

**RESOLVING THE PROBLEMS ASSOICIATED WITH MINIMUM LEGAL AGE
FOR MARRIAGE IN NIGERIA**

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**FACULTY OF LAW
UNIVERSITY OF BENIN
BENIN CITY**

NOVEMBER 2025

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**A LONG ESSAY WRITTEN AND SUBMITTED TO THE FACULTY OF LAW,
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FOR THE AWARD OF THE DEGREE OF BACHELORS OF LAWS (LLB) OF THE
UNIVERSITY OF BENIN, BENIN CITY.**

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CERFITICATION

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APPROVAL

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DEDICATION

I dedicate this work to God Almighty, my creator and my constant helper for his continuous existence, and to all the children in Nigeria who are enduring various phases of abuse that cannot speak because some of which your parents endorse. More particularly, this work is dedicated to every minor suffering the consequences of child marriage, to those who have been abandoned due to health complications, and to those whose lives were cut short either the abuse or childbirth in child marriage unions. You are remembered, and the fight to protect you still ongoing, and shall not stop until every child is free from abuse and every violator is duly prosecuted.

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
CEDAW	Convention for the Elimination of Discrimination Against Women
CRA	Child Rights Act
CRL	Child Rights Law
CRC	Convention for the Rights of the Child
CFRN	Constitution of the Federal Republic of Nigeria
CIA	Central Intelligence Agency.
CYPA	Children and Young Persons Prohibition Act 1943
ECOWAS	Economic Community of West Africa States
GGSTC	Government Girls' Science and Technical College
HIV	Human Immunodeficiency Virus
HPV	Human Papilloma Virus
ILO	International Labour Organization
M A	Marriage Act
MCA	Matrimonial Causes Act
MDGs	Millennium Developments Goals
SEN	Senator
SDGs	Sustainable Development Goals
NHRC	National Human Right Commission
RVF	Rectum Vagina Fistula
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations Children's Fund

UNFPA **United Nations Population Fund.**

USD United States Dollar

VVF Vesico-Vagina Fistula

ABSTRACT

Child marriage is any marriage carried out below the age of 18 years before the child is physically; physiologically, and psychologically ready to shoulder the responsibilities of marriage and childbearing. Child marriage affects both boys and girls, but girls are often more disproportionately affected. The issue of child marriage remains a global menace that has raised several concern because of the harm that comes with the pernicious practice. However, significant efforts have been made to combat the insidious practice through several instruments, towards achieving global realization in the Structural and Developmental Goals Scheme. According to UNICEF, several jurisdictions e.g England and India, among others have harmonized their legal systems to explicitly prohibit child marriage. in spite of these progressive legal strides towards the eradication of child marriage globally, the incident of the practice is quite prevalent in Africa. This practice is prevalent in Africa because it is greatly entrenched in the fabrics of her socio-cultural and religious beliefs. Nigeria is not indifferent in this arena, the antecedence of child marriage is still rampart in Nigeria, in spite of several instruments prohibiting the engagement of such practice and its inimical effect to children. The intrinsic factor responsible for the unremitting practice, among others, is the adoption of a pluralist legal system at its core and the disharmony of legislation in the subject of legal minimum age which have been exploited as a cloaked enterprise for the justification of child marriage in Nigeria. This work critically examines the issue of legal minimum age for marriage in Nigeria and the attendant problems associated with the disharmony in legislation in respect to a legal minimum age for marriage in Nigeria. It further addresses the consequences that unfold as a result of child marriage and other attendant violation

CHAPTER ONE

INTRODUCTION

The scourge of underage marriage and forced unions is not confined to any single territory; it transcends borders, impacting individuals under the age of 18 across diverse regions, cultures, and religious beliefs, albeit with varying degrees of prevalence.¹ Currently, one in every five girls globally becomes a bride before turning 18, with an alarming report of one-third of every marriage involving a child less than 15.² Every day, 39,000 young girls are compelled into marriage, amounting to an overwhelming figure of 12 million yearly. These unions inflict egregious harm on the emotional and social development of the child, often depriving them of their right to education, familial connections and forcing them into adult roles, including involuntary motherhood.³ The United Nations Convention on the Rights of the Child (UNCRC), defines a child as anyone below 18, unless under the law applicable to the child majority is attained earlier.⁴ Child marriage is any formal or informal marital union involving a minor under the age of 18, whether with an adult or another minor⁵. Historically, child marriage was a norm, there is hardly any country in the world that did not participate in the practice of child marriage, including Europe, the United States and the Middle East. It was a common expectation for the girl child to get married as soon as possible for the purpose of procreation. Consequently, the age of the child was not of essence, the concern was whether she was matured enough to marry and bear children. It was fair enough for the

¹ C P Mantovani, 'Child Bride and Force Marriages,' September (2024) volume 9 *Global pediatrics*, " .<https://www.sciencedirect.com/science/article/pii/S2667009724000769?via%3Dihub> (accessed 7 August, 2025).

² European Union Parliamentary assembly, "Forced marriage in Europe," 2018 <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25016&lang=en> (accessed 7 August 2025).

³ S Shahinian, 'United Nations Digital Library 2010,' Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences. <https://digitallibrary.un.org/record/695923?ln=en> (accessed 7 August 2025).

⁴ United Nations, Convention on the Rights of the Child. Resolution 44/25, (1989), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child#:~:text=For%20the%20purposes%20of%20the,child%2C%20majority%20is%20attained%20earlier> (accessed 9 August).

⁵ UNICEF, "Child marriage," (2022), <https://www.unicef.org/protection/child-marriage>, (accessed 10 August 7 2025).

child to attain puberty before being handed over for marriage, in extreme cases, the child does not get to puberty before they are given in marriage. This Chapter will discuss the historical standpoint and give a brief background of the subject, providing an overview of the status and condition of children in Nigeria.

1.1 Background and History of Child Marriage

Child marriage cannot be traced to one origin or be said to have started in a particular year, it was simply a common practice across the world, prior to the development and promulgation of statutory instruments that effected the prohibition on child marriage through several mechanisms and tools safeguarding the rights of children. The practice of child marriage was widely celebrated. It was commonplace for parents to give out their children for marriage at puberty or earlier. Historically, there were no systemic scale for measuring age for marriage. In the medieval period, many societies did not have a legal minimum age requirement, thus, puberty was the primary factor for determining if a child has reached maturity.

In Ancient Rome, the appropriate minimum age for marriage was regarded as 14 years for males and 12 years for females. When Rome became Christianized, these minimum age requirements were adopted into the canon law of the Catholic Church. This canon law governed most marriages in Western Europe until its Reformation. When England broke away from the Catholic Church, the Anglican Church carried with it the same minimum age requirements for the prospective bride and groom. The minimum age requirements of 12 and 14 were eventually written into English civil law.⁶ In Ancient Greece girls in Classical Athens were regarded ready for marriage at the age of 14,⁷ while the males married at a much older age. It was the duty of the parents of the girl to arrange the marriage without

⁶ B D Gordon, 'Early Teen Marriage and Future Poverty,' (2010) 47(3) *Demography*
<https://pmc.ncbi.nlm.nih.gov/articles/PMC3000061/> (accessed 8 August 2025).

