

CHILD BRIDE AND CHILD SEX: COMBATING CHILD MARRIAGES IN NIGERIA*

Abstract

This paper considers the basis of child marriages in Northern Nigeria. It is an Islamic practice rooted in the interpretation of the Quran. Significantly, the caveat that copulation should be delayed until such girls are mature is often ignored as these child brides are engaged in sex. This paper analyzes the report of a Senator in Nigeria married to a 13-year-old bride. More painfully, he divorced a 15-year-old child bride who already had a child for him. It argues that such young teenagers may not be able to give informed consent to the marriage. In addition, because of their tender years, they are unable to express their sexual autonomy. Against this background, it canvasses that the implications of this practice are multi dimensional, drawing from the Yemen example. It analyzes the provisions of Child Rights Act on child marriages against the background of other jurisdictions. This paper concludes that the practice can be jettisoned highlighting the Egyptian example.

Introduction

Child marriage is the practice of marrying a young girl (generally defined as below the age of fifteen) to an adult. In most cases, it is always a young girl married to a man.¹ It is a situation where female adolescents and teenagers are married to adult husbands. In these instances, sometimes, the men can be twice their ages and these females become child brides.

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. 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.²

The incidence of child marriage has become a global phenomenon, particularly in Sub-Saharan Africa and Southern Asia.³ In Nigeria, several researches have been

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¹ 'Child Marriage Wikipedia' available at http://en.wikipedia.org/wiki/child_marriage, (Last accessed 1/12/2010).

² *Ibid.*

³ In Rajasthan, India, there is the custom of giving very small children away in marriage. On the auspicious day of *Akha Teej*, the mass solemnization of marriages between young boys and girls is performed. From the parents' point of view, this is the tried and tested way of organizing the passing on of property and wealth within the family. A small but significant proportion of the children involved are under age 10, and some are mere toddlers of two or three-years-old. Many Bangladeshi girls are married soon after puberty, partly to free their parents from an economic burden and partly to protect the girls' sexual purity. Where a girl's family is very poor or she has lost her parents, she may be married as a third or fourth wife to a much older man, to fulfill the role of sexual and domestic servant. In Albania, families in rural areas, reduced to abject poverty by the post-Communist transition, encourage their daughters to marry early in order to catch potential husbands before they migrate to the cities in search of work, and to avoid the threat of kidnapping on the way to school. In Niger, a recent study by UNICEF in six West African countries showed that 44 percent of 20-24 year old women in Niger were married under the age of 15. The need to follow tradition, reinforce ties among or between communities, and protect girls from out-of-wedlock pregnancy was the main reasons given. In the communities studied, all

carried out on the incidence of child marriages. In 1999 Nigerian Demographic and Health Survey (NDHS),⁴ it was reported that in 26.5 percent couples, there is an age difference of 15 or more years between husband and wife. Equally, it showed the median age of marriage in the South West and South East was 20.2 years whilst those of the North West was 14.6 years and slightly higher in the North East with 15.0 years. It concluded that there was a large zonal variation in the mean age of marriage with females in the North marrying on an average of about five years earlier than those in the South.

Another recent research based on the 2003 NDHS revealed that the timing of marriage varies considerably by region and area of residence.⁵ The median age at marriage is lowest among girls in North West and North East regions, at 15.8 and 16.8 years respectively. Rural girls were more likely to marry early compared with urban girls; for example, in the North West, 29 percent of urban girls married by age 15 compared with 65 percent of their rural counterparts who are married at the same age. The timing of marriage among girls in the southern regions is later.⁶ This survey further substantiates the 1999 NDHS. From these surveys, girls from the Northern part of Nigeria marry at a relatively younger age than their Southern age mates. Another significant factor from the 2003 survey was that rural girls were more likely to get married earlier than urban girls. It is quite glaring that there is higher incidence of child marriage in Northern Nigeria.

This paper considers the basis of child marriages in Northern Nigeria. It analyzes the report of a Senator in Nigeria married to a 13-year-old bride. He divorced a 15-year-old child bride who already had a child for him. This paper argues that such young teenagers may not be able to give competent and informed consent to the marriage. Against this background, it canvasses that the implications of this practice are multi dimensional drawing from the Yemen example. Paper considers the provisions of Child Rights Act on child marriages against the background of other jurisdictions. It concludes that the practice can be jettisoned highlighting the Egyptian example.

