 1970s with its central focus on patriarchy the "set of hierarchical relations between men, and solidarity between them, which enables them to control women"²⁴². In its broader conception, patriarchy refers to "a power relationship inherent in the structures and social relations within which the subordination and exploitation of women occur and it is used to explain the institutionalization of male power and domination over women."²⁴³ At the heart of many feminists²⁴⁴ is the question: 'and what about the women'? In paraphrasing and situating this question within the context of this research, the researchers then ask: Why the subjection of women/ girls to servitude as a result of child marriage in order to sustain their respective families? To explain this, advocates of feminist theory affirmed that "the situation of women is as the consequence of a direct power relationship between men and women in whom men have fundamental and concrete interests in controlling, using and oppressing women with practice of domination as rooted in patriarchy"²⁴⁵. . Apparent from the thoughts of these scholars is the fact that domination and the menace of child marriage are clandestine and socio-economic organized crimes with cultural and religious inducement and overtone. They are sister social problems to watch in modern Nigeria.

²⁴⁰ [Mary Juachi Eteng](#), [Macpherson Uchenna Nnam](#), [Innocent Nwosu](#), [Emmanuel Chimezie Eyisi](#), Gender and modern-day slavery in Nigeria: A critical analysis of baby factory and terrorism, [Aggression and Violent Behavior](#) (2021) 58(3), 101.

²⁴¹ J. Mistique, [Poverty and Youth Migration Out of Nigeria: , Enthronement of Modern Slavery](#), (1963), 29.

²⁴² T. Hartmann [Transnational Organised Crimes: An Assessment of Human Trafficking and the Challenges Militating against a Total Elimination in Nigeria](#), (1981), 368.

²⁴³ A. Walby. [The use of women and children in suicide bombing by the Boko Haram terrorist group in Nigeria](#), (1980), 173-201.

²⁴⁴ B. Ritzer, [Poverty and Youth Migration Out of Nigeria: , Enthronement of Modern Slavery](#), 2011, 11.

²⁴⁵ Ibid.

Their ideas explain how the perpetrators who are for the most part-men make women more vulnerable to different kinds of slavery or engage in slave-like activities like child marriage, which is often precipitated by the institution of patriarchy.

Women are everywhere violently oppressed by the system of patriarchal arrangements and gender system of domination and subordination²⁴⁶. Since patriarchy describes the dominance of men in social and cultural systems, it also determines class structures, economic and power relations, as well as who to use as slaves under any guise. Marginal and relative poverty, social exclusion, alienation and inequalities as structural violence are believed to thrive in patriarchal cultures, with children and female populations bearing the brunt of it all. It is no wonder therefore, that victims of child marriage begging are predominantly young girls and women who may either be constrained by these indices of patriarchy to indulge in child marriage business for sustenance. Due to the fact that culture, tradition, religion, social status, and norms and values (laws) are directly or indirectly influenced by this system, it would be more difficult for people who engage in child marriage to withdraw from child marriage practice.²⁴⁷

Radical feminist theory is important to the study of early child marriage and consequent sexual exploitation of girls by hoodlums and others who may take advantage of young girls all in the name of child marriage. At its core, the theory encapsulates the thrust and kernel of the discourse in some depth, directly linking the practices to disrespect, hatred, control, abuse and violence against humanity. For radical feminists, patriarchy is the least noticed yet the most significant structure of social inequality; it is an act of violence practiced by men and by male-dominated organizations against women in complex practices of exploitation and control.

2.4.3 CLADEA/Human Dignity Theory

This theory is also known as “Human Dignity Theory”. It states that every person should be respected and should not be subjected to any form of human denigration. Over the years, it has been observed that an act of child marriage is a form of inhuman treatment. The prevalence of is unconnected with the fact that people want to survive and reduce a level of poverty in their lives.

²⁴⁶ Lerner 1986, [Exploring socio-demographic factors, avoiding being a victim and fear of crime in a Nigerian university](#), (1986), 28.

²⁴⁷ Namel et al, , *Comparative Analysis of Child Sexual Abuse and Terrorism in Rural Areas - Case Study*, (2018), 28.

Mea & Sims²⁴⁸ defined Human Dignity as the idea that every human being has a transcendent value that resides within his or her essence. They see it as an indispensable aspect of humanity. For them, humans are the ends in themselves, and as individuals, they have a right to treatment that reflects a deep respect for their human rights. Human Dignity is defined as the ability to establish a sense of self-worth and self-respect as well as the ability to respect others²⁴⁹. Similarly, Lee²⁵⁰ sees dignity as the state of being treated with respect or honour, with a sense of self-worthiness and self-esteem. Pirson²⁵¹ explains that the concept arises from the universal vulnerabilities' human beings experience through life and that people will earn dignity through their actions. Later, Pirson et al.²⁵² state that human dignity is inherent and universal. Kipper²⁵³ sees human dignity as a matter that affects every human being. This issue transcends all other levels of social analysis, as being an equal member in the realm of subjects and authorities of justification. Melé²⁵⁴ explains that human dignity is the idea that every human person is worthy of esteem, honour, and respect. Bolton (2007) and Sayer²⁵⁵ share ideas about dignity; their concept of human dignity is an ultimate value for understanding the conditions of work and labour. Also, human dignity is a subjective experience of well-being, contingent on the collective sum of (inter) individual experiences of values. They also stated that it serves as a common ground in our efforts to identify and secure humanity's local to global common interests in an increasingly interconnected world. Finally, the International Labour Organization (ILO, 1974) defines dignity as a fundamental human right. ILO states that all human beings, irrespective of race, creed, or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security, and equal opportunity.

This theory is relevant to this study because people who engage in child marriage are subjected to servitude and slavery as a result of poverty and finding a means to survive by all means.

²⁴⁸ W.J. Mea, & R. R. Sims, Human dignity-centered business ethics: A conceptual framework for business leaders. (2019), 160 (1), *Journal of Business Ethics*, 53-69.

²⁴⁹ M. Pirson, *Humanistic Management: Protecting Dignity and Promoting Well-Being*. (Cambridge: Cambridge University Press, 2017), 32.

²⁵⁰ M.Y.K Lee, Universal human dignity: Some reflections in the Asian context. (2008), 3(1), *Asian Journal of Comparative Law*, 1–33.

²⁵¹ M. Pirson, *Humanistic Management: Protecting Dignity and Promoting Well-Being*, (Cambridge: Cambridge University Press, 2017), 16.

²⁵² Ibid.

²⁵³ K. Kipper, Aligning civic and corporate leadership with human dignity: activism at the intersection of business and government. (2017) 146(1), *Journal of Business Ethics*, 125-133.

²⁵⁴ D. Melé, 'Scholastic thought and business ethics: An overview. In C. Lütge, *Handbook of the philosophical foundations of business ethics*, (2013), 133–158.

²⁵⁵ A. Sayer, *Dignity at work: Broadening the agenda*. Organization, (2007), 14, 565–581.

2.4.4 Participatory Development Theory

Participatory development theory has long been a widely applied theory in developmental issues²⁵⁶. Though its intellectual origins may be traced to the notion of development conceived and popularized by Mahatma Gandhi in India even decades before independence in 1947, various institutions and agencies in the advanced capitalist countries tried to offer a recipe for development in the post-war period under various themes like community development programme, rural development etc.²⁵⁷ Many Third World governments also sought to incorporate the framework of this development formula into their socio-economic programmes and policies. The concept of participatory development got further momentum when the global financial institutions and agencies such as the World Bank promoted "basic needs approach in development. Even as such attempts were underway, many began to argue that participatory development could emerge as a "radical alternative" to the mainstream growth path. The ascendancy of the concept in recent years, however, must be situated in the paradigmatic shift in development strategy, which is integrally linked with the transition in the international political economy from Keynesianism to monetarism/neoliberalism. Participatory development model developed by Aderonmu²⁵⁸ can be explained from three perspectives. The first perspective views legal framework on child marriage as the third of three-legged stool, complementing the state as pillars of any recognised and well-functioning society. The legal framework perspective serves as the space in which citizens understand the rules that governs their environment. This perspective helps them to organise themselves on a voluntary basis to promote shared values and objectives by adhering to the rules and tenets of the society. Thus, the legislature as one of the tiers of government in Nigeria is seen here as essential to proper functioning of a democratic society and the growth of social capital. The type of law they make in the society determines how democratic that society will be. A related view to this perspective is the one that sees Legislature who makes law as one of the five pillars of democracy, along with the Executive, The Judiciary, Non-Governmental organizations and the Independent Media. This view provides a good governance perspective on the role of legislative duties and laws governing street begging in Nigeria. The second perspective of development theory views Non-governmental organizations, governmental parastatals and other social groups which cater for the needs and welfare of vulnerable

²⁵⁶ P.O. Ebigbo, *The Core Child Abuse and Neglect in Nigeria*, *Children Youth and Enviroments* 13(1), Spring 2003.

²⁵⁷ *Ibid.*

²⁵⁸ A.D. Aderonmu, *The street children in Nigeria: Social problem and social policy in Nigeria*, (Lagos: Olubamese Printers, 2013), 14.

people in the society as a constellation of organisations that are actively engaged in development programmes and operations.

From this perspective, the groups mentioned above because of their diversity, are rich in values and provide opportunities for donors, government, citizens and development practitioners, to identify partners with whom to engage in the pursuit of development objectives and public goods. The third approach focuses on non-governmental organisations from a human right perspective, seeing it as a mechanism for the social empowerment of particular classes of society, such as the poor and dispossessed, women and ethnic group, among others.

Although these three perspectives seem to differ, they are complementary, and all emphasise the three general categories of normative roles played by both governmental agencies and non-governmental organisations. Meanwhile, the emergence of the concept of participatory development, that is, development that is conceived not only as society centered²⁵⁹ but also a democratic and people-centered²⁶⁰, has also led to the redefinition of the roles of law in reducing child marriage in Nigeria.

Applying the above theory to the study, especially the first perspective, the theory presumes that legal framework which makes man's actions to be predictable should be updated in reducing the menace of child marriage in Nigeria. Also, in the protection of the vulnerable people which includes women and children in the society the role of laws is pivotal.

2.4.5 Agenda Setting Theory

This theory was proposed in 1972 by Maxwell McCombs and Donald L. Shaw²⁶¹. According to the theory, the news media shapes public opinion, and it aims to characterize the news media's ability to influence the prominence of problems on the public agenda. To put it another way, if a news story is reported frequently and prominently, the audience will regard the topic as more important. It also follows that one of the ways to discourage the menace of child marriage in Nigeria is the use of media. Furthermore, a cognitive process known as accessibility facilitates agenda-setting.

The media provides the most relevant food for thought, portrays major societal issues, and reflects people's opinions and one of the major issues is the menace of child marriage. This

²⁵⁹ E. Pieterse, *Social problems & Social Issues in Nigeria* (Port Harcourt: Sij Publishers, 2003). 12.

²⁶⁰ A. Burkey, Long – term consequences of childhood physical abuse. (1993), 114(1), *Psychological Bulletin*, 68-79.

²⁶¹ N. Agbor, *The street children in Nigeria: Social problem and social policy in Nigeria*. (Lagos: Olubamese Printers, 2021) 12.

theory creates an awareness among the people about how the menace can be drastically reduced and the disadvantages that come with it.

As a result, the agenda-setting theory emerged, which holds that the media sets the agenda for what people should do about the menace of child marriage in Nigeria. The agenda setting theory is a critical theory not only in mass communication, but also in allied social science and law fields like sociology, psychology and other political communication²⁶². According to the agenda setting theory, the mass media lacks the ability to establish the public agenda, particularly in terms of opinions and attitudes²⁶³. The mass media, on the other hand, has a unique ability to influence or contribute to the audience's perceptions, values, focus, and priorities on the menace of child marriage. Furthermore, the amount of time spent on an issue and the information delivered in a news story, as well as the story's placement, impact how much a reader or listener knows about the problem's relevance. Agenda setting suggests that the media define what topics are deemed significant at a particular time in a given society; it does not ascribe to the media the authority to influence what we actually think, but it does ascribe to them the power to dictate what we are thinking about²⁶⁴. Furthermore, the basic reality behind this notion is that it aids in prioritizing societal events and assisting people in pounding or reflecting on them.

The main criticisms of agenda setting theory²⁶⁵, according to Shraddha, are that media users are not perfect, that people may not pay attention to details, that the theory does not work for people who have already made up their minds, that media cannot cause problems, that media can only change the level of awareness, priorities, and importance, and that it is difficult to measure²⁶⁶.

Furthermore, the agenda-setting theory is based on two main assumptions: the media filters and modifies what we see rather than just relaying news to the audience, and the more attention the media pays to an issue, the more likely the public considers it to be important.²⁶⁷ In other words, the media are not telling us what to think or how we should feel about a menace or a cankerworm like street begging which has eaten deep into the fabric of the society but are giving us certain stories or issues that people should think more about.

²⁶² Ibid.

²⁶³ P.O. Ebigbo, *The Core Child Abuse and Neglect in Nigeria*, *Children Youth and Enviroments* 13(1), Spring 2003, 1.

²⁶⁴ Ibid.

²⁶⁵ P. Danesty & F. Okediran, *Street Children: The Core Child Abuse and Neglect in Nigeria*, *Children Youth and Environments* 13(1), Spring 2003, 31.

²⁶⁶ Cited in A. Shraddha, *The street children in Nigeria: Social problem and social policy in Nigeria*, (Lagos: Olubamese Printers, 2021), 12.

²⁶⁷ Ibid.

There is psychological and scientific merit to the agenda-setting theory. The more a story is publicized in the mass media, the more it becomes conspicuously stored in individuals' memories when they are asked to recall it, even if it doesn't specifically affect them or register as a prominent issue in their minds.

2.4.6 Framing Theory

The study is anchored on Framing Theory. This theory is believed to have been popularised by Erving Goffman in 1974²⁶⁸. Frame theory is an expansion of the agenda setting theory of the press. The theory, besides accepting that the media focuses attention on certain issues they consider topical and thereby drawing the attention of the masses to it, also posits that the way, manner and language with which such issue is presented to the masses largely influence the masses perception of it ⁸³. In essence, framing theory opined that how a matter is presented to the audience influences the choices they make about such a subject matter ⁸⁴. The theory suggests that people interpret what is going on around their world through their primary framework. These primary frames are made up of natural and social frames through which an individual is able to interpret the communication stimuli coming his way on a daily basis. The theory makes four major assumptions: journalists select the topics they will present and still bear the professional responsibility of deciding how the selected topics would be presented to the audience. This means that framing theory believes that the media not only determines the issues audience think about but also influences how the audience think about the issue; and interpret information through their own frame. Audience frames may overlap or contradict the media frames, media frames are reinforced every time they are evoked, whether positively or negatively and frame building is a systematic process that occurs over time.

Therefore, frame is simply the way a communication source defines and constructs any piece of communicated information or message with a view to subtly swaying the mind of the audience towards a predetermined sentiment. The theory is relevant to this study because the framing of newspapers on Covid-19 is a major factor that can either make or mar the individual and collective efforts to contain the virus in Nigeria.

The theory that this study relies upon is known as CLADEA Theory or Human Dignity Theory. This is unconnected with the fact that this theory states that every person should be respected and should not be subjected to any form of human denigration. Over the years, it

²⁶⁸ Ibid.

has been observed that an act of child marriage is a form of human denigration. The prevalence of child marriage is unconnected with the fact that people want to survive and reduce a level of poverty in their lives. Child marriage is also not gender-bias as it affects both men and women in the society. It also encourages child labour and every other vices in the society.

2.5. Theoretical Review

A lot of scholars have written extensively on child marriage and the roles of governmental policies and law in curbing it in Nigeria but there is no enough juristic ink on the palpable solutions to the menace of child marriage in Nigeria.

It is interesting to observe that child marriage among school students have psychologically imposed other problems such as sex networking behaviours, juvenile delinquent behaviours which takes much of the student school time that necessitated the poor academic performance and drop out syndrome noticed among students²⁶⁹. Nevertheless, they also lamented that the maternal and paternal deprivation of the essential needs of the young students have prompted their poor performance in public examinations such as West African Examination Council (WAEC), National Examination Council (NECO) and joint Admission and Matriculation Board (JAMB).

Furthermore, NGOs and Humanitarian Departments are increasingly significant in youth development as they provide employment opportunities, vocational skill opportunities²⁷⁰, humanitarian relief, policy formulation and advocacy training, income generation²⁷¹ means women empowerment opportunities (Division for the Advancement of Women [DAW], 2004), healthcare development and promotion²⁷² volunteer work such as participating in cultural programmes, education programmes, awareness creation and campaigns on issues of concern²⁷³. NGOs provides platforms for youth well-being and resilience. Through relating with these organisations, youths learn the art of mood management, self-awareness, empathy, self-motivation and handling relationships (Including social competence). Youths learn critical thinking skills, creativity and problem-solving techniques. It further promotes youth

²⁶⁹ P. Danesty & F. Okediran, *Street Children: The Core Child Abuse and Neglect in Nigeria*, *Children Youth and Environments* 13(1), Spring 2003.

²⁷⁰ Fischer & Fischer, "Child Labor: A Review" (The World Bank, 2004) 6.

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ N.Hoyano & V. Kenan. *Gender differences in knowledge and attitude towards street hawking among rural resident parents* (Ibadan: Royal People Nigeria, 2007).

attitude toward policy making, civic and political engagements such as the understanding of governance systems and processes including voicing their views, politics, campaigns and protests²⁷⁴

Nmom, in his book interpreting social problems and public issues in Nigeria²⁷⁵, contended that while poverty is often postulated as the principal cause of forcing children into child labour, a lack of social services at home, a lack of good housing, inadequate food and health care service, combine to compel parents to send their children into street begging and children labour. According to Crosson²⁷⁶ there is a link between parents with marginal incomes and the imperative to push children into work so as to supplement family income. This view is supported by Bass,²⁷⁷ Binder and Sorgin²⁷⁸ who hold that children of poor families have to help generate family incomes and compensate for economic discrepancies in society, particularly as the gap between the 'have' and 'have not' has grown in recent years. In such situations, poverty breeds poverty. A 2003 ILO survey of child marriage in Nigeria identified eight causation factors. These are cultural influence, economic problems, national debt, low education, unemployment/inability to cope, street life and single parent's families, with the last three factors exacerbating poverty²⁷⁹. Hoyano and Keenan²⁸⁰ opined that people who migrate from rural areas to urban centres in search of better prospects are often ill prepared for urban life and therefore forced to either use their children or other children to enhance their economic situation. Effects of begging on the street amongst Underage Children Research has identified the inherent hazards and risks that children are exposed to child marriage. The physical consequences range from malnourishment, disease, musculoskeletal disorders from heavy labour, physical and sexual abuse²⁸¹, injuries, and exposure to toxic agents.²⁸² Socially, children can experience negative effects on their

²⁷⁴ Ibid.

²⁷⁵ P.C. Nmom, *Social problems & Social Issues in Nigeria* (Port Harcourt: Sij Publishers, 2003), 45.

²⁷⁶ T.C. Crosson, *Understanding Child abuse and neglect* (Boston: Ma Pearson Education, 2008), 21.

²⁷⁷ O.C. Charles, Family of Child labour: A Study of child Hawkers in Calabar. (2004), 4 (1), *J. Soc. Dev. Afr.*, 12-21.

²⁷⁸ R.R. Sorgin, Long – term consequences of childhood physical abuse. (1993), 114(1), *Psychological Bulletin*,: 68-79.

²⁷⁹ Y. Oruwari Children and the Built Environment in Nigeria who should depend their Interests in Housing Provisions. (Port-Harcourt: Hisis Press, 1996), 47.

²⁸⁰ N.Hoyano & V. Kenan . Gender differences in knowledge and attitude towards street hawking among rural resident parents Ibadan: Royal People Nigeria, (2007), 89.

²⁸¹ Ibid.

²⁸² Ibid

educational development and performance. Illiteracy, low school attendance, and low enrolment have developmental and performance implications and have been attributed to children's economic participation.²⁸³ The physical and health consequences of children participating in the sales and service sector have been identified in Latin America, Asia and Africa and include various diseases such as respiratory problems, injuries, rape and molestation, malnourishment, extortion of income, police harassment and participation in harmful or delinquent activities. Amin submitted that children engaged in the sales and service sector of the labour market also encounter problems related to their psychological well-being. Stigmatization by the press and public, feelings of disheartenment, stress and irritability, personality disorders, anti-social behaviour, alienation, and isolation from their family have all been identified.²⁸⁴ Similar to other sectors of children's employment, street begging in less developed countries has a negative effect on the level of education attained, school attendance, grades, literacy, lecture time, and overall human capital formation.²⁸⁵ There was a belief that child marriage prepares the children for adult roles, this belief does not take cognizance of the fact that the children are exposed to numerous hazards ranging from physical violence to risk not to be educated. The most troubling, perhaps, is the fact that some are sexually exploited and forced into prostitution with the risk of unwanted pregnancies and contracting sexually transmitted infections (including HIV). The physical and health consequences of children participating in child marriage in Latin America, Asia and Africa include diseases (respiratory problems) injuries, rape and molestation, malnourishment, extortion of income, police harassment and participation in harmful or delinquent activities. Such children may face robbery, inadequate sleep due to fatigue and long hours on the job and confinement in juvenile homes.²⁸⁶ In a study conducted in Asia, child labour was found to negatively affect the educational outcomes of children.²⁸⁷ In Africa,

²⁸³ Y. Oruwari, *Children and the Built Environment in Nigeria who should depend their Interests in Housing Provisions*. (Port-Harcourt: Hisis Press, 1996), 10.