⁷ C Mason, 'The Nuptial Ceremony of Ancient Greece and the Articulation of Male Control Through Ritual' (2010) *Honours Project*
https://digitalcommons.macalester.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1005&context=classics_honors (accessed 8 August 2025)

contribution or negotiation from the girls. These marriages were arranged as a form of political alliance between families. Consequently, her consent was not required when these marriage alliances are been made. All that was required of the child was her presence when the man/husband was to be revealed to her, all other formalities that sealed her fate to the marriage may be done in her absence.⁸

In India the origin of child marriage have its root from ancient times, for over 140 years the government of India has actively been in the fight of child marriage.⁹The contemporary practice of child marriage in India is rooted in rigid societal norms and the persistence of inequality between the males and females. By adhering to rigid social norms about what classified as an “ideal match,” child marriage made it easier to protect “blood purity” and social boundaries. Its primary function was to ensure that childbearing took place within the confines of one’s own caste and religion. In this system, girls are commonly married before they were 10 years of age, and the ceremony was conducted whenever a potential match was found, even if in the child’s infancy. In such cases, the ritual was separated from the consummation of marriage, which was permitted (and encouraged) as soon as the bride attained puberty.¹⁰

A walk through history displays that the phenomenon of Child marriage is strongly embedded in the custom and religious inclination of practising society. The continued persistence of the malaise of child marriage in Nigeria is profoundly sustained by the moral underpinnings of socio-cultural hegemony and reinforced by religious dogmatism. Child marriage in Nigeria predates the pluralist legal system in Nigeria today. The practice was a norm enshrined-in and shaped by puberty markers, kinship and patriarchal strategies and local political economies. British colonial rule by virtue of indirect rule which established the

⁸ Ibid (n7).

⁹ T Nirantar, ‘Early and Child Marriage in India,’ https://ajws.org/wp-content/uploads/2015/05/EarlyChildMarriageinIndia_LandscapeAnalysis_FULL.pdf (accessed 8 August 2025).

¹⁰ Ibid(9).

foundational benchmark for legal initiation and institution in Nigeria, through its policy constrained itself from interfering in matters that borders on customary issues. Its administration's approach to 'personal law' (recognition, documentation and selective codification of custom where such was relevant) institutionalized and strengthened the juridical authority of chiefs, emirs and religious courts(such as the Sharia courts). That institutional architecture produced a durable legal pluralism which, combined with contemporary socioeconomic pressures and religious legitimation, explains the persistence of child marriage in spite of subsequent statutory reforms such as the Child Rights Act 2003 and other international instruments that frowns at the practice.¹¹ Historical development holds that, marriages across the territories that now form the jurisdiction known as Nigeria was diverse and completely regulated by social, economic and cultural affiliations rather than by a single, universal chronological age or qualification. What was common among these territories in relation to the perception for a concept that had the semblance of legal age, is attributable to physical maturity, ultimately, maturity at puberty or a much earlier age which was subject to the determination of the patriarch of the family. The issue of minimum legal age in the light of its true meaning was not in existence to them. Thus, the interest of these children was disregarded. It was more of what was good for the entire family. The matrimony was a small price to pay for the good of the entire family. Thus, bringing Jeremy Bentham utilitarian theory which aims at the satisfaction of the happiness of the greatest number as against the few into the concept. Thereby making the child a "social worker" for the family. In the context of betrothal, it was a norm for a female child to be pledged in marriage immediately upon birth. However, with a caveat that where an interest is advanced towards her, formal consummation is deferred to some few years after the betrothal (by this method parents try to employ mechanisms to effectively delay sexual relations after a formal union because most

¹¹ F Luggard, and others, *The Dual Mandate in British Tropical Africa* (Edinburgh, London, W. Blackwood and Sons publisher 1922) <https://archive.org/details/cu31924028741175/page/n17/mode/2up> (accessed in 11 march, 2025)

times these girls are too young when introduced into marital affairs especially in cases of betrothal. It has however been proven that those attempts are usually futile, because the newly assumed husbands have little patience before they invoke their conjugal right of consummation). These patterns show that early unions existed before the formation of legal enactments in Nigeria and were integrated into social reproduction strategies, and the practice were largely customary and religious norms.¹²

The British colonial administration adopted a policy of non-interference in personal law, thereby delegating family and marriage matters to native authorities under Indirect Rule. Consequently, they introduced a pluralist legal system that allowed each custom to deal with matters of personal law. Even after the colonial officers departed Nigeria in 1960, Nigeria did not abandon the legal system created by the colonial officers, rather, the system was inherited. Thus, Nigeria officially became a pluralist state.

1.2 Statement of the Problem

This work intend to resolve the problems associated with minimum legal age of marriage and the far reaching schisms of legislation in Nigeria. The issue of minimum legal age have been a controversial discourse in Nigeria, this controversy is informed as a result of lack of uniformity for Minimum legal age for marriage, which invariably results to the prevalence of child marriage in Nigeria¹³. Before the advent of the Child Rights Act in 2003,¹⁴ a federal domestication of the Convention for the Right of the Child (CRC) of 1990,¹⁵ the Children and Young Persons Prohibition Act 1943 enacted originally as a colonial ordinance and later amended in 1950,¹⁶ was the only legislation in Nigeria slightly analogous to the (CRA) which

¹² Ibid (n11).

¹³ GirlsNotBrides, 'Atlas of the Prevalence of Child Marriage: Nigeria,' <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/nigeria/> (Accessed 9, August 2025).

¹⁴ Child Rights Act, Cap C50 LFN 2004.

¹⁵ Nigeria signed the CRC in January 1990 and ratified it on 16 April 1991.

¹⁶ Formerly Chapter 32 of the Laws of the Federation of Nigeria and Lagos.

safeguarded the rights of children (juvenile). The Act defined a ‘child is a person under the age of fourteen years’, while ‘young person’ means a ‘person who has attained the age of fourteen years and is under the age of seventeen years’. Thus, there were no satisfactory laws which addressed the issue of child marriage. According to the Act, persons within the category of the ages of 14 to 17 were considered or presumed to be young adults, which mean they could make important decisions that affects their lives, which includes giving consent to marry. Consequently, no legislation precisely established a legal minimum age for marriage before the advent of the CRA. The Marriage Act¹⁷which regulate the institution of marriage in Nigeria also did not address the issue, its provision in relation to a legal minimum age for marriage have sustained more debate than resolving the problem.¹⁸additionally, Due to the failure of the Constitution to provide a legal minimum age for marriage, loopholes that are inherent in certain provisions of the Constitution have thereby been exploited to validate child marriage.¹⁹

This work further examine the legal and practical implications arising from the absence of a formal arrangement for the registration and issuance of marriage certificates in respect to marriages conducted under customary and Islamic laws.