Child Marriages in Northern Nigeria: Islam and Sharia Law

Islam was introduced into Nigeria around the 11th century and spread throughout the country.⁷ It has its own distinctive legal system, that is, Sharia law. For almost a century, the Borno Empire was the front runner of Islam and Sharia legal system. However, by the 15th century, Sharia had spread to the neighbouring states of Kano and Katsina which subscribed to its cause. The Fulani Jihad and the

decisions on the timing of marriage and the choice of spouse are made by the fathers. See 'Early Marriage, Child Spouses' (Innocenti Digest No 7 March 2001) a publication of UNICEF Innocenti Research Centre Florence, Italy.

⁴ Children's and Women's Rights in Nigeria: A Wake-up Call, Situation Assessment and Analysis 2001 (National Planning Commission, Abuja and UNICEF 2001) p.200.

⁵ Annabel S. Erulkar and Mairo Bello, 'The Experience of Married Adolescents Girls in Northern Nigeria.' The study is collaboration between the Population Council and Adolescent Health and Information Projects (AHIP) Kano, Nigeria (publication of Population Council 2007).

⁶ *ibid*

⁷ O. Junaid, "The Sharia Legal System in Nigeria; A Historical Survey" in C.S. Momoh & S. Awonusi (eds.), **Nigerian Integrative Discourses Volume 1 Sharia**, University of Lagos, Nigeria 2005, pp.234-235.

establishment of the Sokoto Caliphate in the 19th Century further consolidated the influence of Sharia legal system.⁸

The above represented the position until the British colonization of Nigeria. According to a leading scholar on the application of Islamic law in several parts of the world, Sharia law was more in force in Northern Nigeria than anywhere else in the world apart from Saudi Arabia.⁹ The British allowed the Sharia legal system in several Northern states as a native law and custom.¹⁰ To that end, section 2 of the Native Court Ordinance¹¹ provided that native law and custom included Islamic Law.¹² The Native Courts (Protectorate) Ordinance¹³ equally empowered native courts to administer the native law and customs prevailing in the areas of their jurisdiction.¹⁴ Hence, Sharia remained operative in Northern Nigeria as a class of customary law¹⁵ and was recognized under the Constitution of the Federal Republic of Nigeria as an existing law.¹⁶

This was the state of affairs in Nigeria until 2002, when Zamfara State officially adopted the Sharia legal system.¹⁷ This was quickly followed by eleven other Northern states.¹⁸ Since then, several arguments have been canvassed on the merits and demerits of the Sharia legal system which is outside the scope of this paper.¹⁹ Suffice to say that the Muslims believe that all other laws have human origin, but Sharia law is fixed by the Almighty Allah through his Messenger, the Holy Prophet Mohammed, who by using divine power, disseminated the message from its immediate Arab home to the rest of the world.²⁰

⁸ *Ibid.*

⁹ J.N.D. Anderson, **Islamic Law in Africa** Tamaza Publishing Co. Ltd, Zaria, 1998.

¹⁰ S. Fabamise, "The Introduction of Sharia Legal System in Nigeria: Problems and Prospects" in A. Ibadapo-Obe & T.F. Yerima (eds.), **International law, Human Rights and Development, Essays in Honour of Professor Akintunde Oyebo**, University of Ado-Ekiti, Faculty of Law, Nigeria, 2004, p. 380.

¹¹ 1914.

¹² S. Fabamise, *op.cit.*

¹³ 1933.

¹⁴ I. Elaigwu & H. Galadima, "The Shadows of Sharia over Nigerian Federalism", **Publius: The Journal of Federalism**, 2003, p. 126.

¹⁵ G. Akingbein, "*The Antonyms of Sharia and Human Rights: Nigeria's Perspective*". in A. Ibadapo-Obe & T.F. Yerima (eds.), *op.cit.*, p.392

¹⁶ Section 315, 1999 Constitution of the Federal Republic of Nigeria. The existing laws were the penal code and sharia civil law. However, at the Constitutional Drafting Committee stage to usher in a democratic rule in 1978, the Muslim requested for a Federal Sharia Court of Appeal to cater for matters of Islamic personal law. This was granted with modifications and incorporated in the 1979 Constitution. The 1999 Constitution replicated this provision and provide *inter alia*: "the Sharia Court of Appeal of a State shall *in addition to such other jurisdiction as may be conferred upon it by the law of the state*, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law."

¹⁷ S. Fabamise, *op.cit.*, p. 375.