²⁸⁴ B. Oloko, *Children's work in urban Nigeria: A case study of young Lagos street traders*. UNICEF Staff Working Paper, (1989), 19-30.

²⁸⁵ M. Nwabueze, *The street children in Nigeria: Social problem and social policy in Nigeria*, (Lagos: Olubamese Printers, 1992).

²⁸⁶ Ibid.

²⁸⁷ R.R. Malinosky, D.S. Hansan. Long – term consequences of childhood physical abuse. (1993), 114(1), *Psychological Bulletin*, 68-79.

and particularly in rural Nigeria, it has been observed that child labourers generally have lower school attendance.²⁸⁸

2.6 Summary and Gaps in Literature

This section covered the summary and the gaps identified in literature in area of child marriage in Nigeria. The areas include conceptual, theoretical and empirical literatures that are related to the discourse. Existing literature that is relevant for the broadening of the understanding of the independent and dependent variables for the study were reviewed. Numerous literatures were reviewed to explain the definitions, characteristics, advantages and disadvantages of each of the variables and developed definition for the respective concepts of the study. For the empirics, the findings of various researchers were reviewed based on the context and methods to give explanation on how the variables of the menace of child marriage interacted with firm resilience along the study's objectives. Theories that are relevant for explaining the interaction between the independent and dependent variables for this study were adequately reviewed the numerous genetic, neurobiological, social, legal, developmental, and psychosocial factors. The review revealed how each of the theories relates to the interaction between the independent and dependent variables of this study.

2.6.1 Summary of Literature

Existing empirical studies were reviewed on child marriage; articles were reviewed in line with the study findings. Some of these literatures revealed a positive relationship while some were a negative relationship. One of the reasons for this review was to examine the findings of previous studies and build up on the previous findings which would be relevant for discussing the findings of this study later.

2.7 Conclusion

From the discourse above, we have been able to establish that there is no uniformity in the existing legal framework governing child marriage in Nigeria. We have also explained the complexities involved in any attempt to punish and criminalize the violation of the Child Rights Act, 2003. This paper has been able to highlight the provisions of Islamic law on the subject matter and emphasis was laid on the fact that setting a minimum marriage age at 18 years does not contradict Islamic laws and traditions. The problem associated with child

²⁸⁸ B. Ogunjimi, Children's work in urban Nigeria: A case study of young Lagos street traders. UNICEF Staff Working Paper, 4: 19-30.

marriage is enormous and multidimensional. According to the United Nations Children Education Fund (UNICEF), childhood means more than just the space between birth and the attainment of adulthood; it refers to the state and condition of a child's life and the quality of those years. The choice of when and who to marry is an important adulthood decision which no other person should be permitted to do for one. It should be a free, informed choice not one entrenched in coercion, manipulation, fear or undue pressure. The quality and standard of life which a child lives contributes and influences their adult life.

Furthermore, the concept of child marriage is derived from diverse age-long practices and beliefs. In a study carried out by Mobolaji, Fatusi, & Adedini,²⁸⁹ it was discovered that girl-child marriage prevalence differs considerably among girls aged 15–19 years from different ethnic groups in Nigeria. On the one hand, it was found that the level of girl-child marriage among the Hausa/Fulani – the major Northern ethnic group – to be about 15–18 times higher than that of the Southern major ethnic groups (Yoruba and Igbo). This finding accords with previous reports of a higher girl-child marriage rate in Northern Nigeria compared to the South²⁹⁰ and among the Hausa/Fulani compared to other major tribes.²⁹¹ The high rate of girl-child marriage among the Hausa/Fulani is promoted, among others, by parents' betrothal of their daughters in order to sustain family alliance, seal up friendship, fulfil a promise or appreciate their benefactor.²⁹² This cultural practice permits parents or guardians to betroth a girl-child – usually from childhood or at puberty age without her consent – to an individual who had previously provided financial or otherwise support to the family. On the other hand, such practice is less pronounced among the major southern ethnic groups, hence, the low prevalence of child marriage in the southern region.

Nigeria is also a multi-religious society with three major divisions – Islam (53.5%), Christianity (45.9%), adherents of Nigeria's indigenous religions and others (6.0%).²⁹³ Religious beliefs have a significant role in shaping gender-related behaviours and practices.

²⁸⁹Mobolaji, J.W., Fatusi, A.O. & Adedini, S.A. "Ethnicity, religious affiliation and girl-child marriage: a cross-sectional study of nationally representative sample of female adolescents in Nigeria." (2020) 20 *BMC Public Health* 583 <https://doi.org/10.1186/s12889-020-08714-5> accessed on 2nd November 2023.

²⁹⁰Adebowale SA, Fagbamigbe FA, Okareh TO, Lawal GO. "Survival analysis of timing of first marriage among women of reproductive age in Nigeria: regional differences." (2012) 16 (4) *Afr J of Reproductive Health* 95-107.

²⁹¹Adebowale SA. "Dynamics of child marriage and marital timing in Nigeria: Retrogression or progression?" (2018) *Health Care Women Int.* 1-19 <https://doi.org/10.1080/07399332.2018.1490742> Accessed on March 8, 2023

²⁹² Allen AA, Adekola PO. "Health Implication of Child Marriage in North-East Nigeria." (2017) 7 (1) *Analele Universitatii Din Oradea, Seria Geografie Year XXVII* 54–61.

²⁹³ Central Intelligence Agency [CIA]. Demographics of Nigeria. The World Fact Book. Accessed March 6, 2020 at https://www.cia.gov/library/publications/the-world-factbook/geos/print_ni.html cited in Mobolaji et al (note 24) above.

Nigeria's geo-political zones, interestingly, are characterized by an interplay of religion and cultural values; religion may be associated with the sociocultural framing of gender norms and girl-child marriage practices.²⁹⁴

Though not limited to one religious group, available evidence reveals that child marriage is more prevalent in Muslim communities.²⁹⁵ This is associated with the belief among the conservative Muslims that Quran allows girl's marriage at any age, and Prophet Muhammad's wife was nine years at marriage.²⁹⁶ In Nigeria, the Northern States refusing domestication of

Nigeria's Child Rights Act are Muslim dominated and are reacting to protect their ethno-religious standpoint on child marriage. There is however a contrary perspective by other Muslims who argue that a girl-child should attain puberty and emotional maturity before marriage.²⁹⁷

²⁹⁴ Wall LL. "Dead mothers and injured wives: the social context of maternal morbidity and mortality among the Hausa of northern Nigeria." (1998) 29 (4)*Stud Fam Plan* 341–59.

"Child marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the protection of children against child marriage," (2014) 2 (8) *AHRLJ* 24 Available at <http://www.saflii.org/za/journals/AHRLJ/2014/24.html>. Cited in Mobolaji et al (note 24) above.

²⁹⁵ Sisters in Islam [SIS]. "Child Marriage: Its Relationship with Religion, Culture and Patriarchy. National Report: Malaysia."(2018) *Asian-Pacific Resource and Research Centre for Women [ARROW]*. 1–60. Accessed February 4, 2020 at <https://arrow.org.my/wp-content/uploads/2018/03/National-Report-Child-Marriage-Single-Page.pdf>. Cited in Mobolaji et al (note 24) above.

Ayiga N, Rampagane V. "Determinants of age at first marriage in sub-Saharan Africa: a comparative study of Uganda and South Africa." (2013) 28 (1) *J SocDev Africa Harare*9–34.

²⁹⁶ Child marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the protection of children against child marriage (Chapter 8 Vol 2) [2014] *AHRLJ* 24. Accessed September 16, 2019 at <http://www.saflii.org/za/journals/AHRLJ/2014/24.html>.

²⁹⁷ Sisters in Islam [SIS]. "Child Marriage: Its Relationship with Religion, Culture and Patriarchy."(2018) *National Report: Malaysia. Asian-Pacific Resource and Research Centre for Women [ARROW]*. Malaysia. 1–60. Accessed 4th February, 2020 at <https://arrow.org.my/wp-content/uploads/2018/03/National-Report-Child-Marriage-Single-Page.pdf> Cited in Mobolaji et al (note 24) above.

Chapter 3

Overview of the Legal and Regulatory Framework of Child Marriage In Nigeria

Nigeria is a patriarchal society. A patriarchal society is defined as a system of male authority which oppresses women through its social, political and economic institutions.²⁹⁸ In any of the historical forms that patriarchal society takes, whether it is feudal, capitalist or socialist, a sex-gender system and a system of economic discrimination operate simultaneously. Patriarchy has power from men's greater access to, and mediation of, the resources and rewards of authority structures inside and outside the home.²⁹⁹ Child marriage in Nigeria is greatly enabled by this patriarchal society. However, in recent times, different laws and guidelines have been put in place to protect the sanctity, purity and molestation of children.

²⁹⁸Durojaye, E. "Woman but not human": Widowhood practices and human rights violations in Nigeria. , (2013). *International Journal of Law, Policy and the Family*27, 176–196

²⁹⁹ Horn, P. Where is feminism now? *Agenda, Women in Local Government*, (1995) 26, 71–74

While these laws could be exploited for loopholes, it has greatly prevented cases of child marriages in Nigeria and provided succour for victims.

3.1 The Constitution of the Federal Republic of Nigeria, 1999 As Amended

It is imperative to note that in the hierarchy of laws in Nigeria, the Constitution is the most superior as provided in Section 1 (1),³⁰⁰ the Constitution further provides that where any law is inconsistent with the provisions of the Constitution, such law shall be rendered void to the extent of its inconsistency.³⁰¹ Item 61, Second Schedule, Par 1 of the said constitution³⁰² further provides that statutory marriage are matters reserved for the regulation of the National Assembly.³⁰³ Thus, the provision of Marriage Act and the Matrimonial Causes Act regulates the statutory marriage while the provision of the Child Rights Act will be applicable alongside the Marriage Act to regulate age of marriage.³⁰⁴ Thus, it can be said that the Constitution of Nigeria acts as an enabling law to empower the National Assembly to make laws to include laws which are capable of eradicating early child marriage.³⁰⁵ However, the constitution failed to cover the field when it excluded the Customary Marriage and Islamic marriage from the exclusive list. Hence, the inability to have a unified position on the validity or otherwise of child marriage. As a way of advocating for the protection of the girl-child against early marriage, Adeniyi³⁰⁶ explains that the rights contained in Chapter IV of the constitution encompass the issues that raise concern in the child marriage cases. In the institution of child marriage, the girl child's life is threatened by the early pregnancy, her dignity and respect as a person is compromised by the lack of consent and relationship in the age gap between her and her husband³⁰⁷. Thereby, concluding that the right to human dignity, private life which is significant in terms of the right to marry and establish a family are wide enough to void the menace of child marriage.³⁰⁸ Further, the Constitution in Section 17 (3)

³⁰⁰ Constitution of the Federal Republic of Nigeria (CFRN) 1999.

³⁰¹ Ibid, Section 1 (3).

³⁰² Ibid.

³⁰³ Being a matter contained in the Exclusive Legislative list.

³⁰⁴ Prohibits any person under the age of 18 years from being capable of contracting a valid marriage, and accordingly a marriage so contracted is null and void and of no effect whatsoever.

³⁰⁵ The powers of the National Assembly to make laws for the good governance of Nigeria or any part thereof in Section 4, Constitution of the Federal Republic of Nigeria is apposite here.

³⁰⁶ O O Adeniyi "Legal Protection of the Girl Child against Child Marriage (Aure Yarinya) in Nigeria" (Unpublished) LLD thesis Submitted in the Faculty of Law University of Pretoria, 2016, 123.

³⁰⁷ Ibid.

³⁰⁸ Ibid.

(f)³⁰⁹ provides that the state policy must be directed towards ensuring that children and young persons are protected against any exploitation whatsoever. However, this provision is only contained in the aspect of the law which is not justiciable.³¹⁰

Furthermore, the Constitution of the Federal Republic of Nigeria, 1999 guarantees certain fundamental rights to every person including children. These rights are contained in Chapter IV of the Constitution.³¹¹

These include:

- (a) The Right to life (S.33)
- (b) The Right to dignity of the human person (S.34)
- (c) The Right to personal liberty (S.35)
- (d) The Right to fair-hearing (S.36)
- (e) The Right to privacy and family life (S.37)
- (f) The Right to freedom of thought, conscience and religion (S.38)
- (g) The Right to freedom of expression and the press (S.39)
- (h) The Right to peaceful assembly and association (S.40)
- (i) The Right to freedom of movement (S.41)
- (j) The Right to freedom from discrimination (S.42)
- (k) The Right to acquire and own immovable property anywhere in Nigeria (S.43)
- (l) The Right against compulsory acquisition of one's property without Compensation (S.43)
- (m) There is provision in the Constitution for special procedure for enforcement of these Rights by the Courts through the Fundamental Rights (Enforcement Procedure) Rules.

Part 1 item 61 of the 1999 Constitution states:

“The formation, annulment and dissolution of marriages other than marriage under Islamic law and customary law including matrimonial causes relating thereto”.

As Nigeria operates a tripartite legal system with civil, customary and Islamic law operating simultaneously, in relation to marriage the Federal Government has no control over customary and Islamic Marriages but only marriages conducted in a civil manner. What this

³⁰⁹ CFRN, 1999.

³¹⁰ Ibid, Section 6 (6) (c) 1999 CFRN, as amended.

³¹¹ Ss33-46 Constitution of the Federal Republic of Nigeria 1999, (as amended),

means is that, according to Part 1 item 61 of the 1999 Constitution, when a person marries a child under Islamic law in Northern Nigeria and is consequently in contravention of the CRA, such a person cannot be prosecuted because the Federal Government would be interfering with an Islamic marriage and would be in violation of Part 1 item 61 of the 1999 Constitution.

Therefore, in relation to child marriage, Part 1 item 61 of the 1999 Constitution renders the CRA powerless, as the 1999 Constitution serves as the supreme law of the land in Nigeria, overriding all other legislations. An example of how Part 1 item 61 of the 1999 Constitution can be used as a constitutional backing for child marriage was shown in 2010, when a Nigerian senator, Ahmad Yerima, married a 13 year-old Egyptian girl.³¹²

3.2 Violence against Persons Prohibition Act, 2015

The Violence Against persons (prohibition) Act (VAPP) was passed into law in May, 2015. The Act was a result of agitations for protection of persons against the different forms of violence. The Act was passed into law in a bid to eliminate violence in private and public life; prohibit all forms of violence, including physical, sexual, psychological, domestic, harmful traditional practices; discrimination against persons and to provide maximum protection and effective remedies for victims and punishment of offenders.³¹³

3.3 African Charter on the Rights and Welfare of the Child (African Children's Charter), 1999

The African Children's Charter was signed by Nigeria on 13 July 1999, and ratified on 23 July 2001. Unlike CRC, the African Children's Charter is a more comprehensive instrument as it deals with a multitude of rights of the child, including marriage. Also, unlike CRC, the African Children's Charter sets the age of childhood below 18 years,³¹⁴ without affording states the opportunity to prescribe otherwise. Therefore, while the practice of child marriage in Northern Nigeria may not contravene article 1 of CRC, it does contravene article 1 of the African Children's Charter. In contrast to CRC, the prohibition of child marriage is included in the African Children's Charter under article 21(2), which states: Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall

³¹²Braimah, Tim, Child marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the protection of children against child marriage (2013) African Human Rights Law Journal.

³¹³VAPP Long Title.

³¹⁴ Art 1 African Children's Charter.

be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory. Similar to the African Children's Charter, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol), which defines women as including girls, stipulates 18 years³¹⁵ as the minimum age of marriage for women.³¹⁶ Furthermore, a number of articles under the African Children's Charter specifically deal with child marriage. These include, but are not limited to, the protection of children from economic exploitation³¹⁷ and sexual abuse.³¹⁸ Much like article 24(3) of CRC,³¹⁹ the African Children's Charter also contains a provision that urges states to protect children against harmful social and cultural practices.³²⁰ Under article 21 of the African Children's Charter, state parties are urged to: take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular: (a) those customs and practices prejudicial to the health or life of the child; and (b) those customs and practices discriminatory to the child on the grounds of sex or other status. This stamps out the major causes of child marriage; customs and traditional practices.

In the Nigerian context, the Hausa/Fulani undoubtedly are in violation of article 21 of the African Children's Charter. Despite being a signatory to both the African Children's Charter and CRC, Nigeria saw the need to domesticate both instruments and to promote the protection of children in Nigeria. This desire to protect and promote the rights of the Nigerian child began with a Bill of Child Rights in 1993.³²¹

3.4 Child's Right Act 2003

The passing of the CRA signaled Nigeria's domestic intentions to protect and preserve the rights of the Nigerian child. The CRA not only specifies that the best interests of the Nigerian child should be central to all actions, but it also provides the duties and obligations of parents, the government and organizations towards children. The CRA is the most complete

³¹⁵ Art 1 African Women's Protocol.

³¹⁶ Ibid.

³¹⁷ Art 15(1) African Children's Charter.

³¹⁸ Art 16(1) African Children's Charter.

³¹⁹ State parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

³²⁰ Art 21 African Children's Charter.

³²¹ <https://www.saflii.org/za/journals/AHRLJ/2014/24.html> Accessed 8th August, 2023.

legislation dealing with the rights of a child in Nigeria as it covers every situation where a child may be subjected to abuse.

CRA defines a child as one who is below the age of eighteen years. It categorically provides that such a child's best interests shall remain paramount in all consideration. Some of the relevant sections which provide for the protection of children include, but are not limited to,

1. Right to survival and development³²²,
2. Right to a name,
3. nationality,
4. privacy, and family life³²³,
5. the prohibition of the use of children in criminal activities³²⁴;
6. the use of children in exploitative labour;³²⁵
7. unlawful sexual intercourse with a child;³²⁶
8. and the recruitment of children into the armed forces.³²⁷

In relation to dignity of a child, the CRA provides thus;

Every child is entitled to respect for the dignity of his person, and accordingly, no shall be:

- a. Subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse;
- b. Subjected to torture, inhuman or degrading treatment or punishment
- c. Subjected to attacks upon his honor or reputation; or
- d. Held in slavery or servitude, while in the care of a parent, legal guardian or scholl authority or any other person or authority having the care of the child ³²⁸

While the CRA also contains other provisions relating to children with regard to their care and supervision and the custodial possession of children, an important prohibition relates to child marriage.

³²²Sec 4 CRA.

³²³Sec 5&8 CRA

³²⁴ Sec 26 CRA.

³²⁵ Sec 28 CRA.

³²⁶ Sec 31 CRA.

³²⁷ Sec 34 CRA

³²⁸sec 11 CRA

The CRA prohibits both the marriage of those considered to be children and the betrothal of children. In relation to child marriages, Part III Section 21 states: 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 and of no effect whatsoever.

Also, Part III Section 22, which prohibits the betrothal of children, maintains that ‘no parent, guardian or any other person shall betroth a child to any person’. A contravention of either section 21 or section 22 amounts to a fine of N500 000 Naira or imprisonment for a term of five years or to both a fine and imprisonment³²⁹. While the CRA imposes sanctions on child marriages and betrothal, the use of the conjunction ‘or’ is worrisome because there is an indication that those who partake in child marriages and, in turn, contravene the CRA, may escape jail by only paying the stipulated fine of N500 000 Naira.

A major problem with the CRA is its differing levels of acceptance. When the law was passed, it was not automatically enacted into law in each of Nigeria’s 36 states. Each state had to pass the Bill into their state laws for it to become enforceable in order to guarantee and protect the rights of children and, most importantly, to prevent child marriages. Since the CRA was passed in 2003, 12 states have yet to domesticate it.³³⁰ What this means is that children may have no rights in states which are yet to enact the law and, subsequently, if child marriage is practiced, it is not an offence.

Furthermore, apart from the state of Enugu, the 11 states which are yet to domesticate the CRA are in the northern part of Nigeria and these have adopted a penal code which is based mainly on Shari’a law.³³¹ It is not surprising that states in Northern Nigeria, inhabited predominantly by Muslims and with a culture and tradition heavily influenced by Islam, have objected to receiving and passing the CRA because it conflicts with the Islamic point of view, particularly in relation to the minimum age of marriage. While the law provides that a child is to be a person under 18, in Islam there is no age that marks childhood. A child’s maturity is established by signs of puberty such as menstruation, the growth of breasts and pubic hair.³³² To further support the argument that age is a factor contributing to the reluctance of many

³²⁹Sec 23(d) CRA.

³³⁰ Enugu, Kaduna, Kano, Sokoto, Kebbi, Borno, Yobe, Gombe, Adamawa, Bauchi, Katsina and Zamfara.

³³¹ Northern Nigeria consists of 19 states of which 12 have penal laws enacted under the aegis of Shari’a, namely, Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe and Zamfara

³³²https://en.wikipedia.org/wiki/Ages_of_consent_in_the_United_States Accessed on 8 October, 2023.