Other attendant problems arise from ignorance of the child’s right, lack of assess to judicial facilities, societal repugnance and lack of advocates for the right of children. It has been reported that even in those states where the CRA has been enacted, enforcement therein remains weak. This is largely because enforcement officers exercise tolerance towards the practice of child marriage. This outcome is owed to the fact that officers of the law still

¹⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended), Second Schedule, Part 1 (Exclusive Legislative List), Item 61. This provision vest the the National assembly the exclusive powers to laws over marriages other than Islamic or Customary marriages.The National Assembly Exercised that power by enacting the Marriage Act.

¹⁸ Marriage Act, Cap M6, Laws of the Federation of Nigeria 2004, s. 18. This section provides that where a person is under the the age of 21 and wishes to marry, the written consent of his parents or guardian is required.

¹⁹ C Ewelike, ‘Child Marriage in Nigeria,’ (2016). https://www.academia.edu/31011447/Child_Marriage_in_Nigeria_by_Chidinma_Kosa_Ewelike?email_work_card=view-paper, (Accessed, 10 August, 2025).

consider such practices as an integral part of the custom of the people. Factors like poverty, patriarchal societal structures and entrenched political alliances are all further impairing and contributory factors for the elongation of the problem of child marriage in Nigeria. This work tends to address these problems and offer concrete recommendations aimed at resolving the issue of child marriage in Nigeria.

1.3 Research Aim and Objectives

The essential objective of this study is to highlight and interrogate the legal, religious and socio-cultural issues that envelop the subject of minimum legal age for marriage in Nigeria. This further aim at recommending an analytic and enforceable right based contribution in resolving the controversial issue the legal minimum age for marriage in Nigeria. Thus, it examine;

- i. The Constitutional ambiguity on the provision of legal minimum age and its implications on the enforcement of protective laws. This work further addresses the vagueness which have dominate in the *grundnorm* which was supposed to be a guiding light to subsequent legislation.
- ii. The impact of child marriage on children's rights, health, education and socio-economical development.
- iii. It undertake a comparative analysis of how other pluralist legal systems have addressed and curtailed similar conflicts, such countries like; United Kingdom, Kenya and India

1.4 Scope of Study

This work will essentially focus on Nigeria legal system, addressing the disharmony in legislation in setting a uniform legal minimum age for marriage. This study will examine the violation of child rights through child marriage. This study will further undertake an extensive investigation into various forms of deprivation of opportunities experienced by the

girl child as a result of child marriage, as well as numerous diseases and health complications to which she is exposed to, some of which may ultimately result in her death.

This work will also examine the economical impact of child marriage. Furthermore, it will examine the laws that have been enacted to protect the rights of the child and the factors responsible for its violation, ranging from cultural and religious underpinnings.

1.5 Research Methodology

The research methodology in this long essay is largely doctrinal relying on primary and secondary sources of information. Doctrinal method is adopted because it involved the systematic analysis of statutory provisions such as the Constitution and legal principles using statutory materials, case laws, reports of committees and legal history to draw logical conclusions.

CHAPTER TWO

CONCEPTUAL CLARIFICATION

In the life cycle of every living being, there exists a fundamental period that is characterized by dependence, nurture and protection. This principle is universal, not necessarily peculiar to certain living beings, but applies equally to plants, animals, and humans alike, although these processes take effect through different manifestations. For instance, when a hen hatches her chicks, she does not in cruelty abandon them to whatever fate the chicks may encounter, instead, she provides warmth, guards them from predators and leads them to food sources. This active protection is sustained until the chicks reach a stage where they can forage, detect danger and defend themselves. This implies that, during the earliest and most fragile stages of every creature with life, which is also known as the formation period, protection is indispensable, because it is entirely linked to survival and development. This natural order finds its way into human existence. Every individual progresses through distinct phases of life, ranging from conception to infancy, adulthood, and old age. In all these stages, childhood is significant.

2.1 The Concept of Childhood

The Blacks law dictionary, defined a child as a person under the age of maturity,¹The word ‘child’ is a descriptive term for a natural person who is either an offspring or progeny of another by either birth or adoption. Usually it represent any human being from birth up until the attainment of the required age of majority subject to when and how the law accords majority in his jurisdiction.² Childhood is the early period of development of a person, which is suggestive of Immaturity, vulnerability, frailty and marked by innocence, trust, dependence

¹ Bryan A Garner, *Black's Law Dictionary* (9th edition, Thomson Reuters 2009).

² F O Aguda-Taiwo, ‘Guardianship and Custody of Children; Customary Perspective,’ Unpublished Paper Delivered at the Refresher Course for Judges and Kadis on 11 th March, 2019 at the National Judicial Institute, Ondo State. P. 4.

and ingeniousness.³ 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.⁴

The concept of childhood has been confronted by legal debate on the identifiers that are indicative of the threshold of the term child. The question of what constitutes the threshold of childhood has for a considerable period remained a subject of intense legal and academic debate. This is evident by the multiplicity of definitions advanced by legal scholars,⁵ each approaching the subject from a distinct and a diverse conceptual standpoint. The problem of having a unified definition of childhood is further solidified by the disharmony within statutory provisions in Nigeria.⁶ Where different legislation attempt to confine childhood within a particular definitive parameters. However, it is pertinent to note that each statutes adopt significantly different approach. On the other hand, the abstruse nature of childhood continue to remain an amorphous subject under customary and statutory law. Nevertheless, under statutory law the conceptual question of childhood is constituted subject to the focus of that particular legislation and the circumstances peculiar to it and the object it is set out to

³ Webster New Encyclopedia Dictionary (2002), (Massachusetts: Federal Street Press, 2002)p. 310.

⁴ M A Nwachuku, ‘A Legal Analysis of the Nebulous Concept of Childhood in Nigeria,’ (2016), (1)7, Beijing Law Review,7, 122-126. <http://dx.doi.org/10.4236/blr.2016.72013> (accessed 6th August, 2025).

⁵ Ibid

⁶ The Constitution of the Federal Republic of Nigeria 1999(Amended), under section 29(4) provides that majority is attained at 18 years, therefore any person below the age of 18 years is considered by the constitution as a child. Section.21 and 277 of Child Rights Act sets childhood on anyone below the age of 18. s.18 of the Marriage Act implicitly provided that for the purpose of marriage any person below the age of 21 requires parental or the written consent of the guardian. Thus, a person under the age of 21 is a child in the eye of this Act for the purpose of marriage. Section 30 of the Criminal code, using the “*doli incapax*” rule for the purpose of criminal liability, imposes childhood at 7, if it can be proved that the person had the mental capacity to know that he ought not to have done or make the omission, a child then is a person below the age of 12. Section 91 of the Labour Act, set childhood for the purpose of labour at 12. Section 50 of the Penal Code, associates a child’s maturity to criminal responsibility, i.e 14, 16, and 18, subject to the weight of the offence. A form of such offence are kidnapping/abduction or rape. It however provides that no act done by a person below the age of 7 is an offense. While section 2 of the Children and Young Persons Act, provide that a child means a person under the age of 14 and a young person is a person who is above the age of 14 but below the age of 17.