¹⁸ The states are Niger; Bauchi; Borno; Gombe; Jigawa; Kaduna; Kano; Katsina; Kebbi; Sokoto and Yobe, *ibid.*

¹⁹ See S.U.D. Keffi, 'Improving the Quality of Life of Muslims through the Socio-economic Aspects of Sharia in Nigeria' in Sharia implementation in Nigeria, Issues and Challenges on Women's Rights and Access to Justice. This is a proceeding of a two day conference on Women's Rights and Access to Justice under Sharia in Northern Nigeria. Organized by Women Aid Collective (WACOL) Enugu, Women Advocates Research and Documentation Centre (WARDC), Lagos in collaboration with Ahmadu Bello University Zaria 2003 pp.207-227.

²⁰ S. Fabamise, *op.cit.*, p.376.

According to Dr. M.O. Junaid, a leading Islamic jurist:

Sharia is a legal system highly upheld by the adherents of the Islamic faith. It is comprehensive in nature, it is divine in origin and people believe it is a component part of their religion. Sharia is based on the fact that God is the creator and He is so merciful enough to provide a code of conduct which influences our conduct, be it personal, societal, family or whatever.²¹

Hence, Sharia is all-encompassing; it is a religion, a way of life, a society and a State. Thus, “whilst Islam is a package of tenets, Sharia encompasses the full description of the tenets.” The scope of both addresses the entire aspect of human life.²² Obviously, Sharia or Islamic Law connotes the same meaning, as both refer to the Muslim legal system. Most relevant in this context is that Sharia law is derived from fixed and immutable sources such as *Quran*, *Sunna*, *Ijma*, and *Qiyas*.²³

Therefore, Islamic jurists have tackled the issue of age of marriage based on the interpretations of the Quran.²⁴ According to these jurists, a child “experiencing [a] wet dream” or “experiencing [a] monthly course,” as stated in the Quran in relation to the age of marriage, indicates the age of maturity for males and females.²⁵ However, the *ihtilam* (wet dream) for males and *haidah* (menstruation) for females are not attained at any particular age. The age of marriage is determined by a combination of other factors, including environment, climatic conditions, and physical growth.²⁶

Support for the view that the age of marriage is not fixed is also found in the Quranic verse which states:

If you are in doubt as to the prescribed period for such women as have despaired of monthly courses, then know that the prescribed period for them is three months and also for such as do not have their monthly courses yet.²⁷

In essence, it is lawful for a girl who has not attained the age of puberty to enter into marriage. With the precedence of the Prophet’s marriage to Aisha when she was about 12 years old, it is unanimously agreed by all the four *Sunni* schools²⁸ that there is no limit to the number of years that a girl must reach before the age of marriage.²⁹ Therefore, Islamic Law does not fix any age for marriage, and this

²¹ M.O. Junaid, Lecturer, Department of History, University of Lagos, Nigeria, *quoted in* A. Madugba, “The Nigerian Constitution and Sharia Law” **Equal Justice**, 2002, p.20

²² M.A. Bidmos, “Sharia: Another Name for Islam- A Descriptive Study” in C.S.Momoh & S. Awonusi (eds.), *op.cit.*, p.170.

²³ A. Dauda, **An Introduction to Sharia**, Benchmark Publishers Limited, Zaria, 2005. pp. 129-130.

²⁴ M.A. Ambali, **The Practice of Muslim Family Law in Nigeria** Tamaza Publishing Co. Ltd, Zaria, 2003, pp.154-155.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Quran 65:4, M. Taqi-Ud-Al-Hilali & M. Mushin Khan, **Interpretation of the Meaning of the Noble Quran in English Language** 2006, p.766.

²⁸ *Hanifi, Malik*, Shafi’I and Hanbali.

²⁹ ‘Promoting Women’s Rights Through Sharia in Northern Nigeria’, A publication of the Centre for Islamic Studies, Ahmadu Bello University, Zaria, 2004.

probably explains the higher incidence of “marriage of minors” or “child marriage,” or “child bride” in the North including the Sharia implementing states.

Whilst not condemning this practice, which is firmly rooted in the Quran, the caveat that copulation should be delayed until when such girls are mature is often abused as these child brides are often engaged in sex.³⁰ The recent marriage of a senator of the Federal Republic of Nigeria to a 13-year-old bride consequent upon his divorcing another 15-year-old bride who had a child for him is a case in point. We shall be considering this in the next section.