Northern states to pass the CRA, when one of Nigeria's Northern States, Jigawa, accepted the CRA, its state law did not adopt the age of 18 as the age of majority as specified in the Act. Instead, it determined the age of childhood in relation to puberty.³³³

3.5 Convention on the Elimination of Discrimination against Women (CEDAW)

CEDAW provides that State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.³³⁴ This includes:

- A. The same right to enter into marriage
- B. The same right freely to choose a spouse and to enter into marriage only with their free and full consent...

Article 16 also has an explicit reference to child marriage: The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

CEDAW article 16 combined with CEDAW General Recommendation 19 and 35 on Ending Violence against Women promotes a comprehensive approach to family law that encompasses all legislation and policies to eliminate gender-based discrimination in family relations as well as violence against women.

3.6 Universal Declaration of Human Rights

The **Universal Declaration of Human Rights (1948)** states that men and women of full age 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.³³⁵ This, together with the phrase "of full age", amounts to a ban on child and/or forced marriage because children may not be in a position to give free and full consent. However, child

³³³ <https://www.premiumtimesng.com/regional/nwest/501952-jigawa-assembly-passes-child-rights-bill-expunges-age-limit-for-marriage.html?tztc=1> Accessed 8th October, 2023.

³³⁴ Art. 16 CEDAW.

³³⁵ Art 16 UDHR.

marriage continues to be a problem affecting huge numbers of girls, with around one million girls under the age of 18 years getting married every month.

3.7 Marriage Act

Under the Marriage Act, there are provisions relating to the validity of a marriage as discussed earlier,³³⁶ the most important of this relates to the couple's consent which is therefore important and must be voluntary or real, and without fraud or duress. Parental consent is only required where either or both parties are under twenty one, in which case the absence of parental consent will invalidate the marriage. However, it is observed here that the provision of the Marriage Act does not touch the area of marriageable age except for the purpose of parental consent in cases of marriage to a person below 21 years.

3.8 The Child Rights Act and Laws of various states where applicable

The Marriage Act does not specify a marriageable age, Nwogugu³³⁷ holds that recourse must be made to the common law of England which specifies the age of puberty, being fourteen years for boys and twelve for girls.³³⁸ It is submitted that this position will not hold water, it is true that the Marriage Act does not provide for the minimum age of marriage. However, recourse is not to be had to common law anymore, it would rather be had to the Child Rights Act which has the effect of repealing this common law provision as shall soon be seen.

The Child Rights Act provides that no person under the age of eighteen is capable of contracting a marriage and voids any marriages so contracted.³³⁹ It even prohibits child betrothal by a parent or guardian, criminalizing the practice and providing for the punishment for offenders who could be the parent or guardian, or the person who marries or is betrothed to the child.³⁴⁰ Unlawful sexual intercourse is prohibited under the Child Rights Act.³⁴¹ Sexual intercourse in a marriage with a child would be regarded as unlawful sexual intercourse but the Act goes further by specifying forms of sexual abuse and exploitation as well as providing blanket cover against any form of exploitation which is not expressly named in the Act but which is prejudicial to the welfare of the child.³⁴²

³³⁶ Section 33 of the Marriage Act.

³³⁷ E I Nwogugu, *"Family Law in Nigeria"* (Ibadan: Heinemann Educational Books Nigeria Plc. 1974), 23.

³³⁸ Ibid.

³³⁹ Section 21, Child Rights Act, 2003.

³⁴⁰ Ibid, Sections 22 and 23.

³⁴¹ Ibid, Section 31.

³⁴² Ibid, Section 33.

Also, Section 14 of the Act³⁴³ provides that every child has a right to parental care and protection, and accordingly, no child shall be separated from his parents against the wish of the child except for the purpose of his education and welfare; Section 15 (5)³⁴⁴ further provides for the education of a child who gets pregnant before completion of her education, it provides that a female child who becomes pregnant, before completing her education shall be given the opportunity, after delivery, to continue with her education, on the basis of her individual ability.

The Child Rights Act is an avenue by which the menace of child marriage can be effectively combatted. However, the problem is its restricted application, according to Fayokun,³⁴⁵ the implementation of the Child Rights Act faces challenges in certain northern parts of the Nigeria, in particular on the issue of marriageable age. Braimah³⁴⁶ highlights Item 61 Part 1 and the Second Schedule of the Nigerian Constitution as discusses above along with some other provisions as factors inhibiting the acceptance and application of the Child Rights Act in certain of the northern states.

3.9 African Charter on Human and Peoples' Right (Ratification and Enforcement) Act

It has been stated earlier that the Child Rights Act is not automatically applicable to states in relation to marriage which are celebrated in line with customary or Islamic law. Meanwhile, Nwauche³⁴⁷ argues that where a state fails to domesticate the Child Rights Act, recourse can be sought in the domesticated African Charter on Human and People's Rights through the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act Cap 10 of the Laws of the Federation of Nigeria 1990 for protection of the girl child against child marriage. This is because of the fact that where the requirement of Section 12 (1) of the Constitution is met in relation to an international treaty, such treaty will no longer be treated

³⁴³ Ibid.

³⁴⁴ Ibid.

³⁴⁵ Ibid, 894.

³⁴⁶ T S Braimah, "Child marriage in Northern: Section 61 Part 1 of the 1999 Constitution and the protection of children against child marriage" (2014) 14 *African Human Rights Law Journal* 485.

³⁴⁷ E.S. Nwauche, "Civil Questions Involving Customary Law as the Basis of Appellate Jurisdiction in Nigeria" (2015) 11 (1) *Acta Universitatis Danubius. Juridica* 427.

as international law, it is rather a domestic law.³⁴⁸ It can therefore be employed in any instance relating to the rights of citizens since the Charter now has a universal application throughout the Federal Republic of Nigeria. In Article 18 (3), the African Charter mandates the state to ensure the rights of the child as contained in the Convention on the Right of the Child, this is presented below:

the State shall ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions

The international declaration and convention referred to above is submitted to include the Child Rights Convention. Thus, it will be stated that the protection given to the child under the CRC can be given effect to as the legal marriageable age in Nigeria by the argument above. Reference would then be made to Article 1 of the said convention which provides that

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Meanwhile, the convention defines a child as a person under the age of 18, the provision 'unless under the law applicable to the child, majority is attained earlier', contradicts this and does not help to eradicate child marriage.³⁴⁹ For instance, in Northern Nigeria, where traditional and cultural practices are heavily influenced by Islam and laws derived from Shari'a, the age of majority for girls is attained pre-puberty. However, the solace comes from the fact that the ACHPR mentions that all declaration should be given effect to. Thus, we can consider the African Children's Charter in Article 1 sets the age of childhood below 18 years, without affording states the opportunity to prescribe otherwise. The prohibition of child marriage is included in the African Children's Charter under article 21 (2), which 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 an official registry compulsory.

³⁴⁸ Ibid; *Abacha v Fawehinmi* [2001] 51 W.R.N. 29

³⁴⁹ L. Askari, "The Convention on the Rights of the Child: The necessity of adding a provision to ban child marriages" 1999 (5) *ILSA Journal of International and Comparative Law* 124.

Therefore, it can be said that whenever this line of argument presents itself before the court, it would be apt that the Child Rights Act³⁵⁰ be given effect to as the law prohibiting marriage to persons below 18 years.

3.10 Conclusion

An attempt has been made to show that, despite Nigeria's adoption of the CRA, the rights of the girl child in respect of marriage are not adequately protected by law. Firstly, this inadequacy stems from the approach taken that states in Nigeria have to domesticate the CRA before it applies in those states. Secondly, Part 1 item 61 of the 1999 Constitution, which provides that the Federal Government cannot interfere with Islamic and customary marriages, weakens and fails to give effect to the CRA to protect children against a social evil such as child marriage.

Although the wording of Part 1 item 61 of the 1999 Constitution gives people the freedom to conduct marriages according to their religion and customs, it is a dangerous clause which serves as a loophole for child marriages and serves as constitutional support to those who partake in child marriage and justify it as an Islamic practice. Therefore, as argued previously, the major problem in the inadequate protection of the girl child in Nigeria is to be found in Part 1 item 61 of the 1999 Constitution.

Chapter 4

Customary, Religious and Cultural Roles in the Prevalence of Child Marriage in Nigeria

Early marriage is a form of violence and violations of children's rights. Child marriage in many countries in the world is defined as formal and informal marriage before the age of 18.³⁵¹ However, there are many countries that still legalize and allow teenagers between the

³⁵⁰ 2003 Laws of the Federation of Nigeria, 2004.

³⁵¹ Wodon Q., Tavares P., Fiala O., Le Nestour A., and Wise L., "*Ending Child Marriage: Legal Age for Marriage, Illegal Child Marriages, and the Need for Interventions*. London and Washington," DC, 2017

age of 16-18 to get married with parental consent, which raises questions about the concept of childhood and cross-cultural marriage. Child marriage practices infringe on the rights of the child, and are themselves a consequence of violations of the rights of the child. The causes of the phenomenon of child marriage are complex and interrelated. Social, cultural, religious, and economic factors influence norms, values, and behavior on individual, community, and society levels. The social and cultural norms in the event of early marriage are often linked to a religious doctrine. Religion is often used as a justification for the occurrence of early marriage. Parents will be willing to marry their children before the age of 18 if there are good and appropriate intentions.³⁵²

4.1 Socio-Cultural Factors That Enable Child Marriages

One of the rationales for child marriage is related to preservation of the traditional value of girls' chastity and virginity. It has been discovered that parents exhibit anxiety about the sexuality of the girl child, and it metamorphoses into fear of them getting pregnant outside of wedlock, which would be regarded as a shame to the family. In many places, girls who have relationships or become pregnant outside of marriage are shamed for bringing dishonour to their family. This fear motivates parents to limit the sexual agency of the girl. Parents may therefore feel justified to either restrict normative consensual sexual conduct, or to marry off the girl-child as soon as she reaches or approaches puberty. Socio-cultural norms about sexuality of the girl-child, the value placed on the girl's virginity, and the construction of the girl-child as sexually weak against the sexual desires of boys, contributes to parents marrying off their girl-child as soon as she reaches puberty. Such constructions of girls' sexuality reveal underlying power dynamics in a patriarchal environment that justifies girl-child marriages.³⁵³ Social structures such as patriarchy, social institutions (family, education) and socio-economic class can either hinder or support child marriage. In northern Nigeria, communities are patriarchal and it perpetuates the dependency of girls on other people as well as her value being tied to social and economic connotations.

As a result of the fact that marriage often determines a woman's status in many societies, parents also worry that if they do not marry their daughters according to social expectations, they will not be able to marry them at all. Forced child marriage also is a route to cementing

³⁵²Yulyani L. , Kurniatii H.F., *The Effect of Social, Cultural And Religious Aspect On The Occurrence Of Early Marriage*, 1st International Respati Health Conference (IRHC) [2019], pg 3.

³⁵³Kangaude, G. *Legal Grounds: Reproductive and Sexual Rights in Sub-Saharan African Courts*, (Pretoria, PULP, 2017)volume III.

family, clan, and tribal connections or settling obligations. In some instances, young girls have been married off to help the families offset debts or to settle inter-family disputes.³⁵⁴

4.2 Illiteracy and Poverty as a Tool

One of the causes of child marriage may be poverty on the part of parents. Some of the parents view their daughters as an economic burden and therefore take early marriage of the child especially girls as a relief, not only to the family alone but also to the girl. Some families view child marriage as a means to ensure their daughter's financial security and reduce the economic burden of the child.³⁵⁵ An example of this is seen in the infamous story about a Nigerian Senator Yerima that married a 13-year-old Egyptian girl, after paying her family \$100,000 for her. The child is then made "useful" by giving birth and contributing to the labour/income of her new family. In many countries, educating girls often is less of a priority than educating boys. When a woman's most important role is considered to be that of a wife, mother and homemaker, schooling girls and preparing them for the jobs may be given short shrift. Even when poor families want to send their daughters to school, they often lack access to nearby, quality schools and the ability to pay school fees. It is usually safer and economically more rewarding to spend limited resources on educating sons than daughters. This pressurizes families into early marriage as the only viable option for girls.³⁵⁶ Child marriage usually ends the child's education. Child marriage creates inhibitions against the realization of education rights.³⁵⁷ In between giving birth and taking care of children and the household, continuing education is out of the question. The children become illiterate and are unable to contribute to the society or the economy. Consequently, their offspring are less likely to go to school and more likely to remain in poverty throughout their lifetime. Education protects vulnerable children from exploitation, abuse, and violence.³⁵⁸

³⁵⁴ Malhotra A., *The Causes, Consequences and Solutions to Forced Child Marriage in the Developing World*, International Center for Research on Women, (2011) pg 5.

³⁵⁵ Nour, N. M. . "Health Consequences of child marriage in Africa" (2006) 12(11), 1644-1649 (<http://www.cdc.gov/eid/article/12/11/06-05770/article>) Emerging Infectious Diseases Accessed on 10 October, 2023.

³⁵⁶ Ibid.

³⁵⁷ <https://data.unicef.org/resources/child-marriage-and-education-data-brief/#:~:text=Child%20marriage%20is%20a%20violation%20of%20human%20rights.that%20typically%20accompanies%20the%20marriage%20of%20a%20child> Accessed 10th October, 2023.

³⁵⁸ Barry B. *World Development: An essential text*. New Internationalist, 2011, pg 174.

Child marriage may result in poverty, probably, because girls who are not educated may have limited opportunity to work and earn an income and financially provide for themselves.³⁵⁹ This makes girls more vulnerable to persistent poverty, most especially if their spouses die, abandon or divorce them.³⁶⁰ Girls in child marriage are often significantly younger than their husbands; they become widowed earlier in life and may face associated economic and social challenges for a greater portion of their life than a woman who gets married later.³⁶¹ Globally, forced child marriage is much more common in poorer countries and regions, and within those countries, it tends to be concentrated among the poorest households.³⁶² In these impoverished situations, parents see few alternatives for their daughters, aside from early marriage.

4.3 Roles of Communal and Religious Leaders in Ending Child Marriages

Religious leaders are respected figures in their communities, often prescribing which behaviours are acceptable. Over 80% of the world's population profess a religious belief.³⁶³ As spiritual guides, religious leaders are among the most respected figures in many communities. They can help change existing norms in their communities and be critical allies in the movement to end child marriage. In the last few decades, religious leaders from multiple faiths have contributed to addressing child marriage by: collaborating with development actors; making public commitments; refusing to perform child marriages; participating in campaigns and trainings to build their own capacity to raise awareness about the harmful consequences of child marriage through their sermons, and reflect on solutions.³⁶⁴

The complexity of religious contexts can make it hard for practitioners to know where to start when considering if and how to engage with religious leaders. This can be especially difficult in areas where civil society activists face a lot of resistance to their efforts to end child marriage. Before making any decision on whether to engage with religious leaders, additional

³⁵⁹ Q & A. *Child marriage and violations of girls rights to Human rights* Watch (2013) <http://www.org.news> Accessed on 10 October, 2023.

³⁶⁰ Ibid

³⁶¹ Gaffney-Rhys, R. International law as an instrument to combat child marriage. *International Journal of Human Rights*, 201115(3), 359-373
<https://doi.org/10.1080/13642980903315398> Accessed 10th October, 2023.

³⁶² Ibid

³⁶³, Global Religious Future database, Pew Research Center (2012)
<https://www.pewresearch.org/topic/religion/religious-demographics/pew-templeton-global-religious-futures-project/> Accessed 11th October, 2023.

³⁶⁴ Girls Not Brides, *The Global Partnership to end Child Marriage*, April 2019, pg 3.

information should first be gathered about the religious context. Extra time is usually expended in exploring various religious beliefs, any role they might or might not play in driving child marriage, as well as the religious system(s) in the project area and/or at the national level. This could involve looking at how decisions are made within a particular religious system, identifying different profiles of religious leaders and their influence in the project area, and using this information to decide where to prioritise engagement. Similarly, some religious leaders might be more resistant to ending child marriage than others, as this continues to be an ongoing battle.

4.4 Consequences of Child Marriages

The consequences of child marriages are devastating and often determine a life's trajectory. Girls who marry young are at a higher risk of dying during childbirth, having their child die before its first birthday, contracting AIDS and becoming a victim of domestic violence. Girls who are married early are more likely to be abused sexually, physically and emotionally.³⁶⁵ Increased maternal and infant health risks, 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.³⁶⁶ 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 19.³⁶⁷

In addition to death, young girls face tremendous health risks in childbirth, including a serious condition known as obstetric fistula. Obstetric fistula results when a young mother's vagina, bladder and/or rectum tear during childbirth. It causes urine and faeces to leak from her, and without surgery, the condition lasts the rest of the girl's life. Fistula patients are commonly poor women, ages 15 to 20, many of whom were child brides.³⁶⁸ Child brides also are at far greater risk of contracting HIV than their counterparts who marry later. Often, they

³⁶⁵ International Center for Research on Women (ICRW). 2005. Development Initiative on Supporting Healthy Adolescents (DISHA) project: Analysis of quantitative baseline survey data conducted in 2004. ICRW: Washington, DC.

³⁶⁶ UNICEF. 2007. The State of the World's Children 2007: Women and Children, the Double Dividend of Gender Equality. UNICEF: New York, NY. Accessed 10th October, 2022
<http://www.unicef.org/sowc07/docs/sowc07.pdf>.

³⁶⁷ Ibid.

³⁶⁸ Clark, S.. "Early Marriage and HIV Risks in Sub-Saharan Africa," *Studies in Family Planning*, 2004 vol. 35 (3): 149– 160,
<http://www.ncbi.nlm.nih.gov/pubmed/15511059> Accessed 11th October, 2023.

are married to older, more sexually experienced men with whom it is difficult to negotiate safe sexual behaviours, especially when under pressure to bear children.³⁶⁹

More than anything else, early marriage deprives girls of their childhood. They are thrust into the full burden of domestic responsibility, motherhood and sexual relations rather than playing with friends, dreaming about a career or fretting about a school exam. In many countries, young married girls move away from their parents' home to live with their husband and his family, where they have no friends, no support, and little say in their own lives or in household matters.³⁷⁰

Research shows that young married girls often are isolated and powerless. They are unable to negotiate or obtain support for issues in their own interest. They are also frequently exposed to violence and threats of abandonment and divorce.³⁷¹ Outside the family, the doors to schooling are usually closed to young married girls in most countries. This means that they have little chance to prosper later in jobs or as entrepreneurs. Often dependent and with little knowledge and income to support or invest in their children, child brides also end up raising daughters who face the same challenges as their mothers.³⁷²

4.5 Socio-Economic Benefits of Ending Child Marriages

Child marriage disproportionately affects girls; it is a leading cause of school dropouts for adolescent girls. Every year of marriage before 18 reduces the likelihood of completion of secondary school by 4 to 6 percentage points.³⁷³ Child marriage and the associated school dropout rates hamper the girls' chances of earning better wages by 9 percent over their

³⁶⁹ Ibid.

³⁷⁰ Clark, S. "Early Marriage and HIV Risks in Sub-Saharan Africa," *Studies in Family Planning*, 2004 vol. 35 (3): 149–160,

<http://www.ncbi.nlm.nih.gov/pubmed/15511059> Accessed 11th October, 2023.

³⁷¹ Sheppard, Eric, et al. *A World of Differences: Encountering and Contesting Development*. Guilford, 2009 2nd ed.

³⁷² Ibid

³⁷³ Sheppard, Eric, et al. *A World of Differences: Encountering and Contesting Development*. Guilford, 2009 2nd ed.

lifetimes.³⁷⁴ Female victims often live in poverty, hold jobs less frequently, and are less productive. Child marriage reduces their ability to acquire economic resources and perpetuates their oppression. They have less decision-making and bargaining power in their households and face a higher risk of domestic and intimate partner violence.³⁷⁵ Child marriage engenders high fertility, which yields large costs for families and reduces their standard of living. Having more children reduces a household's ability to pay for food, education, and healthcare. The alternative to child marriage is having an education, so the opportunity cost deprives households of a potential source of income.³⁷⁶

Ending the practice of child marriage would lead to better prospects for young girls: improved educational attainment, fewer children, increased lifetime expected earnings, improved household incomes, reduced incidence of intimate partner violence, and more decision-making power. Allowing girls access to higher education changes the prospects of households and the economy for the better. Enabling girls to receive more education increases the likelihood that their children will be educated, thereby improving the human capital of the future labour force of the economy. Curbing high population growth rates in developing countries would boost economic growth and contribute towards economic stability.³⁷⁷

The eradication of child marriage has been recognized as a priority by its inclusion in the Sustainable Development Goals.³⁷⁸

4.6 Child Marriage and Education

In communities where child marriage is prevalent, there is strong social pressure on families to conform. Failure to conform can often result in ridicule, disapproval or family shame. Invariably, local perceptions on the ideal age for marriage, the desire for submissive wives, extended family patterns and other customary requirements, are all enshrined in local

³⁷⁴ Parsons, J., Edmeades J., Kes A., Petroni S., Sexton M., and Wodon Q.. Economic Impacts of Child Marriage: A Review of the Literature, Review of Faith and International Affairs, (2015)13(3): 12-22.