achieve.⁷ For instance, under the Criminal Code, childhood is delimited for the purpose of conviction for unlawful carnal knowledge to the age of 12.⁸

First, the concept of childhood is positioned on the pedestal of the child's conduct to evaluate responsibility over his actions. Within this paradigm, a child is conceived as a person whose actions and omissions are excusable or less stringently appraised under the law.⁹ This approach is premised in the cognizance that children by reason of their immaturity, lack full capacity for rational judgment and responsibility that is expected of adults,¹⁰ Therefore, it is only rational and just to circumscribe criminal liability or create a legal framework that diminishes or qualifies legal liability when those action relates to children. This is the rationale behind the principle of "*doli incapax*," which embodies the protection of children within a certain age because of their notorious immaturity.¹¹

The second approach creates a nexus between childhood and the requirement of protecting the rights of children. The advocates of this theory emphasis is not on diminished liability, rather, it borders on the inherent vulnerability within the frail period of a child's life.¹²

The proponents of this view asserts that, because children cannot effectively insist on or defend their own interest, the law in this regard have to intervene proactively to safeguard their rights. This theory finds expression in several legal instruments, such as; the United Nations Convention on the Rights of the Child (hereinafter referred to as CRC), which provides that in all actions concerning children, the best interest of the child shall be a primary consideration.¹³ Similarly, the African Charter on the Rights and Welfare of the

⁷ Ibid (n6).

⁸ Criminal Code, Cap. C38 LFN 2004. s.30 and s.357 respectively.

⁹ United Nations, Convention on the Rights of the Child. Resolution 44/25, (1989), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child#:~:text=For%20the%20purposes%20of%20the,child%2C%20majority%20is%20attained%20earlier> (accessed 9 August).

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ United Nations Convention on the Rights of the Child, adopted 20 November 1989, entered into force in 2 September 1990, UNTS vol. 1577, p.3.

Child (hereinafter referred to as ACRWC), protects the child when it provided that, children, due to their immaturity require special measures of protection.¹⁴

The third and most widely adopted theory in the description of a child is the age-based definition of childhood. This approach seeks to establish an unequivocal standard to the nebulous concept of childhood. It intend to lay to rest the nebulousness associated with the concept by establishing a universal standard by pegging the chronological age on a definite threshold. To this end, international instruments have widely integrated and adopted 18 years as the upper limit of childhood.¹⁵ Article 1 of the CRC defines a child as, every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.¹⁶ Similarly, Article 2 of the ACRWC, lays the benchmark of childhood at 18 years. While in Nigeria, through the domestication of the CRC, which is now enforceable in Nigeria as the Child Rights Act,¹⁷ defines a child as a person below the age of 18.

In spite of these existing legal frameworks and scholarly propositions, the question of establishing a fully defined, clear, and universally acceptable definition of childhood in Nigeria remains unsettled. The lack of uniformity does not stem from a mere oversight, instead it stems from the structural character of Nigeria's legal system, which is inherently pluralistic. The coexistence of statutory, customary, and religious law, each with a distinct registered conception of age, responsibility, and capacity, (a concept which is tenaciously held to be immutable) has produced a fragmented approach to the definition of childhood. Consequently, what qualifies as the threshold of childhood in a legal framework may diverge considerably from its counterpart because interpretation of age, capacity and responsibility is imbued by custom in the spirit of the people¹⁸ or by religious dogmatism.

¹⁴ African Charter on the Rights and welfare of the Child, adopted 11 July 1990, entered into force 29 November 1999.

¹⁵ Ibid.

¹⁶ United Nations Convention on the Rights of the Child (25).

¹⁷ Child Rights Act, LFN 2004, s.277.

¹⁸ *Owoyin v Omotosho* (1961). 1 ANLR p.304 at p.309.

However, in customary law the concept of age in determining childhood takes a different turn significantly. The informal system of social control renders the determination of childhood by age almost ineffective and delineate statutory benchmarks the potency of setting a universal criteria for a legal definition of who qualifies as a child in Nigeria.

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.¹⁹ Different criteria are adopted to evaluate childhood under customary law.²⁰ Mental capacity is one of those criterion, which relates to socio-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, at the instance he demonstrates this ability, he is then regarded an adult.²¹ Other criteria for determining whether a person is a child under customary law categorically relates to the issues of devolution of property, financial independence,²² marriage,²³ initiation into age grade,²⁴ among others. In the landmark case of *Labinjoh v. Abake* it was held that childhood ceases at the attainment of puberty in the Yoruba native law and custom. The point of emphasis in this case was that infancy or childhood ceases on attainment of puberty under customary law in Nigeria.²⁵ Although, this decision established certain parameters that clarifies the notion of childhood under Nigerian customary law. However, 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

¹⁹ O Obilade, *The Nigerian Legal System*, (London: Sweet & Maxwell, 1979).

²⁰ Ibid.

²¹ Oloko 'Introduction: Protection and Violation of Child Right in Nigeria,' in UNICEF, *Child Protection in Nigeria: Summary of Research Findings on Protection and Violation of Children's Rights*, (Lagos: Jeromelaiho & Associates Ltd,) p. 1. (1986).

²² Ayua and Okagbue , 'The Rights of the Child in Nigeria,' (Lagos: Nigerian Institute of Advanced Legal Studies, 1996) p. 30.

²³ Onibokun, 'Child Protection Measures: Review of Policies and Laws Protecting Children from Abuse in Nigeria', in UNICEF, *Child Protection in Nigeria: Summary of Research Findings on Protection and Violation of Children's Rights*, (Lagos: Jeromelaiho & Associates Ltd 1986), p. 47.

²⁴ Ibid (n9)

²⁵ (1924) 5 NLR 33.

the fact that the criterion of “puberty” as a yardstick for determining adulthood varies considerably, depending on individual development and sex of the person.

To this end, it is evident that the question of the concept of a child does not admit a universally accepted definition within Nigeria. Nevertheless, Nwachuku, has highlighted steps toward the ascertainment of a unified legal threshold of childhood. Particularly through the framework of the Child Rights Act, which is the principal legislation governing the rights of the child in Nigeria. According to him, the CRA has elaborately settled the statutory differences on the issue of childhood in Nigeria. This is true for various 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 legislation on the same legislative matter. Any state legislation on the definition of a child for the purpose of application of the 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”.²⁶ As the erudite scholar has observed, this work asserts that the Child Rights Act, with its ambitious and robust provisions for the protection of the child, is better positioned to reconcile the gaps and ambiguities surrounding the legal definition of childhood in light the conflicting statutory and customary standards for determining the age of maturity.

²⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended), Cap 23 LFN 2004.

2.2 Concept of Rights

According to the Black's Law Dictionary,²⁷ A right is that which is proper under law, morality, or ethics, something that is due to a person by just claim, legal guarantee, or moral principle. A power, privilege, or immunity secured to a person by law. 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.