Senator Ahmed Sani Yerima’s child brides and the socio-medical implications

The Editorial of a reputable newspaper reported that Ahmed Sani Yerima, the former Governor of Zamfara State and a Senator recently got married to a 13-year-old Egyptian girl.³¹ Ordinarily, polygamy is recognized in Nigeria, but the import of the 50 years old Senator marrying a girl who could be his daughter is not lost on Nigerians. Obviously, this has generated fiery reactions from several quarters.³² For instance a coalition of Nigerian women’s groups, activists and academics signed and delivered a petition to the Senate calling for an investigation into the alleged marriage. They equally petitioned that the Senator is in the habit of having child brides.³³ Sometimes in 2006 or thereabouts, he married a 15-year-old girl (Hauwau) as his fourth wife. The Senator divorced the said girl when she was 17 and nursing his child so that he could marry another wife. They urged the Senate to suspend him.³⁴

In his response, the Senator claimed he had done nothing wrong and would not respect any law that contradicted his religious beliefs.³⁵ He further said, “history tells us that Prophet Mohammed did marry a young girl as well. Therefore, I have not contravened any law. Even if she is 13 as it is being falsely peddled about.”³⁶

The Senator was invited by the officials of the National Agency for Prohibition of Trafficking in Persons and Other Related matters (NAPTIP) for questioning over his marriage to a minor.³⁷ The Senator maintained he had not contravened any law and tendered his marriage certificate to the girl in a Sharia court. He was released based on

³⁰ H. Abd al Afi, **The Family Structure in Islam**, International Graphics Printing Service, Maryland, 1977, pp.76-77. A leading proponent in Islamic Family Law explained that under Islamic Law, “marriage in minority would imply a betrothal or some formal agreement, deferring final consummation to a later date...preliminary arrangements may have been made at an early age, but consummation usually took place when the parties were fit for marital congress, which depend among other things on their physical conditions....”

³¹ **Sunday Punch** of 18th April 2010 “Senator Yerima’s new wife” p.10.

³² This Day of 27th April 2010 “Will Senator Yerima’s Child Bride lead him to jail? p. xi. ‘Petition: Yerima marriage to a 13-year-Old Girl’, available at <http://www.blacklooks.org/2010/04/update-on-yerima-marriage-to-a13yr-old-child/> (Last visited 4/12/2010).

³³ *Ibid*, Petition: Yerima marriage to a 13-year-old girl.

³⁴ *Ibid*.

³⁵ The Nigerian Inquirer, ‘Senator Sani Yerima Shrugs off Child Bride Accusations, available at <http://www.thisdayonline.com/login.php?return-to=nview.php?id=171870> (Last accessed 4/12/2010).

³⁶ *Ibid*.

³⁷ ‘Agency grills Yerima over child bride’ available at <http://nigeriang.com/2010/05/19/newstoday-agency-grills-yerima-over-child-bride>, (Last accessed 5/12/2010).

self recognition and asked to report back to the Agency.³⁸ It appeared the dust is settled on the issue because not much is read about it in the papers nowadays.

However, it is indeed saddening that a person occupying such an exalted position could be involved in this dastardly act hiding under the façade of religion. Even more horrifying is that important dignitaries attended the wedding at an Abuja Central Mosque, tacitly giving their approval. The first child bride actually dropped out of school for marriage and with her divorce becomes a 'single child parent'. The second child bride had equally stopped schooling with yet unknown consequences in the event of pregnancy.

Obviously, these child brides would not have been able to give competent and informed consent to the marriage. The Islamic practice is that marriage in minority is invalid without the consent and participation of the guardian and the responsibility for such a marriage is vested in persons who apart from being the parent or guardian have a good sense of judgement and consciousness. To guard against possible misapplication, the minor upon attaining the age of majority can also repudiate the marriage.³⁹ It is disheartening in the case of the Senator that consent which is an essential element of marriage has been vitiated. The first child bride, Hawau was the daughter of his driver. The second child bride is also the daughter of his Egyptian driver. He actually paid \$100,000 dollars as the bride price and financed the transportation of the bride's family to Nigeria for the marriage ceremony. It is hardly disputing that poverty is the basis for such families giving out their teenage daughters. These uneducated child brides could not have been able to give any consent and is a clear abuse of their person even under Islamic law.

Moreover, such child brides are denied the right to sexual autonomy as well as face multi dimensional socio-medical implications. The right to sexual autonomy includes the rights of women to have control over and decide freely and responsibly on matters relating to their sexuality.⁴⁰ They are entitled to bodily integrity, pleasure and determine the intimate partner of their choice.⁴¹ In contradistinction, for these under-educated and adolescent girls, sexual intercourse is the likely consequences of their marriages. The assumption of sex within marriage is *a priori* consensual.⁴² The emphasis by Islamic scholars that whatever may be the age of the child, final consummation must be delayed until the parties are ready for marital relations, a condition determined by puberty is often jettisoned.⁴³ Tragically, recently in Yemen,