³⁷⁵ *ibid*

³⁷⁶ *ibid*

³⁷⁷ *Ibid.*

³⁷⁸ SDG 5.

customs or religious norms. In many contexts child marriage is legitimized by patriarchy, and related family structures, which ensure that marriage transfers a father's role over his girl child to her future spouse. The marriage or betrothal of children in parts of Africa and Asia is valued as a means of consolidating powerful relations between families, for sealing deals over land or other property, or even for settling disputes. No wonder Barnes³⁷⁹ was of the view that:

“The strong religious message also enforce the view that marrying early is best as supported by the following views of one priest representing Ethiopian's orthodox church and these days, with western ideas spread everywhere; girls stay unmarried as late as 30. It is very scientific and modern, but in our church it is prohibited. Such girls are neither clean, nor blessed”

4.6.1. Cultural arguments on Child Marriage

Several researchers³⁸⁰ found that cultural defense arguments tend to be invoked under specific circumstances and in three distinct styles:

- i. Values-based arguments are used strategically to define or assert group identity. Early marriage can be part of a struggle over cultural traditions and the future meaning of those customs.³⁸¹
- ii. Protective arguments reflect the view that early marriage will protect girls and their families from shame and the stigma of unsanctioned sexual relations. In war-torn areas, early marriage can also be a form of safety for girls or provide their basic needs of food, water and housing when parents can no longer do so.³⁸²
- iii. Misplaced attribution of cultural practices to religion. As Archbishop Desmond Tutu³⁸³ has noted, some customs described as religious are not part of religion at all that is, child marriage is not a religious practice—it is a tradition. There are many good traditions that bind communities together. But traditions are also not static—they evolve. Traditions that are harmful, that have outlived their purpose, must be challenged.³⁸⁴

³⁷⁹ E A Barnes cited in A. Timmer, 'Concepts of Human Rights, Democracy and Rule of Law' (unpublished) (2015) 5.

³⁸⁰ Ibid.

³⁸¹ Ibid.

³⁸² Ibid.

³⁸³ Ibid 23.

³⁸⁴ Ibid.

4.6.2 The Rights of the Girl Child to Education

Right to education generally is a social and economic right that is encapsulated under section 18 (1) of the Nigerian Constitution³⁸⁵ which provides inter alia that:

“Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels”

As lofty as the provision above is, it is not justiciable because it is embedded under Chapter II of the Nigerian Constitution³⁸⁶. However, in the case of *Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) v Federal Republic of Nigeria & University Basic Education Commission*,³⁸⁷ where the Court referred to Article 17 of the ACHPR which provides that:

- i. Every individual shall have the right to education
- ii. Every individual may freely take part in the cultural life of his community
- iii. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

It is interesting to note that the above article is subject of deliberation before the ECOWAS Court. The court held that Article 17 of the ACHPR, (to which Nigeria is a signatory) states categorically that every Nigerian has the right to education.³⁸⁸ In addition, in *Socio-Economic Rights and Accountability Project (SERAP) v Federal Government of Nigeria*,³⁸⁹ the plaintiff litigated to induce the defendant to implement the right to education could not be prescribed under section 18 of the Nigerian constitution. In dismissing the objection, the Community Court (ECOWAS) held that:

“... the Plaintiff alleges a breach of right to education contrary to the provisions of the African Charter on Human and People’s Rights. The right to education recognized under Article 17 of the African Charter is independent of the right to education captured under the Directive Principles of State Policy of the 1999 Federal Constitution of Nigeria...”

It is worthy of mention that the Preamble to the African Charter states that “ civil and political rights cannot be dissociated from economic, social and cultural rights in their

³⁸⁵ Constitution of the Federal Republic of Nigeria, 1999 as amended.

³⁸⁶ Ibid.

³⁸⁷ Suit No: ECW/CCJ/App/12/07; Judgement No: ECW/CCJ/JUD/07/10, delivered at Abuja, Nigeria on 30/11/2010.

³⁸⁸ A Govindjee and A Taiwo, “Justiciability and Enforceability of the Fundamental Objectives and Directive Principles in Nigeria: Lessons from South Africa and India” (2011) 7 *Nigerian Bar Journal* 93.

³⁸⁹ (Unreported) Suit No: ECW/CCJ/APP/08/08.

conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights”.³⁹⁰ Nonetheless as noted above the Directive Principles of State Policy in Chapter II of the Nigerian Constitution are not justiciable. However, it can be argued that they can be sanctioned through the ACHPR. By virtue of Section 12 of the Nigerian Constitution, international treaties shall have the force of law when enacted into law by the National Assembly.³⁹¹

From the above, it is evident that right to education is a right recognized and enforceable under Article 17 of the African Charter on Human and People’s Rights, 1981. Lending credence to the provision of the African Charter on Human and People’s Rights, CEDAW in its Article 3 provides that states parties shall take appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights fundamental freedom on a basis of equality with men. Therefore, it is the right of every girl child to get education and they cannot be discriminated against based on gender or sex as the Nigerian Constitution³⁹² provides that every person should be treated equally.

4.6.3 The Impact of Girl’s Education on Child Marriage

The school is the most important institution outside the family involved in socializing young people into all dimensions of adult roles and responsibilities.³⁹³ More years of schooling have been associated with many positive outcomes, including later ages of marriage, lower fertility, and healthier and better-educated children, economic development. However, early marriage inevitably denies children of school age their right to the education they need for their personal development their preparation for adulthood, and their effective contribution to the future wellbeing of their family and society.³⁹⁴ Indeed, married girls who would like to continue schooling may be both practically and legally excluded from doing so. Marriage at a young age denies children the opportunity to develop their intellectual and social skills,

³⁹⁰ Y Olomajobi, *Human Rights and Civil Liberties in Nigeria* (Lagos; Princeton & Associates publishing Co. Ltd. 2016) 5.

³⁹¹ Section 12 (1) Constitution of the Federal Republic of Nigeria, 1999 as amended; *Fawehinmi v Abacha* (2001) 51WRN 29; *Ogugu v state* (1994) 9 NWLR (Pt. 366) 1 at 26-27; *Ubani v Director, SSS* (1999) 11 NWLR Pt. 129.

³⁹² Constitution of the Federal of Nigeria, 1999 as amended.

³⁹³ M A Ajanwachuku, ‘A Legal Analysis of the Nebulous Concept of Childhood in Nigeria’ (2016) 7 *Beijing Law Review* 123.

³⁹⁴ Y Olomajobi, *Medical & Health Law: ‘The Right to Health’* (Lagos: Princeton & Associates Publishing Co. Ltd, 2019) 112.

including the ability to express themselves and to blossom in their own sense of autonomy, which are arguably the principal aims of education.³⁹⁵ The essence of the rights to education and to health is that they facilitate and ensure the effective enjoyment of other human rights.³⁹⁶

For a number of poorer families, the potential rewards of educating daughters are too far off and therefore their education is not recognized as an investment. Families perceive that a girl's education will only benefit her husband's household, and not her parents. Additionally, some parents believe that girls do not need an education for their roles as wives and mothers, that education undermines cultural practices, and it teaches the girl to reject tradition. The following citation illustrates well the case:

“At the age of about 14 years, my father sent me to my uncle so that he could let his wife train me for marriage. He believe that if I could go to school, I would be spoilt girl” and no man would agree to marry me. Being spoilt girl meant that I would be too wise to marry back in his village where he could get my dowry”³⁹⁷.

However, there is a saying that when you educate a woman you educate a nation.³⁹⁸ Education, even at a basic level, is not only about livelihood and technical skills but more importantly provides social ‘connectedness’ or aptitude which enables one to access key resources to alleviate poverty.³⁹⁹ By interacting with others, individuals acquire the social skills and personal capacities needed to access resources and opportunities, and to form social networks for support and assistance when required in the future. Individuals can also develop their self-esteem and confidence to voice their opinions and to take control over their own actions, lives and bodies. Other positive benefits of education are linked to improved reproductive health and child survival and welfare.⁴⁰⁰

³⁹⁵ R Hodgkin and P Newell, *Implementation Handbook for the Convention on the Right of the Child* (London: UNICEF, 1998) 551.

³⁹⁶ Y Olomjobi, *Human Rights and Civil Liberties in Nigeria* (Lagos; Princeton & Associates publishing Co. Ltd. 2016) 5.

³⁹⁷ K O Fayokun, ‘Legality of Child Marriage in Nigeria and Inhibitions against Realization of Education Rights’ (2015) 12 *US-China Law Review* 812.

³⁹⁸ Y Olomjobi, *Human Rights and Civil Liberties in Nigeria* (Lagos; Pinceton & Associates publishing Company Ltd. 2016) 4.

³⁹⁹ M A Ajanwachuku, ‘A Legal Analysis of the Nebulous Concept of Childhood in Nigeria’ (2016) 7 *Beijing Law Review* 123.

⁴⁰⁰ V.A Aduayi and O.S Aduayi and O.A Olasode, ‘Sexual coercion and violence among young women in Nigeria: a northern and southern comparison’ (2016) *African Journal of Reproductive Health* 37-43.

Educated women are more likely to have a say in decision-making regarding the size of their families and the spacing of their children.⁴⁰¹ They are also likely to be more informed and knowledgeable about contraception and the healthcare needs of their children. Adolescent girls who marry outside their communities tend to lose the close friendships they had formed in their parental homes, and often become quiet and subdued.⁴⁰² This means that even where girls have developed social networks they are unable to access them from their marital community.⁴⁰³ The universal right to education has been affirmed by the world's governments for more than 50 years, most recently by the Millennium Development Goals adopted by the 191 member states of the United Nations in 2000. However, some 115 million children among them 62 million girls are still denied this right. According to data from UNICEF⁴⁰⁴, outside of the developed world, only 76 percent of all boys and 70 percent of all girls attend primary school.

While marriage does not have to mean that a girl's or boy's education ends, the attitudes of parents, schools and spouses in many societies mean that it often does. Husbands of young wives are often older men, who expect their wives to follow tradition, stay home and undertake household and child care duties. A girl may be unable to go against her husband's wishes and the husband's family may refuse to invest their scarce resources in the wife's continued schooling. Some schools often have a policy of refusing to allow married or pregnant girls or girls with babies to return. They may believe that it will set a bad example to other pupils or that other parents will be angry to see the school go against the traditional beliefs. Even if they do permit girls to return, the school environment - rules, timetables and physical conditions - can make it too difficult for a girl to attend school and perform her duties as wife and mother at the same time. Bullying and abuse by teachers, pupils and other parents can further reduce girls' self - confidence and sense of security, forcing them to give up on schooling.⁴⁰⁵

When girls drop out of school to get married, there is a knock-on effect for the community as a whole, and for future generations.⁴⁰⁶ Evidence suggests that children of young, uneducated mothers are less likely to have a good start to their education, do well in class or continue beyond the minimum schooling. Their daughters especially are likely to drop out, marry

⁴⁰¹ Ibid.

⁴⁰² Ibid.

⁴⁰³ Ibid.

⁴⁰⁴ R Hodgkin & P Newell, *Implementation Handbook for the Convention on the Right of the Child* (London: UNICEF, 1998) 551.

⁴⁰⁵ Ibid.

⁴⁰⁶ Ibid, 552.

young and begin the cycle again.⁴⁰⁷ Research shows⁴⁰⁸ that the school dropout girls in Nigeria somehow become fully dependent on their husband and cannot be self-reliant. It legitimizes the process in which girls gradually lose their ability to make choices in their lives due to having lack of education. Moreover, the way both boys and girls are getting socialized is still problematic in this 21st century because it promotes the gender hierarchies where the sex role socialization of the girls often keep them lagging behind.⁴⁰⁹

4.6.4 Education as a Human Right

Education has been formally recognized as a human right since the adoption of the Universal Declaration of Human Rights in 1948. This has since been affirmed in numerous global human rights treaties, including the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education⁴¹⁰, the International Covenant on Economic, Social and Cultural Rights⁴¹¹ and the Convention on the Elimination of All Forms of Discrimination against Women.⁴¹² These treaties establish an entitlement to free, compulsory primary education for all children; an obligation to develop secondary education, supported by measures to render it accessible to all children, as well as equitable access to higher education; and a responsibility to provide basic education for individuals who have not completed primary education. Furthermore, they affirm that the aim of education is to promote personal development, strengthen respect for human rights and freedoms, enable individuals to participate effectively in a free society, and promote understanding, friendship and tolerance. The right to education has long been recognized as encompassing not only access to educational provision, but also the obligation to eliminate discrimination at all levels of the educational system, to set minimum standards and to improve quality. In addition, education is necessary for the fulfilment of any other civil, political, economic or social right.

⁴⁰⁷ V A Aduayi and O S Aduayi and O A Olasode, 'Sexual coercion and violence among young women in Nigeria: a northern and southern comparison' (2016) *African Journal of Reproductive Health* 37-43.

⁴⁰⁸L. Sanusi, National Commission for Mass Literacy, Adult and Non-formal Education (2013) 2 (2) *Nigerian Social Science Journal* 4.

⁴⁰⁹ Ibid.

⁴¹⁰ United Nations Educational, Scientific and Cultural Organization, *EFA Global Monitoring Report 2005: The quality imperative*, UNESCO Publishing, Paris, 2004, p. 121. CONFEMEN stands for *Conférence des ministres de l'Éducation des pays ayant le français en partage* (Conference of Education Ministers of French-speaking Countries).

⁴¹¹ Article 26(3) of the Universal Declaration of Human Rights, article 18(4) of the International Covenant on Civil and Political Rights and article 2 of Protocol No.1 to the European Convention on Human Rights.

⁴¹² United Nations Educational, Scientific and Cultural Organization, Convention against Discrimination in Education, 14 December 1960, articles 3, 4.

The United Nations Convention on the Rights of the Child⁴¹³ further strengthens and broadens the concept of the right to education, in particular through the obligation to consider in its implementation the Convention's four core principles: nondiscrimination; the best interests of the child; the right to life, survival and development of the child to the maximum extent possible; and the right of children to express their views in all matters affecting them and for their views to be given due weight in accordance with their age and maturity. These underlying principles make clear a strong commitment to ensuring that children are recognized as active agents in their own learning and that education is designed to promote and respect their rights and needs. The Convention elaborates an understanding of the right to education in terms of universality, participation, respect and inclusion. This approach is exemplified both in the text itself and in its interpretation by the Committee on the Rights of the Child, the international body established to monitor governments' progress in implementing child rights. Beyond the formal obligations undertaken by governments in ratifying these human rights treaties, a number of global conferences have affirmed the right to education. Although lacking the legally binding force of the treaties, these conferences have introduced an additional impetus for action, together with elaborated commitments and time frames for their attainment. The World Conference on Education for All set the goal of universal primary education for the year 2000, a goal not met but subsequently reaffirmed for 2015 at the World Education Forum in 2000.⁴¹⁴ This Forum also committed to an expansion and improvement of early childhood care and education, the elimination of gender disparities in education and the improvement of quality in education.

In addition, the international community and leading development institutions have agreed to the Millennium Development Goals, expressed in the Millennium Declaration, which commit them to ensuring that all girls and boys complete a full course of primary education and that gender disparity is eliminated at all levels of education by 2015. More recently, the 'International Conference on the Right to Basic Education as a Fundamental Human Right and the Legal Framework for Its Financing' (Jakarta, Indonesia, 2–4 December 2005) adopted the Jakarta Declaration. This emphasizes that the right to education is an internationally recognized right in its interrelationship with the right to development, and that the legal and constitutional protection of this right is indispensable to its full realization.

⁴¹³ United Nations Children's Fund (2002) 'A League Table of Disadvantage in Rich Nations', *Innocenti Report Card No. 4*, UNICEF Innocenti Research Centre, Florence, November 2002, p. 7.

⁴¹⁴ See 'Plan of Action, World Programme for Human Rights Education, First Phase', pp. 37–51, <http://unesdoc.unesco.org/images/0014/001478/147853e.pdf> Accessed 10th October, 2022.

4.6.5 The Child's Right to Education

The emotional, social and physical development of young children has a direct effect on their overall development and on the adult they will become. Hence, understanding the need to invest in every child is important so as to maximise their future well-being. Education is regarded as one of the most powerful tools for the development of man and the transformation of human society.⁴¹⁵ Education is also seen as an instrument of conserving, transmitting and renewing culture and for a child, the instructions received in the process of education strengthens his mind to be able to understand his culture as well as unite children from different cultures. Fafunwa describes education as the aggregate of all processes through which a child develops abilities, attitudes and other forms of behavior which are of a positive value to society. The necessary skills to prepare individuals to live happily with each other in the society is also seen as a function of education in the process of teaching, training and learning in schools.⁴¹⁶ Education enables individuals to acquire appropriate knowledge, values and skills for personal development and also contribute meaningfully to the development of the society. It is equally a tool with which various countries can enhance national development. As a socioeconomic right which requires resources for its achievement, the ability of education to achieve this needed development and transformation in the society is dependent on the political will of government to translate its educational policies into actions.

According to the Committee on Economic, Social and Cultural Rights (CESCR) education as a human right is indispensable in achieving other human rights, making it one of the best financial investments a State can make.⁴¹⁷ Education was declared a basic human right for every person in the UDHR been reaffirmed in the ICESCR, the CRC, the African Charter and this has the ACRWC and the African Women's Protocol amongst other international and regional human rights instruments. The right to education has also found its way into the Constitution of some countries where socio-economic rights are guaranteed alongside civil and political rights. One of such is the Constitution of the Republic of South Africa in which section 29 guarantees an unqualified right to basic education and the progressive availability of further education. The child's right to life, survival and

⁴¹⁵ Labo-Popoola, S.O., Bello, A.A. & Atanda, F.A. (2009) 'Universal Basic Education in Nigeria: Challenges and the way forward' (2009) 6(5) *Pakistan Journal of Social Sciences* 252.

⁴¹⁶ Olamilekan A (2014) 376.

⁴¹⁷ Committee on Economic Social and Cultural Rights General Comment No. 13 'The Right to Education' (Article 13) adopted at the 21st session of the Committee on 8th December 1999 E/C.12/1999/10 para 1 (thereafter General Comment 13).

development is guaranteed by the CRC as well as the ACRWC. Development in this regard refers to physical, mental, emotional and psychological development needed by the child in order to sustain him into adulthood for an individual life in a free society. Education is a key aspect of the child's development and the law as a dynamic tool of development, has been applied at different times to protect children and their rights. Children have to be cared for and nurtured to develop their potentials so that they can contribute to the development of the society. The CESCR, emphasising the indivisibility and interdependence of rights, noted in its General Comment 11 that the right to education is essential to the full realization of other rights.

Drawing inspiration from articles 13 and 14 of the ICESCR which makes a comprehensive provision for the right to education, States Parties to the CRC in article 28 recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity,⁴¹⁸ are required to make primary education compulsory and available free to all; encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; make higher education accessible to all on the basis of capacity by every appropriate means; make educational and vocational information and guidance available and accessible to all children; and take measures to encourage regular attendance at schools and the reduction of drop-out rates.

In article 29 of the CRC, education of the child is directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential; the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations.⁴¹⁹ It also aims at the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own. Education is also meant to prepare the child for a responsible life in a free society, in the spirit of understanding, peace, and tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin as well as the development of respect for the natural environment. The Committee on the Rights of the Child has noted that the child's right to education is not just a matter of access but also of content which can build into the

⁴¹⁸ Article 28 CRC.

⁴¹⁹ Article 29 CRC.

child a balanced human rights friendly approach to challenges that accompany a period of fundamental change driven by globalisation, new technologies and related phenomena.⁴²⁰ Education should equally be child friendly, inspiring and a motivation to the child. The school should foster a humane atmosphere that allows children to develop according to their evolving capacities. The essential feature of primary schools has been structured into a 4 'A' scheme by the UN Special Rapporteur on the Right to Education. They include availability, accessibility, acceptability and adaptability. Availability means that all necessary infrastructures, learning facility and personnel are in place. Accessibility means that children have the right of access without discrimination, affordable and within a reasonable distance. The CESCR, emphasising the importance of the four features in General Comment 13, explains acceptability to mean that the form and substance of education curricula and teaching methods have to be relevant, culturally appropriate and of good quality requires that education be flexible enough to meet the changing needs of societies, communities and students in their diverse social and cultural settings.

4.6.6 Children's Rights In Nigeria

The general protection of human rights in Nigeria is contained in Chapter IV of the CFRN 1999 though not child specific. The Children and Young Persons Law (CYPL) of various states in Nigeria contain provisions dealing largely with juvenile justice administration and not necessarily child's rights specific. It is also not in line with the CRC and ACRWC in terms of modern conceptions on children's rights or even on juvenile justice administration.⁴²¹ Nigeria has committed to the protection of children's rights through its ratification of the CRC and ACRWC and other international human rights treaties extending their wings of protection to children. Nigeria submitted its first report on the implementation of the CRC to the Committee on the Rights of the Child in 1996. One of the recommendations of the committee was the domestication of the CRC to ensure full implementation under Nigerian law.⁴²² The CRC equally enjoins State Parties to undertake to

⁴²⁰ Committee on the Rights of the Child General Comment No. 1 'Article 29(1): The Aims of Education' adopted at the 26th session of the committee on 17 April 2001 CRC/GC/2001/1 para 3 (hereafter General Comment No. 1).