Generally, every individual is entitled to a set of rights that are inviolable, through which claims are made for their enforcement in the event of violation. Yet, the question that have confronted legal jurisprudence for a great millennium are thus; what precisely constitutes a right? What are the elements indicative of a right? Can it be said that when a person possess a right over a thing or in relation to another person, the corresponding subject of that right is thereby obliged to confer a benefit or act in accordance with the will of the right-holder? Alternatively, is a right to be considered a claim grounded in the inherent entitlements that nature confers upon every human being and therefore enforceable against another, including the state itself? if so, does this not raise a further question of whether such rights are absolute? In order to properly address the controversy surrounding the issue of legal minimum age of marriage in Nigeria, it is pertinent to clarify the foundational concept of right. In addressing the concept of rights, it is imperative to shed light on the following forms of rights such as:

1. Natural Rights
2. Moral Rights
3. Legal Rights.

However, the focus of this aspect of this work will be on legal rights:

2.2.1 Natural Right

²⁷ B. A. Garner, *Black's Law Dictionary*, (9 th Ed. United States: Thomson Reuters Publishing Company 2009), 1436.

Natural rights cannot be dissociated from natural law from which it draws its validity.²⁸ Natural law is described as the law of nature, higher law, eternal law, divine law, etc. This concept explores where rights come from. Theories of this concept have argued that our rights comes from our humanity, that our rights are not privileges neither are they permission slips but claims against everyone and everything including the government.²⁹ Thus, natural rights are entitlements that belong to a person by virtue of their human nature, apprehended through reasoning, which essentially existed prior to the inception of positive law or state institutions. They are simply described as universal, inalienable and pre-political claims. The essential idea of natural rights is that they exist independently of political institutions, they are regarded as sacrosanct, and are, in most of their precepts, inalienable.³⁰ Locke in his book, *Second Treatise of Government* (1690), stated that, individuals in the state of nature possess right to life, and personal liberty. Therefore, political authority is justified where it protects the right of whom he governs.³¹ Some of these natural rights are expressly enshrined in the 1999 Constitution of Nigeria. They include the right to life s.33, right to dignity s.34, right to personal liberty s.35, right to fair hearing s.36, right to privacy s.37, right to freedom of thought, conscience and religion s.38, right to peaceful assembly and association s.40, and the right to freedom of movement s.41, among others.³² The core focus of natural rights embedded in natural law is to the effect that every individual so long he is a human, possesses certain level of inseverable rights. Children fall within this category by virtue of being humans. The nature of these rights expresses the fact that children should not be treated as

²⁸ A seasoned Roman philosopher named Cicero expressed his thought of natural law as thus, "True law is right reason in agreement with nature; it is of universal application. Unchanging and everlasting ; it summons to duty by its command and averts from wrongdoing by its prohibitions. And it does not lay its commands or prohibition upon good men in vain. Though neither have any effect on the wicked. It is sin to try to alter this law nor is it allowable to attempt to repeal any part of it, and impossible to abolish it entirely.

²⁹ Thomas Aquinas advocated that natural law becomes known to man through reason. Furthermore, he argued that man have the ability to reason what is right and what is wrong. While St. Augustine argued that we can tell right from wrong from revelation. Aristotle on the other end argued that, we can tell right from wrong by knowledge and experiences.

³⁰ Rights- Stanford Encyclopedia of Philosophy, <https://plato.stanford.edu>. (accessed 4 August).

³¹ J Locke, *Second Treatise of Government*, (Awnsham Churchill 1690).

³² Constitution of the Federal Republic of Nigeria 1999 (as amended), Chapter IV.

properties, their welfare should be a paramount concern. They should not be used as bargaining tool in respect to trading them off for child marriage for whatever reason, without putting into consideration the child's emotions, dignity, liberty to childhood, by forcing such child into adulthood courtesy of child marriage. Consequently, abandoning the essential requirement of procuring the child's consent which at this stage of the child's life they cannot validly give.

2.2.2 Moral Rights

Section 40 of the Constitution of the Federal Republic of Nigeria guarantees every person the right to peaceful assembly and association, read together with section 38 which affirms the right to freedom of thought, conscience, and religion, underscores the constitutional recognition of individual freedom to hold and express moral convictions, provided such convictions do cause harm others nor do they infringe upon the rights of one's neighbour. It is pertinent to state that the cultivation of morals is often facilitated through association and social interaction. Moral rights are understood as entitlements justified not by statutory law but by ethical reasoning and the imperatives of duty. Their foundation lies in conscience. These elements was expressed by Ross, who emphasized duties are discernible through moral intuition.³³ Morals are often regarded as naturally inherent rather than externally imposed. Unlike legal rights which derive their validity from state institutional recognition, moral rights and duties exist independently, requiring no legislative guidance for the enforcement of what is right e.g saving a child from drowning. It is widely perceived as a sound moral standard for parents or guardians of a child and the state by extension to safeguard the interest and secure welfare children, as well as to ensure that the child is adequately protected from actors who may attempt to take advantage of their vulnerability. The foregoing are instances of moral duties imposed on the parents and institutions an obligation to protect the child

³³ W D Ross, *The Right and the Good* (Oxford University Press 1930) 19–20.

against any traditional practice that may violate the right of a child. Accordingly, the state institutions have recognized this moral obligations and made stipulations for safeguarding these rights, but by the very fact that the tenets of other institutions, like customary beliefs and religious canons have a divergent grapple on what constitutes the welfare of a child, statutory legislation in respect to the safeguard of the child's right is more observed in breach. For the singular reason that not what the statute considers as morally upright their tenet considers to be so. This approach is a major premise for the persistence of child marriage in Nigeria.

2.2.3. Legal Rights

Legal rights are entitlements conferred upon a person by law. It is an actionable interest or claim recognized and protected by law. Its existence imposes corresponding obligations on others to respect or refrain from interfering with it. For a right to qualify as a legal right, it must satisfy three conditions. First, it must be recognized and enforceable by the law; secondly, it must carry with it a correlative duty imposed on another; and thirdly, there must be a legal remedy for its breach. Essentially, it must entail the imposition of a duty on another person. If a right lacks these features, then it cannot be properly called a legal right, it may be something else but not a legal right in its unique sense.

According to Adaramola, a legal right is a lawful expectation that a corresponding duty will be discharged by another person upon whom the duty rests, and, in the event where such duty is not discharged, the right-holder possesses the power to get the right enforced through the intervention of the state or organized community.³⁴ This definition underlines two key features of a legal right: (a) a legitimate expectation arising from a correlative duty, and (b) the capacity to secure enforcement through state authority.

³⁴ F Adaramola, *Jurisprudence*, (Dueban, LexisNexis Butterworths, 4th ed, 2008) 143.

In light of the foregoing definition, in order to move beyond a mere descriptive account of rights into a more interrogative analysis of their operation within a plural legal system such as Nigeria, and how it relates to this work's focus. For the purpose clarity, this aspect of this work employs the analytical jurisprudence of Wesley Hohfeld's scheme of jural relatives to explain what a right truly is, so as to establish that the concept of right is not merely an illusion, it is lucid and ascertainable.³⁵

In a bid to explain the constituent of rights, Hohfeld distinguishes true right (or claim-rights), from liberties-powers and immunities, each of which has a corresponding correlative.³⁶ In applying this framework to the conflict of legal minimum age for marriage in Nigeria, it brings to light that the longstanding debate as it relates to the disharmony that exist within statutory legislation, customary and religious tenets in having a unified benchmark for a legal minimum age in Nigeria is not a bare clash but a fundamental conflict over jural relations to those canons granting power to parents over their children to make decisions on their behalf, which can also be viewed as exercising a claim on them by reason of having custody, vis-a-vis those granting immunity to the children and liberty.