³⁸ *Ibid.*

³⁹ Ibn Abbas reported that the Prophet (SAW) said 'a virgin's consent should be sought and her silence is her consent'. Hassana bint Khaddar was married by her father against her wish. She complained to the Prophet who repudiated the marriage. It was equally narrated by Ahmad Abu Dawud, Ibn Majah and Dar al Qutni on the authority of Ibn Abbas that a young virgin came to the Prophet and told him that her father had given her in marriage to a man against her wish and the Prophet gave her the option to ratify or repudiate the marriage. See 'Promoting Women's Rights through Sharia in Northern Nigeria' *op.cit.*

⁴⁰ Paragraph 96 of the Beijing Declaration, Working Definition of sexual rights from the World Health Organization. See 'what is meant by sexual and reproductive health and rights' available at <http://www.eldis.org/go/topics/resources-guide/health/key-issues/sexuality-and-reproductive-health-and-rights/what-does-it-mean> (Last accessed 6/12/2010).

⁴¹ *Supra*

⁴² See 'Early Marriage, Child Spouses' (Innocenti Digest No 7 March, 2001).

⁴³ H. Abd al Afi, *op.cit* p.76.

Elham Madhin al-Assi, a 12-year-old girl died of internal bleeding three days after her March 29th wedding. The medical report by the hospital stated that she suffered from “sexual exhaust, cervix tears and severe bleeding.”⁴⁴

A research conducted on several countries, including Nigeria showed that the modern contraceptive usage rate among married child brides from 15-19 years old in Nigeria is 0.6 percent.⁴⁵ This percentage is very negligible; such child brides in most cases, cannot determine the period of pregnancy and are prone to early pregnancy. With this, they are susceptible to the increased risk of dying, increased risk of premature labour, low birth rate and higher chances that the newborn babies will not live.⁴⁶ There are also the serious medical complications of Vesico-Vagina Fistula (VVF) and Rectum Vagina Fistula (RVF).⁴⁷ It is pathetic that girls with such medical conditions are considered unclean and ostracized by society. In Nigeria, this condition affects 150,000 women. Out of this, a whole lot of 80-90 percent of wives with VVF is divorced by their husbands.⁴⁸

Child marriage equals early marriage. This inevitably denies children of school age their right to the education for their personal development, preparation for adulthood and effective contribution to the future well-being of their family and society.⁴⁹ The interaction between the number of years of a girl’s schooling and the postponement of marriage is firmly established by demographic and fertility studies.⁵⁰ On the average, women with seven or more years of education marry four years later and have 2.2 percent fewer children than those with no education.⁵¹ Meanwhile, it has been rightly observed that there is better tool for effective development than education of girls. It lowers infant mortality, promotes health, improves nutrition, raises economic productivity, enhances political participation and prepares the ground for educating the next generation.⁵²

Judging from the array of socio-medical consequences of early marriage enumerated above, it is only logical for countries to legislate against child marriages. Therefore, Nigeria enacted the Child Rights Act which amongst others out rightly

⁴⁴ Madeline Wheeler, ‘Yemen’s Sacrificial Child Bride’ available at http://www.huffingtonpost.com/madeline-wheeler/yemens-sacrificial-child_b_535771.html (Last accessed 8/12/2010)

⁴⁵ A. K. Blanc & A. A. Way, “Sexual Behaviour, Contraceptive Knowledge and Use”, **Studies in Family Planning** Vol. 29, No. 2, 1998.

⁴⁶ J. Senderowitz, ‘Adolescent Health: Reassessing the Passage to Adulthood’, World Bank Discussion Paper no. 272, Washington DC 1995.

⁴⁷ VVF arises from obstructed and prolonged labour. When an under-aged girl goes into labour, her pelvic bones are not sufficiently developed to allow the passage of the baby’s head. Consequently, the foetal head presses on the surrounding tissue and organs. If this continues for long, the pressure can lead to fistula, in the form of holes between the bladder and the vagina (VVF) and in extreme cases between the vagina and rectum (RVF). Children’s and Women’s Rights in Nigeria: A Wake-up Call, Situation Assessment and Analysis 2001, *op.cit.* p.201.

⁴⁸ ‘Final Report on National Baseline Survey of Positive and Harmful Practices Affecting Women and Girls in Nigeria’ Centre for Gender and Social Policy Studies, Obafemi Awolowo University, Ile-Ife, 1998.

⁴⁹ See ‘Early Marriage, Child Spouses’ (Innocenti Digest No 7 March 2001).

⁵⁰ UNFPA State of the World’s Population 1990, New York, UNFPA 1990.