⁴²¹ Ladam, M. 'The Child's Rights Act 2003 and the challenges of its adoption by the governments of the 19 Northern states' At a One-day interactive forum for Sokoto state House of Assembly legislators, organized by the Sokoto state Ministry of Women Affairs and UNICEF on 23 July 2007 at the Sokoto state House of Assembly, Sokoto, Nigeria 1.

⁴²² Alemika, E.E.O., Chukwuma, I., Lafratta, D. *et al* (2005) 'Rights of the child in Nigeria: Report on the implementation of the rights of the child by Nigeria' A report prepared for the Committee on the rights of the

disseminate the convention's principles and take all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the convention. Against this background, the CRA 2003 was drafted in 1993 but finally became an Act of parliament in 2003. It was modelled after the provisions of the CRC and the ACRWC. The Act was informed by the need to incorporate the rights and principles contained in the CRC and ACRWC into national law, consolidate legislation concerning children into one comprehensive law, as well as specify the duties and obligations of government, parents and other authorities, organizations and bodies.

Though a landmark legislative achievement, the CRA 2003 has not translated into an improved child's right protection throughout the federation owing to the fact that having been enacted at the national level; the states are expected to formally adopt the Act for domestication as state laws.⁴²³ The reason is that issues of child protection are on the residual list of the Nigerian constitution giving states exclusive responsibility and jurisdiction to make laws relevant to their specific situations. Thus, the CRA 2003 is only effective in states that have adopted it as a state law. The CRA 2003 in section 277 defines a child as 'a person below the age of eighteen years.'

The Act provides the best interest of the child to be the primary consideration in all actions concerning a child, whether undertaken by an individual, public or private body, institution, court of law, or administrative or legislative authority. The provisions of Chapter IV of the Constitution relating to fundamental rights are stated to apply in addition to the rights contained in the Act.⁴²⁴ Under the Act, every child has the right to survival and development, identity, freedom of association and peaceful assembly, thought, conscience and religion, private and family life and movement. No child shall be subjected to any form of discrimination and must have his dignity respected at all times. The child also has a right to parental care, protection and maintenance, rest, recreation and leisure, health and health care services and also free, compulsory and universal primary education. The Act criminalises child marriage and betrothal, tattoos and skin marks, exposure of children to the use, production or trafficking of narcotic drugs or other criminal activities, abduction or use of a child for exploitative labour, begging or hawking, unlawful sexual intercourse or other forms of sexual exploitation.

Child 38 Session, Geneva January 2005 available at http://www.cleen.org/nigeria_ngo_report_OMCT.pdf (accessed 1st December 2015) 9 (hereafter Alemika EEO, Chukwuma I & Lafratta D *et al*).

⁴²³ Iguh, N.A. and Nosike, O. 'An examination of the child rights protection and corporal punishment in Nigeria' *Nnamdi Azikiwe Journal of International Law and Jurisprudence* (2011) 98.

⁴²⁴ Section 3 CRA 2003.

Section 34 prohibits the recruitment of a child into any branch of the armed forces and requires the government or relevant agency to ensure that no child is directly involved in military operation and hostilities. In addition to the list of rights, the CRA 2003 sets out the responsibilities of government and parents to provide structures and facilities, homes and a conducive environment for the full development of children. It empowers the court to make protection and supervision orders in respect of children in need of care and protection.⁴²⁵ Like the ACRWC, the CRA 2003 provides that every child has responsibilities towards his family and society, the country and legally recognised communities both locally and internationally. The Act also establishes the family courts to determine issues relating to children. The Act contains provisions relating to possession and custody of children, guardianship, foster care and adoption, and child justice administration.

4.6.7 Women and Education

Nigeria significantly influences the achievement of the MDGs in sub-Saharan Africa because of its sheer size. Nearly one in every four women in sub-Saharan Africa is Nigerian. Hence, the situation of women and girls in Nigeria has a key role to play in determining the progress of the whole region. Nigeria has performed poorly in terms of gender equality. According to the 2012 Gender in Nigeria Report, data suggest that Nigeria ranks 118 out of 134 countries in the Gender Equality Index. At every educational level women earn less than their male counterparts and in some cases men with less education earn more than better educated female peers. Also, Nigerian girls drop-out of school earlier than their male counterparts. Evidence further shows that more than two thirds of 15-19 year old girls in Northern Nigeria are unable to read a sentence. Of course, these facts are devastating in their own right, but what is more worrisome is that it seems efforts by the Nigerian government for the past 20 years to tackle the gender disparity in education have not had any significant impact. With regard to women's education, Nigeria's education policy has evolved since the 1980s towards a gender focus.

4.6.8 Relationship Between Women Education, Family Stability And Sustained National Development

At present, the forces which combine to hamper women education, family stability and sustainable development in Nigeria could be viewed broadly to include denial of

⁴²⁵ Section 50-67 CRA 2003.

equitable access to and participation to functional education, early marriage, confinement to solitary living, subjugation by culture to accept choices forced on women, discrimination and harassment at work, political disenfranchisement from elective and political appointment and exposure to cruel mourning rites upon the death of their husband.⁴²⁶ These cultural barriers and environmental manipulation create inferiority complex in many Nigerian women. Oniye further ascertained that through the traditional socialization process of our cultural society, women tend to accept negative self-fulfilling prophecy, stereotyping and stigmatization⁴²⁷. All these predispositions transmit negatively on the family role and responsibilities, which invariably interplay adversely in the national agenda. Women and development rather than women in development becomes an apparatus for gender issues.⁴²⁸

Contrary to the current trend, intensive efforts to foster a gender inclusive culture from the family level through education, across the board up to higher education, in order to promote sustainable human development need to be vigorously pursued. The legislative arm of government must be precise on the principle of gender equality in education by creating viable channels to the legal rights of women. Generally speaking, improving access to and the quality of education is the most rewarding investment a country can make. Investing in female education will accelerate Nigeria's economic and social development by enhancing human capital, slowing population growth, and alleviating poverty. According to Agbakwuru education equips one with marketable skills thereby lifting the possessor up from the poverty arena. Essentially, through education, the individual learns good health habits, principles and practices which promote healthy living and longevity as well as acquire marketable skills that confer economic power on the educated.

Today, the issue of Women's Rights has become a buzz word the world over. It is a great concern to many that women are deprived of their human rights. It has been a burning issue in different parts of the world, yet some think it is all a propaganda blown out of proportion usually because of religious or cultural inclination. A right is defined as a power, privilege or immunity guaranteed under a constitution, statute or case law or claimed as a

⁴²⁶ Oniye, A. O. 'Cross-ethnic study of stress levels, support systems and adjustment strategies among Nigeria widows'. Unpublished Ph.D. thesis. Department of Educational Guidance and Counseling, University of Ilorin, Ilorin(2000).

⁴²⁷ Ibid.

⁴²⁸ Oniye, A. O. 'Women Education: Problems and Implications for Family Responsibility'. *The Nigerian Journal of Guidance and Counselling*, 9 (1). Accessed September 19th 2023 online at www.unilorin.edu.ng/unilorin/publication.com.

result of long usage. In moral vocabulary, respect for rights is seen as a matter of justice. Rights can be asserted, demanded or stood upon. The obligations they impose are expected to be performed and their non-performance occasions feelings of indignation, resentment and disappointment.

4.6.9 The International Perspective

An idea of what the international law provisions are on the rights of women will help us better understand that this is a universal issue that is not taken lightly. Some of these international legislations, protocols and declarations include for instance, Article 1 of the Declaration of Human Rights which states that “all human beings are born free and equal.” Also Article 5 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), adopted by the United Nations General Assembly in 1979 and ratified by Nigeria in 1984, “encourages nations to modify the social and cultural patterns of conduct of men and women with the view to eliminate inferiority and superiority of either sexes or stereotype roles of men and women.” The Solemn Declaration on Gender Equality in Africa reaffirms the principle of gender equality as enshrined in Article 4(1) of the Constitutive Act of the African Union. In chapter 7, member states declare “to actively promote the implementation of legislation to guarantee women’s land, property and inheritance rights including the right to housing”.⁴²⁹

The African Charter on Human and Peoples Rights (ACHPR) was domesticated in Nigeria in form of the African Charter on Human and Peoples Rights (Enforcement and Domestication) Act Cap 10, 1990. This Act makes the provisions of the Charter enforceable in any Court of Law in Nigeria. Article 18 of the ACHPR states that “the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women....” Article 21 of The Protocol to the Charter on Human and Peoples Rights on the Rights of Women in Africa (ratified by Nigeria in 2004) states that “a widow/widower shall have the right to inherit each others property in the event of death whatever the matrimonial regime, to continue living in the matrimonial home”. Sub paragraph (2) of the above states that “women and girls shall have same rights as men and boys to inherit in equal shares their parents properties”.

⁴²⁹ CEDAW (1979). Convention for elimination of all forms of discrimination against women. Accessed online at www.un.org/womenwatch/daw/cedaw/cedaw.htm Accessed 19th September, 2023.

4.6.9.1 The Nigerian Reality

Despite the provisions of protocols, charters and conventions recognizing and guaranteeing rights of women and the obligations of the Nigeria government, the lives of Nigerian women is yet to attain a commensurate level of improvement. Women rank lower than men in all indices of development in the country. The rights of women in Nigeria are clearly spelt out in the nation's Constitution. The rights of women enshrined in the Nigerian Constitution are consistent with the ideals of humanism. But unfortunately, the rights and ideals have remained paper tigers, mere theoretical postulations without any practical bearing on the lives and conditions of the Nigerian women. In practice, the Nigerian society is replete with anti-humanist ideals. Women are systematically relegated to inferior positions. Despite all the provisions in the law and ratification of protocols, charter and conventions, Nigerian women suffer violations of their human rights through:

- Violence in the home
- Sexual harassment at school and work
- Rape and defilement
- Harsh and punitive widowhood rites
- Female Genital Mutilation (FGM)
- Forced childhood marriages
- Sexual violence in conflict situations and during armed robbery attacks
- Enforcement of gender biased laws
- Discrimination against the girl-child
- Disinheritance of wives and daughters
- Harmful traditional practices.

So far, some of the positive actions taken by the Nigerian government are:

- Adoption of a gender policy in 2007;
- Establishment of science schools for girls;
- Establishment of women development centres in Nigeria's 36 states;
- Adoption of the Trafficking in Person's (Prohibition) Law Enforcement and Administration Act;

- Establishment of a National Agency for the Prohibition of Trafficking in Persons;
- Adoption of a national policy on HIV/AIDS, reproductive health and female genital mutilation.

Despite these efforts by the government, aspects still hindering the recognition of the rights of women in Nigeria include:

- The patriarchal structure of the Nigerian society;
- Failure of the National Assembly to pass the Abolition of All Forms of Discrimination Against Women in Nigeria and Other Related Matters Bill and failure to pass a national bill prohibiting violence against women.
- Failure of the Government to domesticate protocols or enact appropriate legislations necessary for bringing to pass its obligations and undertakings.

4.6.9.2 Economic and Social Welfare Rights

Paul Ogunyomi writing on the typologies of discriminative practices in the Nigerian workplace, identified sex discrimination as being prevalent in Nigeria.⁴³⁰ This takes the form of a woman being treated less favourably than a man on the grounds of sex or indirectly by conditions applied equally to men and women which are detrimental to women. Research reveals that adequate maternity leave is important to enable the woman's body to recover after delivery. A study of the Nigerian workplace has revealed that '...gap is identified between law and practice with wide patterns of protection resulting in some women enjoying good benefits, while others are wholly or partly unprotected within the Nigerian workplace...' Women still have a higher unemployment rate than men. Those employed are concentrated in the informal sectors like agriculture, petty trading and services. Home-making is still not recognised or compensated.

4.6.9.3 Health and Reproductive Rights

With a maternal mortality ratio of 704 to 1,000 per 100,000 live births, Nigeria continues to have one of the highest levels of maternal mortality. Incidences of gender-based violence have health consequences and result in health complications including miscarriages,

⁴³⁰ Ibid.

long term disabilities, unwanted pregnancies, HIV/AIDS and other sexually transmitted diseases.

4.6.9.4 Right to Education and Training

Access to education is still low, especially in the northern parts of the country where withdrawal of girls for the purposes of marriage or for care giving is still practiced. According to Action Aid, ‘...educational developments in northern Nigeria is lagging behind other parts of the country on practically every indicator, number of facilities, transition rates, girls enrolment, number of teachers...The girls are hawking wares or doing household chores...Low girls enrolment is bound to aggravate gender imbalances that skews present and future opportunities against women.’ Nationwide gender gaps still exist at the higher levels of education.

4.6.9.5 Right to Participation in Political and Decision Making Processes

Significant advances have been made in the area of women’s participation in governance yet the political participation of women in Nigeria remains one of the lowest in the world. Women’s participation in government is still below the 35 per cent stipulated in the gender policy.

4.6.9.6 Marriage, Separation, Divorce and Women’s Property Rights

Although Article 7 of the Protocol to the Charter on Human and Peoples Rights on the Rights of Women in Africa provides for both parties of a marriage to enjoy equal rights within and after the marriage, in issues of custody and access to an equitable share of the joint property deriving from the marriage, this is not the case. Three forms of marriages are recognized in Nigeria – Customary, Islamic and Marriage under the Act. The reality of women married under Customary and Islamic law has not yet been affected by the protocol. A woman married under customary law is entitled to be provided with a home by her husband as long as the marriage subsists. She is also entitled to use her husband’s property but cannot dispose of it as her own. The right to be provided with a house by her husband terminates upon divorce. Upon divorce, a woman married under customary law has no claim over a house jointly owned by her husband. Her position is not helped by the provisions of the Matrimonial Causes Act in respect of maintenance and settlement of property, which

expressly excludes the application of its provisions to marriages under customary and Islamic law. However in the case of women married under the Act, where she is able to produce documents showing she made a contribution to the property, she is entitled to the part of the property commensurate to her contribution. Many women are denied custody and access to their children. Among those under Islamic law, child marriage is still prevalent. According to BAOBAB for Women's Human Rights, '...girls are often married between the ages of 9-14.' The occurrence of child marriage is common.

4.6.9.7 Violence Against children

The protocol guarantees women freedom from violence. In reality, there is a prevalence of violence against women in our society. Violence takes several forms including domestic violence, early and forced marriages, female genital mutilation, widow torture and inheritance related violence. There are also direct forms of violence against women in Nigeria. For instance, in discussing the impact of the activities of militias, cults and security forces on women in the Niger Delta, Emem Okon states, '...When a culture of armed gang violence takes root in a society that does not recognise and respect women's rights, the result is a higher level of gender-based violence against women. In this case, the proliferation of guns in the Niger Delta has increased the risk that girls and women will be targets of sexual assault.' In another section of the same article, she stated that, 'The consequence has been disastrous, as women have suffered massive massacre, rape, sexual abuse, social psychological trauma...aggravated poverty, unemployment, hunger, anger, low self-esteem, bitterness, frustration, desperation, fear, tension and more conflicts.'

Some measure of violence is inflicted by law enforcement agents. This can be direct or indirect. Direct assault by security officers is becoming prevalent. For instance, a case was brought before the Gwagwalada High Court in Abuja in which a police man raped two girls. In the Odioma community of Brass Local Government in Bayelsa State, Amnesty International reported a case where a rape victim described how she was raped alongside her mother by security officers. Two-months pregnant at the time, she lost her baby.

4.6.9.8 Governance and implementation

All three tiers of the state (federal, State and local government) play an important role in the provision of education. The Federal government is primarily responsible for regulation, quality control and policy formation and it is most directly engaged at the tertiary level.

States take responsibility for the provision of quality secondary education, while local governments are responsible for primary schools. All the tiers are currently operating under the Federal Ministry of Education's Strategic Plan for the Development of the Education Sector 2011-2015. This Plan has two strategic goals – access and quality – and four key implementation areas:

- (i) Strengthening the institutional management of education;
- (ii) Teacher education and development;
- (iii) Technical and vocational education and training;
- (iv) Funding, partnerships, resource mobilisation and utilisation.

The UBE Act provided for the establishment of the Universal Basic Education Commission (UBEC) to coordinate the delivery of basic education at State and local government levels through the State Universal Basic Education Boards (SUBEBs) and the Local Government Education Authorities (LGEAs).⁴³¹ However, while primary education is intended by the UBE Act and the Constitution to be the responsibility of LGEAs, in reality the autonomy of LGEAs and the delineation of the relative roles of State and local government authorities for primary education may be opaque and often varies. LGEAs report to SUBEB and, in practice, may defer to the SUBEB for many critical decision-making on education at all levels. While key strategies, policies and core funding come from federal level, the States have considerable autonomy for policy and financing. The Education Commissioner at State level, appointed by the State Governor, is head of the State Ministry of Education. The States play a strong role in the delivery of primary and secondary education.

A weakness of the existing governance structure for basic education is the number of overlapping functions that may be conflicting or contradictory with limited coordination of many activities. It is a challenge to provide quality basic education for the estimated 45% of the population who are under 15 years of age - a challenge that demands adequate financing and resource management.

4.6.9.9 Access to Justice And Equal Protection Under The Law

The Constitution and certain laws in Nigeria still contain discriminatory aspects. For instance, Section 26(2) of the Constitution does not allow a Nigerian woman to transmit her

⁴³¹ Universal Basic Education Commission '2010 Basic Education Profile National & Regional Statistics'. UBEC: (2010) Abuja.

nationality to her husband if he is a foreigner. Section 55[12] of the Penal Code applicable in Northern Nigeria permits wife battery as chastisement as long as grievous harm is not inflicted. Section 55 of the Labour Act prohibits women from working in the night.

4.6.10 Elimination of Harmful Practices, Culture and Discrimination against Women

In some parts of Nigeria, women are still regarded as part of the husband's property and as such cannot inherit her husband's property but must be inherited alongside his other property by another male in the family upon the event of her husband's death. According to the National Human Rights Commission (NHRC), challenges to the promotion and protection of women's rights still include harmful traditional practices such as female genital mutilation, widowhood rites, child marriage and violence against women. One very annoying display of discrimination is the requirement of most Embassies and High Commissions that a married woman must amongst other necessary visa applications and documents present a written letter of consent from her husband permitting her to embark on her proposed trip. No such 'consent' is required of the male for the same occasion.

4.6.11 Right to Inheritance

In most parts of Nigeria, female children are still discriminated against on issues of inheritance. With the decision in *Mojekwu v. Mojekwu*⁴³², in which the Court of Appeal declared the 'oli-ekpe' custom of Nnewi which permits the son or the brother of a deceased person to inherit his property to the exclusion of his female children as discriminatory, it was expected that discrimination against women and the girl child on the issue of inheritance would end. This is definitely not the reality, probably because the decision has not gained nationwide popularity and poverty prevents women from going to court to assert their rights.

4.6.12 Poverty and the Right to Dignity, Food Security and Adequate Housing

One major hindrance to the right to dignity, food security and adequate housing in Nigeria is poverty. Although Nigeria is richly endowed with both human and material resources, the Nigerian government, Nigerian civil society and the UNDP all state that approximately 70 per cent of Nigerians are poor. The majority of the poor are women. Also,

⁴³² (1999) NWLR pt. 4 p. 45

Nigeria does not have a social security plan for providing food and housing to the poor. This makes the situation of women precarious and exposes them to sex trade and destitution.

4.6.13 The Right to a Healthy Environment and Sustainable Development

Every woman in Nigeria has a right to a healthy environment that is favourable to their development. In reality, the environment in Nigeria has not been favourable to the development of women. According to Abiola and Iyare, ‘Since oil struck four decades ago, the ecological and environmental hazards from indiscriminate exploration have constituted an affront on the community and the survival of its people...the effects of oil exploration has produced debilitating effects on the peoples traditional occupation fishing and farming...’ The environment is degraded, as is the current situation in Nigeria; women are most affected because of their culturally and socially defined roles and responsibilities, because their adaptive capacity is low due to poverty and because their livelihoods are tied to the environment. In sum, any damage to the environment is damage to women as it affects their potentials and their productivity.

The rich provisions of the protocols, charters and conventions recognizing and guaranteeing women’s human rights in Nigeria promises a beautiful future for women if the government fulfills its obligations. In light of the current realities, government should redeem its image and show its commitment by:

- Domesticating all protocols, charters and conventions relevant to women;
- Passing the bill on violence against women;
- Reviewing laws on women’s property rights and all other laws discriminating against women;
- Adequate budgetary allocations to issues that promote women’s rights and bridge gender gaps;
- Integrating women’s right issues and gender education into the school curriculum.

Also we all, male and female, should in our own little ways condemn emphatically all dehumanising elements which women are made to endure right from the cradle (especially by their fellow women).