The application of this scheme to this work drives off the vague appeal of what constitutes a right into a precise order of legal relationships. Consequently, it allows us to redirect the question of asking "does the child have a right?" into asking the question of "what specific jural relations does the child hold, and to whom?"

³⁵ W Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, (Yale University Press 1917)

³⁶ Ibid.

2.2.4 (True) Right (or Claim)

These are rights in its true legal meaning, rights in this context may be defined as an advantage conferred on a person or group of persons by a rule of law, whereby the person or the group can bring an action against a third party on the basis of those rights.³⁷ These rights basically means the obligation which other people owe a person on the strength that where a breach occur the aggrieved person can bring an action against the person in breach and enforce those rights. Hence, true right is defined in terms of duty or obligation correlative to it. As Austin noted, “a person has a right when another or others are bound by law to do or forbear towards him.”³⁸ Some rights addressed above are guaranteed under Nigeria’s Constitution from section 33-43. Thus, every child possesses claim (right) to bodily integrity which imposes a corresponding duty on the child’s parents, guardians and society at large to refrain from inflicting bodily or emotional harm, whether through child marriage or other degrading practices. This position is supported by s.11 of the CRA which guarantees the dignity of the child’s person by prohibiting torture, inhuman or degrading treatment, such as physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse. Similarly, Article 19(1) CRC obliges States Parties to protect the child from all forms of physical or mental violence, injury or abuse. Similarly, Article 16 of the ACRWC 1990 recognizes the protection of these rights against abuse and harmful practices. Article 11(3) of the ACRWC further imposes an obligation on States Parties to take all appropriate measures to ensure the realization of the rights of accorded to children. It therefore follows that child marriage constitutes a grave violation of these rights as intended by several legislation to protect children.

³⁷ I Kant, ‘*Groundwork of the Metaphysics of Morals*,’ (1785 Cambridge University Press 1998 edn, Mary Gregor tr) 41–42.

³⁸ J Austin, *Lectures on Jurisprudence or The Philosophy of Positive Law*, vol. I, 5th ed, Robert Campbell (ed) (London: John Murray, 1885) (Cornell University Library copy).
<https://ia801301.us.archive.org/18/items/cu31924017199484/cu31924017199484.pdf> (accessed 18 August 2025).

2.2.5 Liberty/Privilege(No Duty/No Right)

Liberties are freedom a person enjoy which are protected by the law. They are rights granted to a person but not actionable against him in the event where he does not exercise those benefits. Liberty [which is] also known as personal liberty, are guarantees and freedoms of every individual that should not be interfered with.³⁹However, the exercise of a person's liberty is not absolute, the state have orchestrated statutory legislation to regulate the exercise of one's liberty as a guide for individuals not to express or observe it in infringement of other persons rights or against the state.⁴⁰Its correlative is the corresponding absence of a right or duty on the part of the person on the other side of the relationship.⁴¹In Nigeria, personal liberty is provided and protected under s. 35(1) of the Constitution, subject however to the exceptions in paragraph(a) to (f). S.35(2) to (7) further guaranteed the rights of an individual where his liberty was unjustly interfered with in lieu of paragraph (a) to (f) of the 1999 Constitution. While Chapter II the 1999 Constitution, titled "Fundamental Objectives and Directive Principles of the State Policy. Provides for a wide range of privileges in Nigeria which by virtue of s.6(6)(c) are non-justiciable. Applying this principle to children, In Hohfeldian terms, liberty (or privilege) correlates to others a no-right to interfere with the child's liberty.

The implication of the foregoing for children is as follows: when a child has the liberty to pursue education, self-development, and to decide if or when to marry, parents or guardians possess a no-right to compel them to do otherwise. What is more is that, every child has a right to bodily autonomy; some form of security from physical, mental and sexual abuses. Thus, the child has the liberty not to be subjected to harmful practices, which correlates to a no-right on the part of parents or community members to impose child marriage on a minor.

³⁹ A T Denning, *Freedom under the Law: The Hamlyn Lectures*, ' (Steven & Sons Ltd, London, 1949).

⁴⁰ A Taiwo and I J Koni, "Jurisprudence and Legal Theory in Nigeria," (ed) (Princeton & Associates Publishing Co Ltd, 2019).

⁴¹ Ibid (n34).

Thus, Article 19 of the CRC, obliged states to protect children from physical or mental violence. Article 28 ensure the right to education. Article 34 protect them from sexual exploitation. Article 12 urge the states to give due weight to the views of the child in matters affecting them.⁴² Similarly, the ACRWC require States to guarantee education⁴³ and to protect children from abuse and harmful practices.⁴⁴ While in Nigeria, the CRA, by virtue of s.11 and 15, expressly prohibits a child from being tortured or subjected to inhumane or degrading treatment, including physical, mental, or sexual abuse, and further affirms every child's right to free, compulsory, and universal basic education.⁴⁵ These protections are further reinforced by the Constitution, which guarantees the dignity of the person⁴⁶ and personal liberty.⁴⁷ Conversely, when parents or guardians force a minor into the rigours of marital life, they purport to exercise a "right" to override the child's liberty-a right which by Hohfeldian analysis, the parents or guardians, in fact and in law do not possess. The State owes a positive duty under both domestic legislation and international instruments to prevent such violations and remedy same where such violation has been carried out or where it occurs. Accordingly, child marriage constitutes not merely a cultural or social wrong, but a fundamental violation of the child's liberty and a breach of binding legal obligations.

2.2.6 Power

Power is simply the capacity to change another person's position. By Hohfeldian jural relations, power is the legal capacity or ability vested in one party to change the legal relations of another person. The correlative of power is liability. This means, If A has power to issue an order to B, B is under a liability to obey those orders. The issue of child marriage

⁴² Convention on the Rights of the Child, adopted 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) arts 12, 19, 28, 34.

⁴³ Organization of African Unity, African Charter on the Rights and Welfare of the Child, 1990. Art 11.

⁴⁴ Ibid Art 16.

⁴⁵ Child Rights Act, Cap. C50, LFN 2003.

⁴⁶ Constitution of the Federal Republic of Nigeria 1999, Cap C23, Laws of the Federation of Nigeria. section 34.

⁴⁷ Ibid.

in relation to Hohfendian jural relatives, brings into focus the conflict between statutory power and customary/religious power. On one hand, statutory law imposes liability on a parent who attempt to contract marriages for their children below the legal prescribed age; on the other hand, customary and religious laws permits parents or guardians to exercise extensive power over the marital decisions of their children. To be more particular, the rights of parents under customary and religious laws are quite enormous when the still minors (persons generally below puberty, or at puberty, but below the age of 18), thereby imposing a liability on the child who suffers the consequence of decisions she has no control over.