⁵¹ *Ibid.*

⁵² Kofi A. Annan, Foreword Note, State of the World Children 2004. See also Iyabode Ogunniran “Legal Perspectives on the Educational Rights of the Girl-Child and Development Issues in Nigeria” (A.B.U.J.P.I.L) 2007, pp. 41-54.

prohibits child marriages. The paramount issue is the effective implementation of this law as shall be seen in the next section.

Child Marriages under the Child Rights Act: Jigawa and Borno Examples

Nigeria signed the Convention on the Rights of the Child in January 1990 and ratified the same in April 1991.⁵³ Despite stiff oppositions to the Convention on the Rights of the Child, it was domesticated as the Child Rights Act in 2003.⁵⁴ The CRA will provide a comprehensive and child specific legislation which is in accordance with international standards.

The CRA prohibits child marriages. A person under the age of 18 years is incapable of contracting a valid marriage and where such marriage is contracted, it is null and void.⁵⁵ Furthermore, a parent, guardian or any other person cannot betroth a child in contravention of this section as such betrothal will be null and void.⁵⁶ The Act states clearly the category of persons contemplated by this provision, that is a person who marries a child, to whom a child is betrothed, promotes the marriage of a child or who betroths a child.⁵⁷ In order to show the seriousness of this issue, the Act makes it an offence liable on conviction to a fine of N500, 000 or imprisonment for a term of five years or both.⁵⁸

Most Northern states have refused to adopt the CRA.²¹³ In fact, the strongest opposition to the CRA by Islamic leaders pertains to the age of marriage.⁵⁹ A Nigerian cleric, Imam Sani, declared that if the government imposed the CRA, there will be violent conflicts from some Muslims to the extent that some would even die in the process.⁶⁰ Hence, Jigawa State is the only sharia implementing state that has adopted the CRA.

Already, there appears to be some manipulations of this section. The Jigawa State Child Rights Law prohibits child marriage but a child for the purposes of the

⁵³ Status of Ratification of the Convention on the Rights of the Child, available at <http://www2.ohchr.org/english/law/crc-ratify.htm>, (Last accessed 20/8/2010).

⁵⁴ For instance, that the CRA will demolish the very basis and essence of Sharia and Islamic culture. Available at Sharia Council Against Child Rights Act, *available at* <http://www.wluml.org/node/2408> (Last accessed 20/10/2010).

⁵⁵ Section 21. According to some scholars, the rationale for prohibition of child marriage is as a result of incessant cases of VVF in some parts of the country where early child marriages are common. Also, such children below the age of eighteen years may not necessarily be fit mentally and psychologically to bear the burden of motherhood or parental responsibilities towards children. See A.A. Adeyemi, Dean, Faculty of Law, University of Lagos at the Law Teachers Conference held in May 2004.

⁵⁶ Section 22 (1).

⁵⁷ Section 22(2).

⁵⁸ *Ibid.*

There are thirty-six states in Nigeria, but presently, twenty-four states have adopted the CRA. These are: Abia, Anambra, Bayelsa, Ebonyi, Ekiti, Imo, Edo, Delta, Jigawa, Kwara, Lagos, Nassarawa, Ogun, Ondo, Oyo, Osun, Plateau, Rivers, Benue, Akwa Ibom, Cross Rivers, Taraba. Only four northern states such as Jigawa, Kwara, Nassarawa Taraba, Kogi and Adamawa have adopted the CRA. In fact, many of the states that are yet to adopt are from the north. Significantly, it is only Jigawa out of the Sharia-implementing states that has adopted. Interview with Sharon Oladiji, Project Officer Child Protection and Participation Section, UNICEF, U.N. House Central District, Abuja.

⁵⁹ Child Marriage in the Islamic World, <http://97.74.65.51/readArticle.aspx?ARTID=36336> (Last accessed 21/12/2010).

⁶⁰ *Ibid.*

section is a person below the age of puberty.⁶¹ It defines this age as when one is physically and physiologically capable of consummating a marriage.⁶² Even though this is to be determined by the courts, it is our opinion that there will be different judicial opinions depending on each case hence, lack of uniformity. It must be stressed that the definition section defines a child as any person below 18 years but specifically excludes section 15 on child marriage.⁶² And to show its obvious disapproval for the prohibition of child marriages, the penal provision ridiculously states that a person is liable on conviction to a fine of ₦5,000 or a term of imprisonment for one year or both.⁶³

In the same vein, the proposed bill of the Child Rights Law in Borno State cleverly states that no person under the age of 18 years is capable of contracting a valid marriage unless the Law applicable to the child majority is attained earlier.⁶⁴ As earlier reiterated, In Islamic Law applicable to all Muslims, there is no fixed age of marriage. Hence, a child may not necessarily be 18 years to get married. Also, the penal sanction is a fine of ₦10, 000 or a term of imprisonment six months or both.⁶⁵ It is glaring from these two provisions that child marriages are indirectly encouraged. It is within this context that suggestions shall be proffered in this paper.