4.6.14 Strategies To Improve Girls' Education In Nigeria

Many programmes have been developed and delivered in the last decade to address the obstacles and urgent need for action on girls' education in Nigeria. Northern States have much ground to cover to enroll all girls in primary school and keep girls in school until they complete junior secondary school. Federal, States and local government authorities have been engaged with all of the programmes described below in order to generate ownership, leadership and sustainability around girls' education. Civil society organisations and the media have also been informal partners in some programmes to deliver public information campaigns to tackle gender stereotypes and harmful traditional practices. A selection of major programmes is presented here to highlight various strategies, interventions and successes in girls' basic education. It is clear from many successful activities that good local policies and collaborative and sustained interventions can have a positive impact on girls' lives. There is much to be learned and to take forwards from these programmes to transform girls' basic education in Nigeria.

i. Strategy for the Acceleration of Girls' Education in Nigeria

UNICEF supported the Federal Ministry of Education to develop the Strategy for the Acceleration of Girls' Education in Nigeria (SAGEN) in 2003. SAGEN was designed to respond to the number of out of-school girls in Nigeria and was a plan of action to enable all girls to access quality basic education by 2005. SAGEN was also designed to complement and enhance work already being done towards EFA in Nigeria. The initiative evolved into 'SAGEN Plus' in 2004 with support from international development partners and with refinements that link girls' education to women's health. SAGEN inspired the Girls' Education Programme, launched in 2004.

ii. Girls' Education Programme

The Girls' Education Programme (GEP) is delivered by UNICEF in partnership with the UK Department for International Development (DFID) and the Government of Nigeria. It is a collaborative programme which has become the largest DFID/UNICEF partnership in the world with £26 million funding from DFID to boost girls' participation in education Northern Nigeria.⁴³³ The Programme's main goal is to achieve progress towards MDG 3 in Nigeria: to eliminate gender disparity in primary and secondary education. To achieve this, the Programme takes an inter-sectoral approach, combining interventions in education, health,

⁴³³ UNICEF 'Update of the Situation Assessment and Analysis: Children's and Women's Rights in Nigeria' UNICEF: (2004). Abuja.

water and sanitation, and income generation. It operates in 720 schools across six states in the North East and North West regions where many girls do not go to school and many more dropouts early. The states are Bauchi, Borno, Niger, Sokoto, Jigawa, and Katsina.

GEP has been delivered in three phases: Phase I from 2005-2008; Phase 2 from 2008 - 2012 and Phase III scheduled for 2012–2019. The Programme’s interventions have taken a holistic view of education, working simultaneously within schools and school functions, such as establishing school based management committees and reviewing teaching materials, and in the wider community including awareness-raising and promoting synergies between girls’ education and poverty alleviation. Non-formal learning centres have been supported alongside the GEP schools to provide income generation skills to out-of-school girls and women.

4.6.15 Girls Education Programme Interventions

- Raising national awareness in girl-child education and increase political and financial commitments through advocacy and sensitization of policy makers at all levels, parents, school authorities, other leaders and girls’ themselves.
- Developing schools’ technical capacity and pedagogical skills to create a girl-friendly school environment that enhances the participation of girls’ and improves learning outcomes.
- Establishing child-friendly school principles as minimum benchmarks for effective schools linked to community empowerment and development.
- Creating school management committees with community involvement and participation.
- Collaborating with Government and other stakeholders in reviewing existing curricula and teaching materials for gender sensitivity.
- Promoting the employment of more female teachers to serve as role models and mentoring out-of-school girls.
- Monitoring and evaluating of girls’ education programmes and mobilizing and strengthening inspectorate.
- Promoting synergy between girls’ education and poverty alleviation programmes.
- Service delivery on a partnership basis with all stakeholders providing more girl-only schools and improved facilities) for the promotion of quality education.

- Developing School-based Teacher Development Programme to build teachers' capacities and skills to improve pupils' learning outcomes. (UNICEF)⁴³⁴

At national level, GEP promotes best practice and seeks to mainstream improvements into the national education system, policy and strategy development, and planning, monitoring and evaluation. Technical assistance has been specifically delivered to (i) improve States planning and data management systems; (ii) establish School-Based Management Committees (SBMCs) with 28 SUBEBs; (iii) improve the quality of teaching and learning in collaboration with State Colleges of Education (Akunga).⁴³⁵ The first evaluation of GEP I in 2006 noted that in GEP schools girls' enrolment and attendance had increased. GEP schools had also benefitted from new boreholes and separate toilets for boys and girls. GEP has evolved over time to deliver and promote the most effective interventions, learning from what works such as female teacher training and advocacy with traditional leaders. The fact that communication on girls' education is led by religious and traditional leaders is believed to have enhanced the influence and reach of GEP. In addition, the Female Teacher Training Scholarship programme introduced in 2008 through GEP II, UNICEF and state and local governments extended efforts to increase girls' completion rates through closing gaps between the demand and supply of women teachers in rural areas. The programme provided full teacher training funding for women in rural areas, attracting over 3,000 women since 2009.

4.6.16 Commitments Towards Achieving Human Right Based Approach and Implementation of Girls Right Education

It has been noted that a major problem facing the developing world is the lack of quality basic education to poor children from poor countries with the worst hit being girls and other vulnerable children, such as those with disabilities, affected by HIV/AIDS, refugees and internally displaced children.⁴³⁶ Commendable efforts have been made at the international level to improve access to and the quality of education. One of such is the Education for All (EFA) movement led by the UNESCO with the aim of meeting all the learning needs of children, youths and adults by 2015. In 1990 over 150 governments met at

⁴³⁴ UNICEF Information Sheet: *Girls' Education*. Nigeria Country Office, September 2007. Abuja.

⁴³⁵ Akunga, A. *Northern Nigeria: Approaches to Enrolling Girls in School and Providing a Meaningful Education to Empower Change*. E4 Conference: (2010) Dakar, Senegal.

⁴³⁶ Sperling, G.B. 'The case for universal basic education for the world's poorest boys' and girls'. 87(3) *Phi Delta Kappan (PDK International)* (2005) 213.

Jomtien in Thailand and adopted the World Declaration on Education for All. In 2000, this commitment was reaffirmed by 164 governments in Dakar, Senegal at the World Education Forum where six goals were adopted to be met by 2015.⁴³⁷ Among the goals, of particular interest to children are expanding and improving comprehensive early childhood care and education, especially for vulnerable and disadvantaged children and ensuring that all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities have access to free, quality and compulsory education. Other goals are, eliminating gender disparities in primary and secondary education with a focus on ensuring girls' full and equal access to quality basic education; improving every aspect of the quality of education and ensuring their excellence so that recognised and measurable learning outcomes are achieved by all, especially in literacy, numeracy and essential life skills.⁴³⁸

Commitment towards ensuring the reality of the right to education is also reflected in the UN Millennium Development Goals (MDGs) established at the Millennium Summit of the UN in 2000 following the adoption of the UN Millennium Declaration. Through the declaration, all UN member States and international organisations made a commitment to help achieve the MDGs by 2015. The achievement of universal primary education is the second goal among the eight MDGs. The target of this goal is to ensure that children universally, including both boys and girls will be able to complete a full course of primary education by 2015. MDG third goal also has the target of eliminating gender disparity in primary and secondary education by 2005 and in all levels of education by 2015.⁴³⁹ Although the MDG deadline of 2015 has not met with full achievement, significant progress has been made. Primary school net enrolment in the developing world rose from 83 percent in 1990 to 91 percent in 2015. Also, there has been nearly 50 percent decrease in the number of out-of-school children of primary school age globally from 100 million in 2000 to about 57 million in 2015.⁴⁴⁰

In Sub-Saharan Africa, primary school net enrolment has increased from 8 percent in the period between 1990 and 2000 to 20 percent in the period between 2000 and 2015.

⁴³⁷ UNESCO 'Education for All Movement' (2015) available at <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/education-for-all/> Accessed 26th November 2015.

⁴³⁸ UNESCO 'Education for All Goals' available at [http://www.unesco.org/new/en/education/themes/leadingthe-international-agenda/education-for-all/efa-goals/\(26November](http://www.unesco.org/new/en/education/themes/leadingthe-international-agenda/education-for-all/efa-goals/(26November) Accessed 26th November, 2023).

⁴³⁹ United Nations 'MDG 3: Promote gender equality and empower women' (2015) available at <http://www.un.org/millenniumgoals/gender.shtml> (accessed 26th November 2015).

⁴⁴⁰ MDG Report 2015 25.

However, the target of MDG second goal of achieving universal basic education is still a challenge in the developing countries as a result of poverty, disability, inadequate school facilities, and disparity in access to education for the rich and the poor, and for children in urban and rural areas.⁴⁴¹ A survey conducted in 63 developing countries between 2008 and 2012 revealed that children in the poorest households were four times more likely to be out of school as those in the wealthiest households.⁴⁴² That same study showed that the average number of out-of-school children was twice as high as the rate in urban areas. In India 33 percent of children aged six to 13 with disabilities are out of school. Inequality in access to education is also a major hindrance in achieving the MDG second goal. The children most likely to drop out of school are girls from poor households living in rural areas due to son preference and early marriage. Sub-Saharan Africa and Western Asia have the largest gender gaps in primary enrolment.⁴⁴³

Another major problem currently affecting education is armed conflict. Due to the impact of armed conflict on access to education, in North Africa and Southern Asia, the number of out of school children increased from 30 percent in 1990 to 36 percent in 2012. The EFA goals have not seen full achievement in many countries. The EFA 2015 report documented increases in school enrolment, abolition of school fees that helped attract students, declining disparities in education access but noted rural urban gap in access to education as well as a large out-of-school population.⁴⁴⁴ It was noted that though school entry and enrolment was made a priority, efforts to address the issues of quality, age-appropriate entry and schooling costs did not match need. This led to significant problems with dropout, progression and completion levels. Although achieving education for all is one of the biggest challenges of the present, any country looking for lasting economic development must put in place strategies to raise the literacy level of its citizens.

4.6.17 The Situation of Girl Child and Access to Education in Nigeria

Nigeria has been unable to secure an effective child's right protection system despite the domestication of the CRC and ACRWC as the CRA 2003. The protection gaps are evident in education, high rate of child marriage, female genital mutilation and other harmful

⁴⁴¹ MDG Monitor 'Goal 2: Achieve universal primary education' (2015) available at <http://www.mdgmonitor.org/mdg-2-achieve-universal-primary-education/> (accessed 26 November 2015) (hereafter MDG Monitor: Goal 2 (2015)).

⁴⁴² MDG Monitor: Goal 2 (2015).

⁴⁴³ United Nations (2008). 'MDG 3: Promote gender equality and empower women' Fact Sheet available at <http://www.un.org/millenniumgoals/2008highlevel/pdf/newsroom/Goal%203%20FINAL.pdf> accessed 26th November, 2023.

⁴⁴⁴ UNESCO EFA (2015) 77.

cultural practices, child abuse and neglect, lack of appropriate and accessible healthcare services, especially in rural areas, child labour, absence of a child friendly justice system and recently the children affected by the Boko Haram insurgency.⁴⁴⁵ Children are also affected by discrimination as a result of living on the streets, being orphaned, disabled or born out of wedlock. Poverty and hunger have increased the number of street children exposed to exploitative labour and trafficking, illnesses, malnourishment, accidents and drug abuse.⁴⁴⁶ In Northern Nigeria, many of the street children are Almajiris. They are young children (boys) who leave their homes to receive Koranic education, but rather than learn, they are sent to the streets by their teachers to beg or carry out menial jobs to survive.⁴⁴⁷

A survey conducted on 340 Almajiris in Northeast Nigeria revealed that 66.2 percent of the boys were involved the use of drugs such as stimulants, volatile solvents, cigarettes and cannabis.⁴⁴⁸ The rate of early and child marriage is still very high, especially in the North. This was a reason for the delay in the passing of the Child's Right Bill as the predominantly Muslim states, objected to the provision setting 18 years as the minimum age for marriage. They claimed that it was incompatible with Islamic precepts where girls were given in marriage at a much younger age.⁴⁴⁹ The CRA 2003 has not made a huge significance in the lives of Nigerian children because of the unwillingness of some states to adopt it as they claim diversity of cultures and religion as the reason. Considering that a protected right activates the obligation of the duty bearer, no court can punish the violation of children's right in states that have not adopted the CRA 2003 especially with respect to provisions that are peculiar to the Act. There is a severe lack of financial and human resources allocated to the promotion and protection of children's rights as well as a weak social protection system due to poor enforcement and inadequate documentation of the extent of violation of children's rights.

⁴⁴⁵ Edmonds, E.V. & Pavenik, N. 'Child labour in the global economy'. *Journal of Economic Perspectives* (2005) 209.

⁴⁴⁶ Aderinto, A.A. 'Social correlates and coping measures of street-children: A comparative study of street and non-street children in south-western Nigeria', 24(9) *Child Abuse and Neglect* (2000) 1200.

⁴⁴⁷ Yusha'u, M.A., Tsafe, A.K., Babangida, S.I. 'Problems and prospects of integrated almajiri education in Nigeria'. *Scientific Journal of Pure and Applied Sciences* (2013)125.

⁴⁴⁸ Abdulmalik, J., Omigbodun, O., Beida, O 'Psychoactive substance use among children in informal religious schools (Almajiris) in northern Nigeria. 12(6) *Mental Health, Religion and Culture* (2009)532.

⁴⁴⁹ Ijaiya, H. 'Human rights: Gender discrimination against female children in Nigeria'. *University of Ilorin Law Journal* (2006) 92.

More so, not much effort has been made to educate children about their rights as a study revealed children's limited awareness of their rights.⁴⁵⁰ Though the UBE scheme is a laudable strategy for providing free basic education, it however has many challenges, the greatest of which is funding. The funds allocated to education are not sufficient to ensure effective implementation of the scheme. In Nigeria, education funding involves the federal, state and local governments appropriating funds for capital and recurrent expenditure from the budgetary allocations for the educational sector in each particular fiscal year.⁴⁵¹ Despite the UN recommendation that 26 per cent of the total budget be devoted to education,⁴⁵² only 10 per cent of the 2015 budget was allocated for education. More so, just a fraction of the budget was spent in developing the sector. Out of over 483 billion naira budgeted for education in 2015; the 71 billion budgeted for UBE had 67 billion for recurrent and 4 billion for capital expenditure. The increased military spending due to the Boko Haram insurgency has also affected the spending on other sectors including education.

Another problem is corruption resulting in mismanagement and embezzlement of funds reserved for the development of the education sector. There is equally the absence of proper planning with regard to teaching staff requirements, infrastructure requirements, and materials for teaching and learning. Consequently, most public primary and secondary schools are heavily populated with an inadequate teacher pupil ratio, overcrowded classes, inadequate teaching and learning materials which makes the school environment unsuitable for teaching and learning. Another problem with the UBE scheme is as regards its accessibility which is an essential feature of basic education as contemplated in CESC General Comment 13. 'Universal' in the context of UBE, means the availability of basic education to the whole people irrespective of tribe, ethnic group, race, culture, sex or class. The placing of a ceiling on enrolment rates in various states with differential levels of literacy being the reason is seen as a ploy by the federal government to reintroduce the quota system into the Nigerian educational system.⁴⁵³ This undermines universality contemplated in the UBE scheme and falls short of the accessibility requirement of education. These problems are the result of inappropriate projections in relation the estimated population of children that

⁴⁵⁰ Ejieh, M.U.C. and Akinola, O.B. 'Children's rights and participation in schools: Exploring the awareness level and views of Nigerian primary school children'. 8(1) *Elementary Education Online* (2009) 180.

⁴⁵¹ Oseni, M 'Adequacy of budgetary allocations to educational institutions in Nigeria' (2012) 3(1) *Pakistan Journal of Business and Economic Review* 144.

⁴⁵² International Organisation for Migration 'Needs assessment in the Nigerian education sector' (2014) available at https://publications.iom.int/system/files/pdf/needs_assessment_nigerianeducsector.pdf accessed 18th February, 2016 27.

⁴⁵³ Aluede ROA (2006) 99.

will be enrolled in school, the number of qualified teachers that will be needed, the required infrastructure and learning facilities and the cost implication of these.

4.6.18 Nigeria's Policies on Girls' Education

Since Nigeria's Independence in 1960, the government has made concerted efforts in ensuring her citizens gain access to education. However, the focus on girls' education became more prominent in the late 1980s. The Blueprint on Women's Education and the Nomadic Education programme were both launched in 1986. The Blueprint on Women's Education was aimed at improving the chances of education for women. Education programme was targeted and children in nomadic communities. This was in order to consecutively preserve the culture of the nomadic communities and ensure access to education for children born within the communities.⁴⁵⁴ The curriculum has been reviewed to merge with the 9-year basic education curriculum, with adaptable learning tools such as interactive radio instructions.

In addition, to further ensure that the needs of women were further included as part of the nation's development priorities, the National Commission for Women was created to formulate a national policy for women and development in 1989. According to Adebore and Olomukoro⁴⁵⁵, this led to the creation of women education units at federal and state levels of improve access to education for women and girls at national and sub-national levels. There is limited available statistics to show the enrolment rate or level of literacy within this era. However, the success of this project can be felt with an increase in the enrolment rate of girls in primary school from over 32% in 1970 to over 86% in 1994. In 1991, the National Commission for Mass Literacy Adult and Non-formal Education (NMEC) was created to end illiteracy in Nigeria. Women and girls are well prioritized in the projects of NMEC. Other policies created in the 90's include the Family Support Basic Education Programme which was aimed at increasing access to education for girls living in rural areas. According to Dauda, this programme made impressionable steps, including the construction of early

⁴⁵⁴ Dauda, M. (2007). "Female Education and Nigeria's Development Strategies: Lots of Talk, Little Action?" Indian Journal of Gender Studies.

⁴⁵⁵ Adebore, B. and Olomukoro, A. —Influence of Literacy Education Programmes on Socio-economic Empowerment of Women in Edo and Delta States, Nigeria (2015).

childhood education centres as well as primary schools.⁴⁵⁶ It also constructed WASH facilities such as public toilets. In 1999, Universal Basic Education was revised, to reduce inequalities in education relating to gender and geography. As a result of these policies, the literacy rate for 15-24-year-old girls and young women increased from 62.5 in 1991 to 68.2% in 1999. To support global and local development frameworks including the National Economic Empowerment and Development Strategy (NEEDS) and the Millennium Development Goals, in 2004, the Universal Basic Education Act was an instrument enacted to ensure free compulsory qualitative education for all children. This led to the creation of the Universal Basic Education Commission. It addresses issues such as the role of the government at all levels and parents in ensuring children attend school. The Gender Education Programme (GEP) which also began in 2004 aims to reduce the gender disparity through different projects such as the Students Tutoring, Mentoring and Counselling (STUMEC), Mothers Association, Teachers Development Pedagogy Module (TBTD) and Girls' Education Movement (GEM).

These projects have recorded successes such as the training of stakeholders through the School-based management committee platforms for mentoring and training of students, and the establishment of the Mothers' Association which is a useful platform to mobilize women to take an interest in ensuring their girls go to school. Although these policies were created between 1986, the exact extent to which they impacted on the rise of girls' enrolment rate in primary school is hard to estimate which is targeted at girls who have dropped out of schools as a result of barriers such as early marriage and teenage pregnancy. It outlines the values of Nigeria and resonates with the fact that education is a tool through which Nigeria can be developed. It further aims to ensure all children are educated. It was revised to include early childhood education which is a key tool for improving the quality of education for both girls and boys. The National Policy on Gender in Basic Education was launched in 2007, the objectives are to promote equal access and participation in the basic enrolment of girls and boys, achieve high level of retention completion and performance rate, advocate for the support of key stakeholders, enabling environment for planning, implementation and achievement of the goals. In this policy, the Federal Ministry of Education further designed the National Framework on Girls and Women in Education which was aimed at increasing

⁴⁵⁶ Dauda, M. "Female Education and Nigeria's Development Strategies: Lots of Talk, Little Action?". *Indian Journal of Gender Studies* (2007).

the quality of education accessible to girls through amongst other techniques, a rights-based approach.⁴⁵⁷ The National Gender Policy, created in 2006 aims to recognize the differences between men and women while addressing the inequalities between men and women. It highlights important actions such as cultural reorientation through sensitization and dialogues and ensuring strategic partnerships with important stakeholders such as the parliament at national and sub-national levels, civil society organizations, inter-governmental agencies as well as bilateral agencies.

4.7 Internal Conflict of Law and Child Marriage in Nigeria

Conflicts of Laws exist both in international law and municipal law. The existence of different ideological and legal systems gives rise to conflict of laws of multiple nature.⁴⁵⁸ When there is a conflict between the legal system and laws of different nations, a branch of law known as private international law is called in to resolve the conflict.⁴⁵⁹ However, if the dispute is between systems of law within a particular state, the problem assumes a special character and recourse must be had to the different Court Rules and Local Statutes for the resolution of such conflicts. This type of conflict is very pronounced in Nigeria. This is as a result of a multiplicity of reasons.

First, most part of our customary law still remains un-codified with the result that obsolete laws exist side by side with new ones.⁴⁶⁰ Secondly, the reception of the laws of a country with higher level of economic development and totally different historical and cultural background. This is very evident in the subjection of our customary laws to English standards for its validity. Thirdly, adherence to the doctrine of precedence requires constant touch with the laws to avoid the application of laws that have since changed. Fourthly, the multi-ethnic nature of the Nigerian polity has also led to a multiplicity of customary laws with the result that conflict in customary law exists even within the same geographical location.⁴⁶¹

It has been stated earlier that the issue of marriage in Nigeria is a matter regulated by the federal government as long as such marriage is contracted statutorily.⁴⁶² Thus, there can be no

⁴⁵⁷ The Federal Ministry of Education —The Development of Education National Report of Nigeria [http://www.ibe.unesco.org/National_Reports/ICE_2008/ Nigeria NR 08 .pdf](http://www.ibe.unesco.org/National_Reports/ICE_2008/Nigeria_NR_08.pdf) (2008).