Under customary law, parents or guardians possess the power to arrange a marriage ceremony for a child, without considering the laws that protect her from such practices.⁴⁸ A child under most customary and religious laws, lack the capacity to give consent to marry any person, which means, they lack the power to alter their marital status. This prohibition, which is similar to statutory provision, was intended to form a protective shield to safeguard the child, which entails, in principle, that before a child who is not of marriageable age can validly marry,⁴⁹ according to the s.21 of the CRA.⁵⁰ Such a marriage even with a child's consent will be recognized as invalid because a child below the age of 18 cannot validly enter into a marriage contract. Accordingly, where the child is up to the age of 18, she can as well seek her parents' consent (which could practically be for the purpose of blessing the union) because she is not up to 21 years (as required by the Marriage Act), this was provided for in s.18 M.A.⁵¹ However, in the case of *Ugboma v Morah*,⁵² it was held that consent of parents is not a necessary criterion in a contract to marry; that is, where the parties are adults, they can validly enter into a contract to marry without parental consent.

⁴⁸ Ibid (n43).

⁴⁹ Marriage Act, Cap M6, Laws of the Federation of Nigeria 2004, s. 18.

⁵⁰ Ibid(n43).

⁵¹ Ibid (n49).

⁵² (1940) 15 NLR 78.

Contrary to the above legal position, under customarily, and in some religious tenets (under the Islamic law, a man can get married to a child as young as 9 years old), parents or guardians have the power to arrange marriages for their children, irrespective of statutory provisions to safeguard the child's liberty and bodily autonomy. While on the part of the child, she is under a liability to obey and accept the arranged (forced) marriage.

Statutory framework in Nigeria has deliberately placed safeguards in resolving the tension surrounding the issue of legal minimum age for marriage by fixing a statutory threshold (though, so it appears). By virtue of the powers vested on the legislature, the relevant prohibitions imposes a liability on the parent or guardian who attempts to contract marriage on behalf of a child below the age of 18. This mechanism serves as a means of guaranteeing the child's liberty to marry, and to give consent⁵³ only at the stage of life when they are capable of appreciating the consequences of marital life. The implication of the above is that, through the powers vested in the legislature under s.4 CFRN, laws have been made to prohibit parents and guardians from compelling minors into marital obligations. For example, Section 21 of the Child Rights Act expressly prohibits the marriage of any person below the age of 18, thereby rendering such unions void.

The strength of this safeguard lies in its clarity that: parents are under liability to refrain from coercing children below the statutory age of 18 into marriage, irrespective of whether such practice is accredited or endorsed by their religion or custom. In sum, parents lack the power to alter the marital status of their children that are below the statutory age of 18. Furthermore, when a parent disregards these prohibitions, the state, through s.23 CRA, retains the power to enforce the imposed liability by sanctioning violators. Thus, the state owes the child a duty of protection and responsible for ensuring the child's liberty is secured.⁵⁴ Thus, tension arises between both legal frameworks, due to the oppositions of imposed liability by the statutes on

⁵³ Matrimonial Causes Act, Cap. M7 LFN 2004. s.3(1)(d).

⁵⁴ Ibid (n35).

the parents on one hand, and the liability imposed on the child to obey her parents because her personal law demands it. Consequently, while statutory laws reallocate liability (from the child) to the parent, customary and religious laws persist in allocating liability to the child. The result is a structural contradiction: the child is, in principle, settled to be immune by statute from child marriage, while still liable to the practice under customary or religious norms. Likewise, the parent is simultaneously empowered by custom but liable under statute. This conflict is not merely theoretical but is of significant implication for the child rights protection and enforcement. If customary and religious parental power over the child is given primacy, the child's liberty will certainly be undermined. It then follows that the child will continually bear the liability to engage in the egregious practice of child marriage. However, if statutory power attains primacy, the parent's customary entitlement is rendered unlawful and unfounded, and the parent therefore bears the liability and thus, appropriately sanctioned. The resolution of these tensions therefore lies at the very heart of this work. This study however, suggests that while it is important for both systems to be harmonized, it is imperative and only rational for statutory legislation to take primacy at every point in time, to ensure that the child's liberty is not undermined by selfish parents or guardians or by repugnant customary practices or religious affirmations.

2.2.7 Immunity

Immunity is one's freedom from the legal power or control of another as regard some legal relation.⁵⁵ The correlative of immunity is a disability (inability) to exercise certain powers against the holder of the immunity. This principle applies to child marriage, in the sense that a child is shielded from any attempt by parents or guardians to enter into a contractual relationship that alters the child's marital status. As earlier observed, customary and religious norms often empower parents or guardian to give out their children for marriage irrespective

⁵⁵ Ibid (n35).

of the age of the child. A practice that contravenes the provision of s.21 of the Child Rights Act.⁵⁶ In most cases, the child is subjected to sexual abuse by being forced into the primary role of a wife-that is, consummation and childbearing.⁵⁷ Due to the degrading treatment and violations inherent in child marriage-against which the provisions of section s.34(1) of the Constitution seeks to guard against-the law insists on the child's immunity from contracting marriage,⁵⁸and further imposes a liability on parents, as made clear under section 23 CRA. A parent who violates s.21 CRA will be arraigned and subjected to penal consequences. This implies that parents are disabled from arranging marriages on behalf of their children who have not yet reached the age of maturity. This disability imposed on parents extends to the child herself, though here it serves as a shield: the child cannot validly give consent to marry anybody until she attains the statutory age of maturity. This disability follows from the possibility that a child can easily be enticed or manipulated; by winning her over to secure her apparent consent, even where she does not truly desire such a union (this is on the liberal side). In a much stricter sense, coercion or duress may compel a child to submit to a marriage. Thus, the child's disability to give consent rest in the fact that, any such purported consent cannot validly sustain a marital union under statutory law, since the child is legally a minor.⁵⁹ The state is therefore under an obligation to protect the child. In discharging this duty, it deploys statutory instruments that confer immunity upon the child and prohibit parents from conducting child marriages. However, in situations where parents violate the prohibition on conducting child marriage, the state imposes penalties on them. Consequently, the parents come under liability when they disregard these provisions.

⁵⁶ Ibid (n45) section 21.

⁵⁷ Human Rights Watch, 'Child marriage remains prevalent in Nigeria,' (17 Jan 2022), empirical reporting on persistence and enforcement gaps, Human Rights Watch <https://www.hrw.org/news/2022/01/17/nigeria-child-marriage-violates-girls-rights>, (accessed 6 September).

⁵⁸ Ibid (n53).

⁵⁹ Ibid (n45), s.227.

In conclusion, It is of great importance to understand the concept of rights and how it relates with other claims to properly unpack the issue that borders around child marriage in Nigeria.