Child Marriages: England and Egypt

Comparatively, England, though a developed nation is also faced with the issue of child marriages.⁶⁶ Presently, two separate government probes are investigating the disappearance from school of hundred of kids from ethnic minorities. The authorities are worried they are being forced into marriages in other countries.⁶⁷ In England, the immensely complex and sensitive issue of forced marriages of children has been tackled by making consent an essential factor for the conclusion of a valid marriage.⁶⁸

There are preventive pre-marriage measures to protect children threatened with forced marriages. An application may be made for an Emergency Protection Order (EPO). Where the EPO is granted, but the parents are the threat to the child, the court could be asked for a presumption of non-contract for the duration of EPO to neutralize the effect of parental consent.⁶⁹ Further, a prohibited steps order may also be obtained by a local authority to prohibit the removal of the child from the country without the

⁶¹ Section 15(1).

⁶² Section 2 (1).

⁶² Section 2(1).

⁶³ Section 17.

⁶⁴ Section 21. It has been argued that the definition of a child under the Children's Convention as "every human being below the age of eighteen years, unless, under the law applicable majority is attained earlier" is more purposeful, realistic and flexible within the context of Nigerian people especially the Muslims than the blanket provision of eighteen years under the CRA. It is our opinion that the preference for this definition is that under it, the age of marriage will still not be specific as depicted in the Borno State's bill.

⁶⁵ Section 23.

⁶⁶ 'UK Probes Forced Child Marriages' <http://www.newser.com/story/21275/uk-probes-forced-child-marriages.html> (Last accessed 13/12/ 2010).

⁶⁷ *Ibid.*

⁶⁸ B. Clark and C. Richards "Combating Forced Marriages: a Comparative Franco-English Perspective" *IFL*, 2007, p. 75.

⁶⁹ *Ibid*, p.77

permission of other court.⁷⁰ However, where there are allegations that a child has left the country to enter into a forced marriage abroad, the normal course of action is to seek the return of the child by making them a ward of court through application to the High Court Family Division.⁷¹

The post-marriage remedy is annulment. A marriage will be voidable if either party to the marriage did not validly consent to it through duress. The test by the court is that a spouse pleading duress must prove that his or her will had been overborne by genuine and reasonably borne fear caused by threat of immediate danger to life, limb or liberty. In addition, there is extra-territorial protection for victims of forced marriages.⁷² In August 2000, the UK Government produced a joint action plan from the Home Office to tackle forced marriages abroad. The Home Office was to ensure that victims knew where to resort for help by distribution of Foreign and Commonwealth Office forced marriages leaflets and to increase accessibility of consular sections for victims.⁷³

In this instance, the courts have been positioned to play central roles and the welfare of the child is the utmost consideration. In Nigeria, the courts may not be able to play such visible roles because some of the judges especially in Northern Nigeria are also involved in the act of having child brides. It can at least learn a lesson from the practice in England by adopting their victim-centred approach where there are ground rules for the protection of victims. This writer submits, in this regard, consent should be the core element for concluding a valid marriage.

Obviously, child marriages have Quranic backing substantiated by Prophet Mohammed's marriage to Aisha. However, it has been canvassed that instead of purporting to base the legal authority of family law on a Sharia jurisprudence that has ceased to exist as a living and evolving system, it is better to recognize that this field, like all other law, derives its authority from the political will of the state.⁷⁴ A clear acknowledgement of this reality will open the door for more innovative approaches to family law reform guided by Islamic principles, without being confined to outdated understandings of Sharia. This will enable Islamic countries to make family law more consistent with other aspects of their legal systems, including their constitutional and international obligations to protect the rights of women.⁷⁵

A clear application of the above principle is seen from the Egyptian example. Just like Nigeria, Egypt is an Islamic country. Though Egypt belongs to the *Hanafi* School of Jurisprudence, the Upper Egypt just like Nigeria belongs to the *Maliki* School of Jurisprudence.⁷⁶ In essence, the two countries share some similarities in the practice of Islam. However, in Egypt, the idea of child marriage has been reformed

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*, p. 78.

⁷³ *Ibid.*

⁷⁴ A. An Na'im, **Islamic Family Law in a Changing World, A Global Resource Book**, Zed Books Ltd London, New York, 2002 p.3.