⁴⁵⁸ Z.A Abdulsalam, 'An Appraisal of The Ascertainment Of Applicable Law Of Torts In Conflict Of Laws' (Unpublished) LL.M Thesis Submitted to the Postgraduate School, Ahmadu Bello University, Zaria, (2014), 24.

⁴⁵⁹ Ibid.

⁴⁶⁰ K O Fayokun, '*Legality of Child Marriage in Nigeria and Inhibitions against Realization of Education Rights*' (2015) 12 *US-China Law Review* 812.

⁴⁶¹ Ibid.

⁴⁶² As evident in item 61, Second Schedule, Part 1, Constitution of the Federal Republic of Nigeria, 1999 as amended.

problem relating to conflict of law in Nigeria in relation to statutory marriage except where such conflict occurs on the basis of private international law, usually, in the cases of double-deck marriages. However, customary marriage is largely regulated by the bodies of unwritten and non-unified customary law and the Islamic law of marriage as found in all of the geographical areas constituting Nigeria.

Historically, the absence of formal court system in Africa as it is structured in the Europe made the foreign writers concluded that there was no court system, and legal administration in existence before the arrival of colonial overlord. Olaoba⁴⁶³ is of the view that the regulation and enforcement of law is not absolutely attached to these paraphernalia of structure, adding that there are other agencies that enhanced the administration of justice in African such as age-grades and secret societies – the *Ogbonis*, *Odi* in Ijebu, the *Emese* in Ife, Ekiti and Ijesha, *Baale* in Ibadan, *Igbimo Ilu* in Ibarapa – all these opinions fail to address the dynamism of African customary law of which Yoruba legal tradition is a key part, with respect to its modern relevance.⁴⁶⁴

One point to make here is that the legal system of Nigeria is pluralistic in nature, the explanation that Nigeria is composed of about 300 ethnic groups, the largest of which are the Hausa (Northern Nigeria), Igbo (south-east) and Yoruba (south-west). Other than the Hausa that mostly practise Shari'a law, each ethnic group has a system of customary law, although variations are noticeable among communities in these groups.⁴⁶⁵ In 1914, the Supreme Court Ordinance established the Supreme Court of Nigeria and mandated it to apply the common law of England, the doctrines of equity, and the statutes of general application in force in England on 1 January 1900. On 1st October 1954 Nigeria became a federation with a central government in Lagos and three regional governments in the north, west and east. On 1 October 1960 it became independent with a federal constitution and constitutions for the three regions.⁴⁶⁶ On 1 October 1963 it became a republic, and severed judicial and political ties with Britain. Following a civil war that lasted from 1967 to 1970, and several coups d'état, a constitution was adopted in 1979, and later modified into the current 1999 Constitution.

Nigeria's legal system, thus, is based on the Constitution, the received English common law, local legislation, Shari'a law, and customary law. As a federation consisting of a central government, 36 states grouped under six geo-

⁴⁶³ O B Olaoba, 'Legal Research in Royal Domain; The Experience of a field Researcher in Handbook in African Studies', (1992) *John Archers Publishers Ltd.* 24 – 25.

⁴⁶⁴ *Ibid.*

⁴⁶⁵ *Egharevba v Orunonghae* (2001) 11 NWLR [Pt. 724] 318 [CA] 337 per Ibiyeye JCA.

⁴⁶⁶ Nigeria Independence Act of 1960 8 & 9 Eliz 2 CAP. 55.

political zones, and nearly a thousand local government councils, law making is shared.⁴⁶⁷ Unlike federal law with unlimited territoriality, state and local council laws are limited to their respective territories.

Having established the pluralistic nature of Nigerian law, it remains to be said that the co-existence of these laws usually lead to the problem of the choice of law to be applied in certain circumstances as demonstrated in this section. The Nigerian legal system runs on three somewhat distinguishable streams of civil law, Islamic law and customary law. For instance, marriages under customary law are not invalidated merely because they do not meet the conditions stipulated for marriages under the Marriage Act, for they operate under different systems of law.⁴⁶⁸ Statutory provisions enjoin the High Courts to administer customary law along with law from other sources.⁴⁶⁹ In *Oppion v. Ackinie*,⁴⁷⁰ it was held that, the continued exercise of the jurisdiction of customary courts was not inconsistent with that of the High Court but that both are “co-existent”. Thus, marriages and matrimonial causes in customary law exist side by side with statutory marriages. The plurality of laws in the Nigerian legal system no doubt introduces a complexity which is bound to generate conflict of law problems. In the words of Niki Tobi:

Nigeria is a multi-lingua country with diverse varied and various ethnic groups, cultures and traditions. The sociology of the country is not only complex but highly diversified and heterogeneous. This type of society certainly gives rise to conflict problems in our laws, particularly when that highly diversified society operates a plurality of laws⁴⁷¹

The focus here is then to determine the appropriate lawful age at which a person can be said to have been marriageable in the face of the available customary laws and the various Child Rights Laws of States, this is owing to the fact that there are cases of inter-tribal marriage and movement of persons from their indigenous communities to other communities, would it then be said that a marriage purportedly contracted under a customary law may be rendered void if circumstances takes such person to another community or could it be said that a girl who would have been marriageable under the native law of Kano who may not have been marriageable under the customary law of the Yorubas would then become non-marriageable

⁴⁶⁷ Ss. 2(2) & 4 of the Constitution of the Federal Republic of Nigeria, (CFRN), 1999.

⁴⁶⁸ K O Fayokun, ‘*Legality of Child Marriage in Nigeria and Inhibitions against Realization of Education Rights*’, (2015) 12 *US-China Law Review* 812.

⁴⁶⁹ For instance sections 12(1) and 26(1) of the High Court Law, Cap. 52, Laws of Lagos State, 2019. Similar provisions abound in the High Court Laws of other states.

⁴⁷⁰ (Unreported) Quoted In Niki Tobi, *Sources of Nigerian Law* (MIJ Publisher 1996), 14.

⁴⁷¹ *Ibid.*

because she is getting married to a Yoruba man. The way to explain this kind of conflict can be seen in the dictum of James, L. J. where he observed that;

Can it be possible that a Dutch father stepping on board a steamer at Riterdam with his dear and lawful son should on his arrival at the port of London find that the child has become a stranger in blood and in law, and a bastard filliu nullius? (Because the law of marriage in London does not accept the marriage law of the Dutch people⁴⁷²

In conflict of laws, in order to determine the law of the particular jurisdiction that will be applicable, certain conditions have to be considered, this principles include inter alia, the following:

- i. The *lex fori* rule which dictates that the law of the forum or the court where the matter is instituted should be applied.⁴⁷³
- ii. The *lex loci* which dictates that the law of the place where rights were acquired or liabilities incurred should be applied, it identifies the *contractus, delicti, domicili, solutionis, cerebationis*, etc. where the suit was brought⁴⁷⁴.

Meanwhile, in matrimonial cases, the applicable law is determined by the principle of *lex loci celebrationis*.⁴⁷⁵ This means the law of the place where the marriage was made or celebrated. It may mean the law of the place where a marriage contract was cerebrated i.e. *lex loci celebrationis*. In this regard, if the validity of a marriage is in question under conflict of laws, the question is determined by recourse to the connecting factor of the place where the marriage was cerebrated. For example, if a *Gbaguji* man from *Kakau* in Kaduna South Local Govt. Area contract a marriage under native law and custom and the validity of that marriage is in question in a court in U.S.A. the validity of that marriage would be determined by recourse to *lex loci celebrationis* of the parties.⁴⁷⁶ In the circumstance, the personal law of the parties in *Kakau* village of Kaduna State of Nigeria would be resorted to in order to determine the validity of their marriage in U.S.A. It is not the law of the state in U.S.A. where the matter is, that will determine the validity of the marriage.⁴⁷⁷ The challenge here will then go to the fact that if a man from Lagos, Nigeria marries a girl from Zamfara state who is below the age of 18 years, the said marriage will be valid while contracted on the basis of the

⁴⁷² Re Goodmann's Trust (1981) 17 Ch. p. 298.

⁴⁷³ M A Adebayo, *Cases and Materials on Nigeria Legal System* (Ikeja: Princeton Publishing & Co, 2003) 353-382.

⁴⁷⁴ Ibid.

⁴⁷⁵ Z A Abdulsalam, 'An Appraisal of The Ascertainment Of Applicable Law Of Torts In Conflict Of Laws' (Unpublished) LL.M Thesis Submitted to the Postgraduate School, Ahmadu Bello University, Zaria (2014) 27.

⁴⁷⁶ Ibid.

⁴⁷⁷ Ibid.

principle of *lex loci celebrationis* but if the said man moves back to Lagos where marriage to a girl below 18 years is prohibited, could he have been said to have committed an offence under the Lagos law? This conflict is created as a result of the lack of availability of a unified legislation on the definition of who a child is. The kind of conflict of law pointed out here is conflict among customary laws within Nigeria owing to the nature of diversity of the various customary laws.

4.8 Conclusion

Child marriage is a barrier for girls not to have basic education as they abandon the pursuit of education and start early to rear children immediately they enter into a husband's house. Early marriage results in poor sexual and reproductive health for child brides, as they are incapable of negotiating safe and protected sex with their partners who are much older than them. Indeed child marriage violates the UN Convention on the Rights of the Child which has been domesticated by several countries including Nigeria. It is important that Nigeria endeavours to prosecute culprits found guilty to account and those who cover up to eliminate or prevent gender crimes. The violations of the rights of women in the society affect society as a whole and not merely the persons violated. There is a need to raise consciousness amongst the people on the extent of early marriage in our communities. They should be engaged in public campaigns and incentive schemes; this should be carried to parents, community leaders, and policymakers on the implications of early marriage in young girls.

Chapter 5

Enforceability of Laws and Statutes Prohibiting Child Marriages

One major method of determining whether a state has an effective child rights protection framework in place is the extent to which the standards of child rights protection, as outlined in the Convention on the Rights of the Child (CRC), are guaranteed in its domestic legislation. To this end, the Committee on the Rights of the Child has concluded that an obligation exists on the part of states to ensure that Convention provisions are given domestic effect; it has thus particularly ‘welcomed the incorporation of the Convention into domestic law’ (Committee on the Rights of the Child, 2003). This may suggest the undermining of state sovereignty to an extent, with national law and policy being regarded as subservient to international law. In 2003, Nigeria’s Civilian Government under Chief Olusegun Obasanjo went a step further in the child rights protection agenda by passing the Child Rights Act. The Act aimed at enshrining the principles entrenched in the Convention on the Rights of the Child in Nigeria.

The Protection Against Domestic Violence Law of Lagos state (2007) is Lagos-specific and was passed to provide protection against domestic violence and for connected purposes. The law offers protection to any person who is or has been subjected or allegedly subjected to an act of domestic violence. In 2015, The Violence Against Persons (Prohibition) Act (also known as VAPP Act) was enacted by the National Assembly (Nigeria) and was assented to become law by President Goodluck Ebele Jonathan. The goal of the Act is to eliminate violence in private and public life, prohibit all forms of violence against persons and to provide maximum protection and effective remedies for victims and punishment of offenders; and for related matters. The VAPP Act was enacted as a result of many gender-based violence and human right abuse happening in Nigeria, including rape, maiming of spouse, forceful ejection from home, forced isolation, acid bath, and killing.

5.1 Overview of the Enforceable Laws – CRA And VAPP

The Violence Against Persons Prohibition⁴⁷⁸ is an incredibly important piece of regulation for Nigerians. Not only does it prohibit multiple forms of Sexual and Gender Based Violence,

⁴⁷⁸The Violence Against Persons (Prohibition) Act (2015)

but it also appends punishment for offenders, accomplices and anyone caught in an attempt. The first part of the law has twenty-six sub-sections which include offences such as rape, coercion, threatening a person with physical injury, offensive conduct, female genital mutilation, depriving a person of his or her liberty, forced financial dependence or economic abuse, forced isolation or separation from family and friends, verbal and psychological abuse, negative widowhood practices, abandonment of spouse, children and other dependents, stalking, intimidation, spousal battery, harmful traditional practices, among others. Currently, 29 states and the Federal Capital Territory have adopted this law.

The Child Rights Act⁴⁷⁹ was passed into law in 2003 and was created to serve as a legal documentation for the protection of children rights in Nigeria. It recognizes the rights of children, restores their confidence and self-esteem and improves their status. The Act has 278 sections, 24 parts and eleven schedules. The CRA incorporates all the rights and responsibilities of children and specifies the duties and obligations of government, parents and other authorities, organisations and bodies. It has three primary purposes: to incorporate the rights of the CRC and the Children's Charter into the national law, to provide the responsibilities of government agencies associated with the law and to integrate children-focused legislation into one comprehensive law.

5.2 Aim and Objectives of the Laws

The VAPP Act seeks to: - eliminate violence in private and public life, prohibit all forms of violence against persons, provide maximum protection and effective remedies for victims and punish offenders.

Section 1 of the Act redefined the nature and scope of Rape to include using any part of body or anything to penetrate into the vagina, anus or mouth without a consent or where such consent is obtained by means of fraud, force, threat, false, intimidation or impersonation by a married couple. Thereby radically departing from the restrictive traditional concept and Jurisprudence of Rape in Nigeria in order to protect both females and males (as potential victims of rape).

⁴⁷⁹ Act No. 26 of 2003

The Act is the first criminal legislation to prohibit and punish whoever performs or procures another to perform female circumcision with a maximum of 4 years imprisonment or a fine not exceeding 200,000 naira or both. An attempt of it attracts not more than 2 years imprisonment or 100,000 naira fine or both.

The Act creates this offence that is novel and contentious, by criminalizing the conduct of a person who intentionally exposes his or her genital organ or a substantial part thereof, and consequently causes stress to another person or induces such a person to commit any of the offences established by the Act. Such a person is liable on conviction to a maximum of one year imprisonment or to a fine maximum of 500,000 naira or both.

To protect victims or potential victims from further victimization in both public and private settings, the Act provides that no complainant of any offence under the Act shall be expelled, disengaged, suspended or punished in any form whatsoever by virtue of the action of compliance with the provisions of this Act (such as lodging complaints in relation to offences under this Act).

The Act Provides also for the Protection of Victim's Identity and Dignity by Determining the number and categories of persons that may be in court, by empowering the court to hear proceedings in camera or to exclude any person from attending such proceedings, and prohibits the publication of certain information in relation to the trial.

The Act Provides for a Protection Order to be issued by a Judge restraining a private person or state actor from further abusive behaviour towards the victim, upon application made anytime by a victim or complainant. The offence of domestic violence as defined by section 46 of the Act, is the kind of violence that an interim protection order will be issued for⁴⁸⁰. Any respondent who contravenes an interim order or a protection order by denying the complainant access or preventing him/her from remaining in the place or house to which the order relates, commits an offence and is liable on conviction to a term of imprisonment not more than 6 months or a fine of not exceeding 300,000 naira⁴⁸¹.

The Act Provides for the award of appropriate compensation to victims of crime/violence as it may deem fit in the circumstances. They are also entitled to access to information on the

⁴⁸⁰ Section 23 VAPP

⁴⁸¹ Sections 29-36 VAPP

availability of legal, health and social services as well as reintegration and rehabilitation programmes. They are entitled to medical, psychological, social and legal assistance by accredited service providers, government and non-governmental bodies providing such assistance.⁴⁸²

The Child's Rights Act aims to protect the best interest of the child and is considered to be paramount, and must be protected either by an individual, public or private body, institutions or service, court of law or administrative or legislative authority. The Act provides that necessary protection and care shall be given to the child for his/her well-being, taking into account the rights and duties of the child's parents, legal guardians and other bodies legally responsible for the child.⁴⁸³

The Act provides for the rights and responsibilities of a child in Nigeria. It entrenches the following fundamental rights for the child, namely, the rights to survival and development, to a name, to freedom of association and peaceful assembly, to freedom of thought, conscience and religion, to private and family life, to freedom of movement, to freedom from discrimination, to dignity of the child, to leisure, recreation and cultural activities, to health and health care services, to parental care, protection and maintenance, to free, compulsory and universal primary education, as well as encouragement of the child to attend and complete secondary education.⁴⁸⁴

5.3 Restrictions to the Enforceability of the Laws In Nigeria

The CRA derives its validity from the CFRN, and while customs and cultures should necessarily be subjugated to any law for the time being in force in Nigeria by reason of its invalidity, it is a great wonder that child marriage remains a custom in the Northern states. Child marriage is most prevalence in the North and the enforcement of the CRA faces the most challenges in the North. The CRA is the supreme law as far as matters pertaining to the child in Nigeria is concerned, be it a Christian law, a customary law or an Islamic law.⁴⁸⁵

The CRA had been adopted by 26 States of the Federation, while the remaining ten States have bills pending for passage at various stages: - Adamawa, Bauchi, Borno, Gombe, Kano, Kebbi, Jigawa, Yobe, Sokoto and Zamfara. The first challenge is that of reflecting local

⁴⁸² Sections 1(2), 2(5) and 38(1) VAPP.

⁴⁸³ Sections 1-2 CRA.

⁴⁸⁴ Sections 3-20 CRA.

⁴⁸⁵ Sections 277, 274 CRA

peculiarities, in the process of drafting and passage of the Bill, that are cultural or customary or religious in character.⁴⁸⁶ The practice of giving out children in marriage at early states of their life without formal education or trade is predominant among the northern people especially the illiterates and may be less prevalent amongst the rich and educated citizens.

One of the reasons for the reluctance to adopt this law in the north, is because it is believed and justified that the Qur'an is against the marriageable age of 18.⁴⁸⁷ This is a typical example but it shows that there will always be a difference between cultural realities or political manipulations.

Another major reason why the CRA is that it does not make any provisions for Female Genital Mutilation (FGM). However, the VAPP Act in Section 6 prohibits female genital mutilation as well as section 16 of the Child's Rights Law of Oyo state. This potentially decries and questions the efficacy of the CRA in really providing protection to the rights of the female child in the Nigerian society.⁴⁸⁸ FGM is still a menace in some parts of the country, owing to cultural beliefs. The failure of the Nigerian government to educate her citizens on human rights generally and child rights specifically, has also contributed to this non adoption, particularly in the North. Grassroot reorientation is needed and the government continues to fail in this regard. There is a need for children to know their rights so that they could be human rights conscious. Parents need to know the rights of the child in order to respect them. Law enforcement officers or agencies need to know about child rights in order to stop confusing violations with domestic affairs. Government agencies need to know these rights to enable them to differentiate child rights from child privileges and charity. Legislators too need to know these rights in order to have a reorientation on the rights of the child.⁴⁸⁹

5.4 Steps for Its Enforceability

⁴⁸⁶ Prof. MuhammedTawfiqLadan, Ph.D, An Overview Of The Child Rights Act, 2003, Paper Presented At The All Nigeria Judges' Conference Of The Superior Court, 2021.

⁴⁸⁷EzeAnaba, 'Why The Child Rights Bill Must be Passed Into Law," Vanguard Newspapers Nigeria", May 12 2003 p. 26.

⁴⁸⁸ Akin OlawaleOgundayisi, "Legal Impediments on the Practical Implementation of the Child Right Act2003" 2015<https://www.academia.edu/6898104/LEGAL_IMPEDIMENTS_ON_THE_PRACTICAL_IMPLEMENTATION_OF_THE_CHILD_RIGHTS_ACT_IN_NIGERIA> accessed 15th September, 2023.<https://www.academia.edu/6898104/LEGAL_IMPEDIMENTS_ON_THE_PRACTICAL_IMPLEMENTATION_OF_THE_CHILD_RIGHTS_ACT_IN_NIGERIA> accessed 15th September, 2023.

⁴⁸⁹ Akin OlawaleOgundayisi, "Legal Impediments on the Practical Implementation of the Child Right Act2003" 2015<https://www.academia.edu/6898104/LEGAL_IMPEDIMENTS_ON_THE_PRACTICAL_IMPLEMENTATION_OF_THE_CHILD_RIGHTS_ACT_IN_NIGERIA> accessed 15th September, 2023.

To ensure total enforceability of the CRA, it is important to observe due process of law in the administration of child justice. Section 210 of the CRA provides that the legal status and fundamental rights of the child shall be respected and in particular, the following basic rights:

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- The presumption of innocence;
- the right to be notified of the charges;
- the right to remain silent;
- the right to the presence of a parent or guardian;
- the right to legal representation and free legal aid.

Sections 213 – 235 of the CRA, provide for Adjudication matters relating to Child offenders, including Jurisdiction of the court to try child offenders; rights to fair hearing and compliance with Due Process; guiding principles in adjudication; parents, guardians to attend court; child Justice procedure in court; remands and committals to State Government accommodation; social inquiry report on the background and conditions of the child ; power of the court to order parent or guardian to pay the fine, compensation or costs awarded against the child, unless the court feels otherwise; restriction on imposing imprisonment or corporal punishment or death penalty on child offenders, except in cases of treason, murder, robbery, manslaughter or grievous bodily injury caused to another, the court may order detention of such a child; methods of dealing with child offenders, etc.