⁷⁵ *Ibid.*

⁷⁶ A. Dauda, *op.cit.*, p.150. T. Khabir, 'The Role of Islam in Childhood Marriage Case Study: Nigeria'. Presented at the Annual Convention of the Global Awareness Society International San Francisco USA May 2008.

through religion.⁷⁷ Child marriage was heavily reformed in the 1920s. The Child Marriage Restraint Act of 1929 prohibited underage marriages. Presently, there are no reported cases in the country.⁷⁸ Through the transformation of the focus of the *Hanafi madhhab* they were able to raise the marriage age to 16 for girls and 18 for boys. The ruling also included a penalty for any male over the age of 21 or parent arranging a marriage outside of this regulation. This occurred as other entities of societies saw reform as well during the 19th and 20th century.⁷⁹ It is our submission that if an Islamic country could successfully promulgate a law prohibiting child marriages, reformation is also possible in Nigeria. Much depends on the political will of the state.

UNICEF published in 2009 a special edition reviewing the implementation of the Children's Convention, 20 years after.⁸⁰ Egypt, the world largest Arab nation was commended for his child protection laws amidst intense debate among conservative Islamists, moderates and secularists about the role of state, religion and families in child welfare.⁸¹ In fact, it was stated that Egypt is on the track to achieve most of the Millennium Development Goals.⁸² Similarly, in Nigeria, there is already the CRA banning child marriage, the Northern States where the practice is endemic must exhibit the will to adopt and work the CRA for overall purpose of development as can be seen from the Egyptian example. It is within these parameters that we shall be making the following suggestions are proposed.

Conclusion and Suggestions

This paper has attempted to trace the basis for higher incidence of child marriages in Northern Nigeria. It established that child marriages have socio-medical implications and child sex can lead to complex medical problems such as VVF and RVF. It considered a developed nation such as England and the way it has tackled child marriages. This paper showed that Egypt is the world largest Arab nation which equally shares some Islamic practices with Nigeria. However, it has outlawed child marriages and was even commended for its progressive development over the years. In view of the practice in Nigeria, we make the following suggestions which are both preventive and curative for combating child marriages:

- 1. Attitudinal change:** Reforms must take cognizance of the power of traditionally structured family. But parents, family heads, traditional rulers and other stakeholders must realize there is need for change of attitudes towards child marriages. Awareness should be created that it is not a fight against religious beliefs, it is to save the lives of child brides from all the attendant consequences.
- 2. Adoption of Child Rights Act:** The Northern Nigeria states must adopt the CRA without any modifications as depicted in the Jigawa Child Rights Law and the Borno proposed bill.
- 3. Consent of the bride:** Bridal consent must be made an essential element of a valid marriage whether Customary or Islamic. This must be shown by an overt

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ The State of the World's Children, Special Edition 2009.

⁸¹ *Ibid.*

⁸² *Ibid.*

act and probably confidential questioning of the couples before solemnization of marriages.

4. **Adolescent healthcare services:** Since these child brides are constantly exposed to sex and sexually transmitted diseases, there is the need for approaches to adolescent healthcare that provide services that are accessible to married and unmarried youths. In addition, skills education for sexual health and regulation need to be provided in the classroom, youth clubs, newsletters and radio programmes.⁸³
5. **Education of the girl-child:** Girls must be empowered through education. Both the CRA and the Universal Basic Education Act provide for free, compulsory and universal basic education for Nigerian children.⁸⁴ Already some states have taken the lead to educate the girl-child and prohibit child marriages. The Cross River State Girl-Child Marriage Prohibition Law,⁸⁵ Niger and Bauchi states have laws prohibiting the withdrawal of girls from school for purposes of early marriage. Also, Sokoto State has a scheme whereby young married girls who dropped out of school can return to complete their education. Girl's education is said to reduce child and maternal mortality and high incidence of HIV/AIDS. It increases women's skill and productivity which consequently eradicate poverty and strengthen the economy in the long term.⁸⁶ Ultimately, as can be seen from the foregoing global overview, educating the girl-child instead of forcing her into early marriage will translate into accelerated development for Nigeria.

⁸³ See 'Early Marriage, Child Spouses' (Innocenti Digest No 7 March 2001).

⁸⁴ Sections 10, 15 and 21 CRA. Section 2 Universal basic Education Act 2004,

⁸⁵ Cross River State Girl-Child Marriage and Female Circumcision (Prohibition) Law 2000.

⁸⁶ UNICEF State of the world Children 2004.