State governments have the legislative power to modify certain provisions of CRA, 2003, in order to reflect local peculiarities in a constitutional federalism, provided the best interest and welfare of the child will remain of paramount importance. There is also a need to embark upon a widespread and aggressive awareness campaign among all stakeholders in respect of the rationale and contents of the CRA and state obligations to promote and protect children's rights. It is also necessary to intensify collaborative and cooperative networks in order to provide a strategic plan of action for both the passage and the gradual implementation of the law in our respective states. State governments need to demonstrate fairly, consistently and honestly their political will to protect children in our society using law and committing reasonable budgetary allocations to match governments' promises

Victims of sexual and gender-based violence can face myriad obstacles to reporting such crimes, especially, where women are viewed as keepers of family virtue and female modesty is enshrined in law or tradition. Too often, women view sexual and gender-based violence as a fact of life. Under these circumstances, women sometimes elect, or pressured by their

families or communities, not to report such violence to authorities. Many victims have no prior experience with the legal system and do not know how to proceed in sexual/gender-based violence cases. The insensitive attitudes of police officers may deter women from coming forward or prevent them from pursuing a case. Even when a victim of sexual assault is willing to come forward and pursue her or his perpetrator in court, myriad challenges can obstruct the road to Justice. The investigation itself can be difficult in terms of collection of testimony and evidence in sexual and gender-based violence cases which can pose unique challenges. These problems can be compounded in times of political unrest and armed conflict, when authority structures are disrupted and authorities may even be the perpetrators. In some cases, investigators and prosecutors may bear the same gender biases or rape myths prevalent in their community, treating sexual violence cases as personal matters or as less important than other crimes. Further, a lack of coordination between prosecutors and investigators can also create problems with evidence collection, causing eventual prosecutions to suffer.⁴⁹⁰

Investigators may not be trained to work through an interviewee's psychological difficulties, or may not know how and when to refer a traumatized witness for supportive counselling. Investigators themselves may suffer vicarious traumatization from repeatedly listening to accounts of rape, sexual mutilation or other violence. Interpretation can also complicate cases where an investigator does not speak the first language of the witness. Obviously, flawed interpretations can easily lead to confusion, misunderstanding and even unjustified concerns about witness credibility.⁴⁹¹

5.5 Conclusion

All agencies of the government, NGOs, civil societies, the media, churches, communities and parents alike, must, in a bid to curb to a reasonable extent this menace of child rights violation, prioritize the issue of child rights and see to it that the delicate beings on which the posterity and indeed the future of Nigeria lies, are not lost to the bottomless pit of gross human right violations, or left to grow without educational development, lest the next generation would develop another form of activism a nation-destroying one. Awareness and publicity needs to be carried out about the provisions of the Child Rights Act against child labour and the punishment made public for the purpose of deterrence. It is recommended that

⁴⁹⁰ Professor. M.T. Ladan, Ph.D, An Overview Of The Violence Against Persons (Prohibition) Act 2015, A Presentation Made At The Virtual National Workshop For Investigators And Prosecutors Organised By National Judicial Institute, Abuja, 2021.

⁴⁹¹ Ibid.

a consistent study and observation on the abuse of children in Nigeria be carried out from time to time. This will further expose social and personality variables responsible for the perpetration of the acts, so the Child Rights Act can be amended to cater for it. National agencies on Child's Right protection needs to be established, which must be responsible for reporting all forms of in human practices against the rights of children counseling and educating people on child abuse and law that guides against it. The agency would also be responsible for implementing various laws and conventions on child's rights.

Chapter 6

Conclusion

6.1. Summary of Findings

It is without doubt that Child marriage is at the forefront of global socio-cultural, health and legal issues. Nigeria currently ranks 13th among the 20 countries with the highest rate of girl child marriages with approximately 3 million child marriages amongst which 17% married before they turn 15 and 43% married before they reach the age of 18.

Early marriage is a form of violence and violations of children's rights. Child marriage in many countries in the world is defined as formal and informal marriage before the age of 18.⁴⁹² However, there are many countries that still legalize and allow teenagers between the age of 16-18 to get married with parental consent, which raises questions about the concept of childhood and cross-cultural marriage. Child marriage practices infringe on the rights of the child, and are themselves a consequence of violations of the rights of the child. The causes of the phenomenon of child marriage are complex and interrelated. Social, cultural, religious, and economic factors influence norms, values, and behaviour on individual, community, and society levels. The social and cultural norms in the event of early marriage are often linked to a religious doctrine. Religion is often used as a justification for the occurrence of early marriage. Parents will be willing to marry their children before the age of 18 if there are good and appropriate intentions.⁴⁹³

Child marriage is viewed as a violation of human rights and is prohibited by a number of international conventions and other instruments, namely: Universal Declaration of Human Rights 1948; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964; African Charter on the Rights and Welfare of the Child, 1990; and the Convention on the Rights of the Child, 1989 amongst others.

⁴⁹²Wodon Q., Tavares p, Fiala O, Le Nestour a., and Wise L., "Ending Child Marriage: Legal Age for Marriage, Illegal Child Marriages, and the Need for Interventions. London and Washington," DC, 2017.

⁴⁹³Yulyani L. , Kurniatii H.F., *The Effect of Social, Cultural And Religious Aspect On The Occurrence Of Early Marriage*, 1st International Respati Health Conference (IRHC) [2019], pg 3.

Under the Nigerian Law, the concept of the child is based exclusively on calendar age. The legal age at marriage is 21 years and anyone under this age is considered a minor and would require parental consent before legally entering into a marriage in the country⁴⁹⁴. The rights of the girl-child in Nigeria are protected by a legal framework, including national laws and international and regional conventions which the country has ratified.

It has been established that there is no uniformity in the existing legal framework governing child marriage in Nigeria. We have also explained the complexities involved in any attempt to punish and criminalize the violation of the Child Rights Act, 2003. This paper has been able to highlight the provisions of Islamic law on the subject matter and emphasis was laid on the fact that setting a minimum marriage age at 18 years does not contradict Islamic laws and traditions.

A clear attempt has also been made to show that, despite Nigeria's adoption of the CRA, the rights of the girl child in respect of marriage are not adequately protected by law. Firstly, this inadequacy stems from the approach taken that states in Nigeria have to domesticate the CRA before it applies in those states. Secondly, Part 1 item 61 of the 1999 Constitution, which provides that the Federal Government cannot interfere with Islamic and customary marriages, weakens and fails to give effect to the CRA to protect children against a social evil such as child marriage.

The causes of the phenomenon of child marriage are complex and interrelated. Social, cultural, religious, and economic factors influence norms, values, and behavior on individual, community, and society levels. The social and cultural norms in the event of early marriage are often linked to a religious doctrine. Religion is often used as a justification for the occurrence of early marriage. Parents will be willing to marry their children before the age of 18 if there are good and appropriate intentions⁴⁹⁵. In many places, girls who have relationships or become pregnant outside of marriage are shamed for bringing dishonour to their family. This fear motivates parents to limit the sexual agency of the girl. Parents may therefore feel justified to either restrict normative consensual sexual conduct, or to marry off the girl-child as soon as she reaches or approaches puberty. Socio-cultural norms about sexuality of the girl-child, the value placed on the girl's virginity, and the construction of the

⁴⁹⁴ Grace K Atim, Ph.D, *Girls not Brides: Ending Child Marriage in Nigeria*, (2017) JGIDA, Vol. 6, Numbers 1 & 2, pp 73-94.

⁴⁹⁵Yulyani L. , Kurniatii H.F., *The Effect of Social, Cultural And Religious Aspect On The Occurrence Of Early Marriage*, 1st International Respati Health Conference (IRHC) [2019], pg 3.

girl-child as sexually weak against the sexual desires of boys, contributes to parents marrying off their girl-child as soon as she reaches puberty. Such constructions of girls' sexuality reveal underlying power dynamics in a patriarchal environment that justifies girl-child marriages.⁴⁹⁶ Social structures such as patriarchy, social institutions (family, education) and socio-economic class can either hinder or support child marriage.

It is no doubt that religious leaders are among the most respected figures in many communities. They can help change existing norms in their communities and be critical allies in the movement to end child marriage. In the last few decades, religious leaders from multiple faiths have contributed to addressing child marriage by: collaborating with development actors; making public commitments; refusing to perform child marriages; participating in campaigns and trainings to build their own capacity to raise awareness about the harmful consequences of child marriage through their sermons, and reflect on solutions.⁴⁹⁷

A wide range of research has shown that young married girls often are isolated and powerless. They are unable to negotiate or obtain support for issues in their own interest. They are also frequently exposed to violence and threats of abandonment and divorce.⁴⁹⁸ Outside the family, the doors to schooling are usually closed to young married girls in most countries. This means that they have little chance to prosper later in jobs or as entrepreneurs. Often dependent and with little knowledge and income to support or invest in their children, child brides also end up raising daughters who face the same challenges as their mothers.⁴⁹⁹

It cannot be over emphasized that Nigeria needs to prosecute culprits found guilty to account and those who cover up to eliminate or prevent gender crimes. The violations of the rights of women in the society affect society as a whole and not merely the persons violated. There is a need to raise consciousness amongst the people on the extent of early marriage in our communities.

It has also been stated that it is important for every State in Nigeria to have an effective child rights protection framework in place. This will improve the extent to which the standards of

⁴⁹⁶Kangaude G., *Legal Grounds: Reproductive and Sexual Rights in Sub-Saharan African Courts*, (Pretoria, PULP, 2017) volume III.

⁴⁹⁷ *Girls Not Brides, The Global Partnership to end Child Marriage*, April 2019, pg 3.

⁴⁹⁸ Sheppard, Eric, et al. *A World of Differences: Encountering and Contesting Development*. Guilford, 2009
2nd ed

⁴⁹⁹ibid

child rights protection would be deeply entrenched in the Nigerian Legal System. Awareness and publicity needs to be carried out on the provisions of the child rights protective frameworks in place in every State in Nigeria against child labour and the punishment and same made public for the purpose of deterrence.

This research work in its entirety has demystified the subject of child marriage and its disadvantages, the available legal frameworks and their enforceability amidst the rising number of cases of child marriages in the Country. It becomes point of reference that despite the available laws protecting the child, there still exists lacuna that needs more efficacious laws to fill, especially in the northern region of the country where their laws do not give recognition to the Child Rights Act, 2003 through domestication as done by the southern states.

6.2: Conclusion:

In many ethnic groups or tribes in Nigeria, girls still get married early and many start having children while they are still children. This is a threat to their health and their lives; maternal mortality is unacceptably high and the greatest danger is to the youngest women. Early marriage is a powerful deterrent to their educational opportunities; it is a threat to their reproductive health; and it is highly risky for both mother and child, for adolescent girls are physically, mentally and emotionally unprepared for childbirth. Our common aim should be to make it unacceptable in a social as well as a legal sense, to men as well as to women; and to promote actions that will enhance the physical and mental development of young girls and boys and their human rights as a whole. We want to promote an atmosphere in which couples are free to make choices firmly grounded in maturity, and to wait until they are ready for marriage. Working together to change attitudes and legislation, improve data collection and promote education, we can achieve this goal.

Strategies suggested to address the problem of child marriage include empowerment of girls, mobilisation of families and communities, establishment and implementation of laws and policies. Since all the strategies are interlinked and mutually reinforcing, it is necessary to combine the related actions in a context-specific way that takes into consideration the different drivers of child marriage in each region.

Ending child marriage will help break the intergenerational cycle of poverty by allowing girls and women to participate more fully in the society. Empowered and educated girls are better able to nourish and care for their children, leading to healthier, smaller families. When girls are allowed to be girls, everybody wins.

Finally, one of the most important rights for a girl-child is the right to education. This right is usually violated as a result of child marriage. The 1999 Constitution of Nigeria provides that the government shall provide Education for every Nigerian.⁵⁰⁰ These rights are referred to as fundamental objectives and Directive Principles of state policy. However, these rights are not justiciable in a court.⁵⁰¹ Although in the case of *Legal Defence and Assistance Project (LEDAP) Gte Ltd v Federal Ministry of Education & Anor*,⁵⁰² Hon. Justice John Tsoho of the Federal High Court, sitting in Abuja declared as enforceable, the right of every Nigerian to free and compulsory primary and junior secondary education. Tsoho also ruled that federal and state governments have constitutional duties to provide adequate funds for free education. The court held that failure by any arm of government to fund free primary and junior secondary education would constitute a breach of the Constitution. The judge noted that the right to free education in section 18(3) (a)-(d) of the Constitution was ordinarily not enforceable, being in chapter two of the Constitution. However, he added that since the National Assembly enacted the Compulsory, Free Universal Basic Education Act of 2004,⁵⁰³ it had made that provision of the Constitution an enforceable right. The court stated that it relied on the Supreme Court's decision in *Attorney General of Ondo State and Others v Attorney General of the Federation*⁵⁰⁴ to arrive at the judgment. In this case, it was held that the provisions of Chapter 2 of the Constitution, even though they are not enforceable by virtue of section 6(6) (b) of the constitution, could be made enforceable or justiciable by legislation. One of the laws that can

⁵⁰⁰ 18 (1) Government shall direct its policy towards Ensuring that there are equal and adequate educational opportunities at all levels.

(3) Government shall strive to eradicate illiteracy; and to this end Government shall as and when practicable provide (a) free, compulsory and universal primary education;

(b) free secondary education;

(c) free university education; and

(d) free adult literacy programme

⁵⁰¹ See Section 6 (6) (b) of the 1999 Constitution.

⁵⁰² Unreported suit no. FHC/ABJ/CS/978/15.

⁵⁰³ By virtue of sections 2 (1) and 3 (1) of the Compulsory, Free University Basic Education Act, 2004; the right to free universal primary education and free junior secondary education for every Nigerian child is guaranteed. They provide thus: 2 (1) Every Government in Nigeria shall provide free, compulsory and universal basic education for every child of primary and junior secondary school age. 3(1) The services provided in public primary and junior secondary schools shall be free of charge.

⁵⁰⁴(2002) 9 NWLR (Pt. 772) 222.

be relied on is the Compulsory, Free Universal Basic Education Act of 2004 mentioned above.

Therefore, the girl-child who is denied of her right to an education as a result of early or child marriage can be defended in a court of law apart from the fact that she is a minor and she needs to be protected by the laws. It is in view of the above that the implementation of the Child's Rights Act and Child Rights Laws of the various states should be strengthened using the apparatus of family courts as established by the same Child's Rights Laws to ensure that such cases of early or forced marriage can be filed in a family court by a Social Welfare officer or official of the state if the matter is reported to them by any concerned adult or teacher in the school if the child has been withdrawn from school for the purpose of child marriage. This situation demands that citizens of Nigeria can assist in ensuring that the perpetrators of child marriage are reported, particularly, the man who marries a young girl or impregnates an underaged girl. Such a person must be prosecuted as child marriage is an offence under Section 21 of the Child Rights Act.

6.3. Recommendations

As recommendation, this research work suggests the empowerment of the girl child, mobilisation of families and communities for empowerment programmes and re-orientation exercises, establishment and implementation of laws and policies drawn towards preventing early child marriages and possibly stiff legal consequences. Since all the strategies are interlinked and mutually reinforcing, it is necessary to combine the related actions in a context-specific way that takes into consideration the different drivers of child marriage in each region.

Ending child marriage will help break the intergenerational cycle of poverty by allowing girls and women to participate more fully in the society. Empowered and educated girls are better able to nourish and care for their children, leading to healthier, smaller families. When girls are allowed to be girls, everybody wins. It is further recommended as follows:

1. The Constitution of the Federal Republic of Nigeria 1999 as Amended (CFRN) needs to be reviewed and amended. There is a drastic need for the amendment of section 12 of the CFRN⁵⁰⁵ to enable international laws relating to children to directly be

⁵⁰⁵ (1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly. (2) The National Assembly may

automatically applied by Nigerian Courts. Issues relating to children needs to be placed within the Exclusive Legislative List of the CFRN so as to ensure that laws like the CRA, which pertains to the Child to be mandatorily applied by all States in the federation. The provision of section 29(4)(b) of the CFRN⁵⁰⁶ should likewise be expunged from the CFRN as it remains unreasonable for girls of 10-14 years or even below 18 years to be deemed as being of full age, as this provision leaves room for exploitations. It is recommended that the age of the child be solely less than 18 years in accordance with section 29(4)(a) of the CFRN.

2. The CRA should contain express provisions prohibiting Female Genital Mutilation so as to really provide protection to the female children in Nigeria. With respect to the age of the child, the provisions of section 277 and 274 of the CRA should prevail over any other legislation and, as regards customary law positions on this subject, the incompatibility test of validity should be applied by the Court to ensure conformity with sections 274 and 277 of the CRA, even when such customary law previously had the force of law. The governments should revise or enforce legislation regarding the minimum age of marriage. This includes a serious examination of customary marriages that contravene existing legislation. Too often, for example, harmful traditional practices are allowed to continue in spite of laws that forbid them. Legislation needs to be reassessed and enforced in the interest of the rights and health of young people.
3. To ensure that the child enjoys maximum protection, there is need to harmonise domestic child protection laws, make room for enforcement of socio-economic rights, intensify child rights awareness campaign, regularly train officers involved in child protection movement, renovate and adequately equip educational and health centres monitor projects awarded for the protection of the child, punish child rights violators, rehabilitate children involved crimes or violated, and ensure that states yet to adopt the CRA do so. The Child's Rights Implementation Committees (CRIC) created under the CRA should be created in all states and local government levels in

make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty. (3) A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and shall not be enacted, unless it is ratified by a majority of all the Houses of Assembly in the Federation.

⁵⁰⁶ (4) For the purposes of subsection (1) of this section— (a) "full age" means the age of eighteen years and above ; (b) any woman who is married shall be deemed to be of full age.

Nigeria, as Lagos State *inter alia*, has done. The Federal Government and the National Human Right Commission should ensure that all states, particularly those that have domesticated the CRA should be obligated to do so speedily.

4. The government must do all it must to tackle insecurity in Nigeria so as to prevent parents in insecurity-infested states, from taking their female children to become brides to bandits just to negotiate for safety. Also this will prevent children from being recruited into the battle as combatants during such conflicts, or from being orphans or being forced to stop their education.
5. The formation of partnerships is a strategy that should be employed so that it will increase the chances of success in addressing this problem. To end the practice of early marriage, resources must be mobilised at all levels, within a coordinated and cooperative structure. All actors have a role to play: families, communities, health providers, education services, religious leaders, local and national government, and international organisations. NGOs can provide valuable lessons from the field, and offer a means of establishing new initiatives. The media has a crucial role to play in terms of changing attitudes and raising awareness amongst these different actors. It can promote arguments against early marriage, raise awareness of the potential of girls and women, and depict positive role models. It is important that adolescents are involved in designing, implementing and evaluating programmes intended for their benefit. The Universal Basic Education Curriculum should be revisited to ensure adequate knowledge is provided to every child in every single school in the federation of Nigeria of their rights.
6. It is recommended that a consistent study and observation on the abuse of children in Nigeria be carried out from time to time. This will further expose social and personality variables responsible for the perpetration of the acts. The Child Rights Act can be amended to cater for it. A National agency on Childs Right protection needs to be established which must be responsible for reporting all forms of in human practices against the rights of children, counseling and educating people on child abuse and the laws that guide against it. The agency would also be responsible for implementing various laws and conventions on child's rights.

7. Various educational programmes should be organized by government, relevant bodies and individuals in order to empower young women, by teaching them on how to start a trade, teaching them the importance of education, teaching them a skill through various and series of trainings. Such programmes should be encouraged and available not only in schools, but in communities and rural areas as well. Public education and advocacy that target policy makers should be used in preventing early marriage, and in making visible the problems and risks that the young brides face. Through the programmes, the awareness of parents, community leaders, and policy makers are raised, about the health and rights limitations of young girls being married off to much older men.
8. Social and economic programmes should be provided for out of school girls, including non-formal education programmes for girls who are not in school, these programmes will help build in her a sense of financial independence, as she will be able to develop business ideas.

6.4 Contribution to Knowledge

The researchers contribution to knowledge is to the society at large. This is because child marriage and betrothal are prohibited by National Legislation, the Childs' Right Act 2003, the socio-cultural practice and religious backing of the issue in some sections of Nigeria makes it a necessary evil which shamefully continues to stare us in the face. The Constitution of the Federal Republic of Nigeria 1999 as Amended (CFRN) needs to be reviewed and amended. There is a drastic need for the amendment of section 12 of the CFRN to enable international laws relating to children to directly be automatically applied by Nigerian Courts.

6.5. Suggestion for Further Studies

Since the study of this thesis was limited to library based research and based on findings of other researchers. The researches suggests that this thesis be further researched into by other future researchers by having a personal one on one interview with girls under the age of eighteen who are victims of child marriage.

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This is to certify that this Thesis by Obiageli Christiana BENSON with Matric No. LCU/PG/002652 in the Department of Public and International Law, Faculty of Law, Lead City University, Ibadan, Oyo State, Nigeria is in full compliance with the approved University format and style.

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