2.3 The Concept of Marriage

It is impossible to provide a single definition to the concept of marriage, however, an holistic view of the term marriage may appear to make the term impossible to define. This is because marriage is whatever the parties to the union take it to mean (this is however one approach to the term). Thus, a christian couple seeking to found their union on biblical standards may see the institution differently from other couples basing their marriage union on the principle of Islam, or those entering into the union on the basis of obtaining a new citizenship or for tax purposes. Notwithstanding, it will be simplistic to merely say that the concept of marriage is whatever parties to the union take it to mean. This is because there are various factors that must come to existence before the hallowed title of marriage can be conferred on a union.

As a social institution, marriage is founded on and governed by social and religious norms of society.⁶⁰ According to Lord Westbury, marriage is the very foundation of civil society,⁶¹ it brings to the fore a very important fact in human existence. Marriage is a legally and socially recognized union between two persons, usually a man and a woman, (this is the ideal idea of marriage, and it still remains the idea of marriage in Nigeria and most parts of Africa. In contemporary times, same-sex marriage is permitted in some jurisdiction as a valid union) it establishes mutual rights and obligations, it is a personal contract and a social institution regulated by law, custom and religion, instituted to create a framework of cohabitation for procreation, mutual support, succession purposes and furnish a social status. The contractual feature of marriage lie in the requirement of consent for the validity of any marriage.⁶²

⁶⁰ Nwogugu E I, *Family Law in Nigeria*, (3rd edn, HEBN Publishers 2014) 4.

⁶¹ *Shaw v Gould* (1868) L.R. 3HL55, 82.

⁶² I O Omoruyi, 'Marriage in Private International Law,' (Professor, Faculty of Law, University of Benin, Nigeria).

The institution of marriage in Nigeria is classified into three categories, which are

2.3.1 Monogamous Marriage

This form of marriage is governed by the Marriage Act, it is a voluntary union for life of one man and one woman to the exclusion of all others until divorce or death.⁶³ At every stage in the marriage, only one man and one woman are involved to the exclusion of others.⁶⁴ There may be subsequent successive marriages by either party, provided that only one partner is involved on each occasion. It is a union for life, however, the union may be disrupted by divorce or death of one spouse. The Interpretation Act, defines a monogamous marriage as a marriage which is recognized by the law of the place where it is contracted as a voluntary union of one man and one woman to the exclusion of all others during the continuance of the marriage.⁶⁵

2.3.2 Age

This has to do with the parties' physical and mental maturity at the time of contracting the marriage. It is an essential requirement for conferment of capacity. The issue of legal age for marriage is an important requirement in every legal system, essentially in the institution of monogamous marriages. Where parties get married without attaining this requirement, their marriage will be void in the eyes of the law. Nonetheless, what qualifies as legal age for marriage differs between countries manifestly. For example, in England, marriage between under aged persons is void. s.2 of the Marriage Act 1949 (re-enacting the Age of Marriage Act 1929),⁶⁶ sets 16 years as the the minimum age of marriage and invalidates marriage between persons either whom is under the age of 16.⁶⁷ While in other countries, legal

⁶³ *Hyde v Hyde* (1886) I.R.I.P & D 130. 133.

⁶⁴ *Ibid* (n60) 5.

⁶⁵ Interpretation Act , Cap.123, Laws of the Federation of Nigeria 2004, s. 18.

⁶⁶ *Spiers v Hunt* (1908) 1 KB 720. 724.

⁶⁷ Morris, *Conflict of Laws* (2nd edn, Cambridge University Press 1994) 295, cited in I O Omoruyi, 'Marriage in Private International Law' (Professor, Faculty of Law, University of Benin, Nigeria).

minimum age requirement could be lower or higher. In the case of *Pugh v Pugh*,⁶⁸ a marriage was celebrated in Austria between a British officer domiciled in England but stationed in Austria, and a girl of 15 domicile in Hungary. The parties later move to England. The marriage although valid by the Austrian and Hungarian law, was held void. Thus, the marriage was held void in England.

By virtue of the recent development in England and Wales the legal minimum age for marriage have been raised from 16 to 18 years. However, in Nigeria, the Matrimonial Causes Act does not lay down any mandatory legal age for marriage, s.3(1)(e) of the Matrimonial Causes Act, provides that a marriage would be void if either of the parties is not of marriageable age. But the term or what constitute marriageable age was not defined anywhere in the act or by any statute. This work suggests that, just as it has been done in England and Wales, Nigeria should clearly set out a definite legal minimum age for marriage. Doing so would serve as a significant measure to put to rest the issue of child marriage in Nigeria to a large extent.

2.3.3 Consent

The issue of consent is a fundamental requirement in the formation stage of the contract to marry, which if absent can rather the marriage void. It is an essential matter, the voluntary consent of the parties is a prerequisite for the the celebration of marriage.⁶⁹ Absence of such consent vitiates the marriage contract.⁷⁰ This principle of consent applies to everyone, including children that are forced into the pandemic of child marriage. s.3(1) (d) of the Matrimonial Causes Act, provides that, the consent of either of the parties is not a real consent where; It was obtained by duress or fraud; or that one party is mistaken as of the

⁶⁸ [1951] 2 All E.R. 680.

⁶⁹ Matrimonial Causes Act, s.3(1) (d).

⁷⁰ Omoruyi (n62).

other identity or as to the nature of the ceremony performed; or the consenting party was mentally incapable of understanding the nature of the marriage contract.

Given the foregoing, it is doubtful if it can be said that a child who, in most circumstances, does not understand the nature of the ceremony of marriage could be said to have given real consent. It may be argued that parents or guardians involved in the practice of child marriage, as of common practice, usually inform their children in advance that they will be given out in marriage, and that such exposure amounts to an enlightenment about the nature of marriage in itself, which the objective of such information was aimed at to giving the child an insight about what is expected of them and to prepare their minds for marital responsibility. This argument is tenuous, as mere information or awareness cannot substitute for the level of understanding required to constitute real consent. There is no gainsaying that such an argument merely serves to mask the pretence of obtaining the child's consent. As will be discussed in the next chapter of this work, many children who were married before the age of 18 were forced into the marriage, either by family members or by their guardians without real consent of the child. This is why child marriage is sometimes referred to as forced marriage. Section 21 of the Child Rights Act,⁷¹ provides that a child under the age of 18 cannot give a valid consent to marry. Even when the consent of the child may have been obtained either by fraud or duress. The MCA considers such procedure of obtaining the child's consent as tainted consent. Pursuant to s.3(1)(d) of the MCA,⁷² tainted consent is no consent at all. Section 21 of the CRA, provide that such marriages are void, insofar the child is not up to the age of 18.

⁷¹ Ibid (n45).

⁷² Ibid (n69) s.3(1)(d).

2.3.4. Customary Law Marriage

Customary law marriage is a union recognized by the native law and custom of the intending couples, which involve payment of bride price, consent of the families and performance of traditional rites. This form of marriage permits polygamy, this is however premised on the applicable custom. It is the the union of one man and several women. Its essential characteristic is the capacity of the man to take more than one wife at a given time. Thus, a marriage remains one under customary law where there is only one wife, provided the man retains throughout the union the capacity to take additional wives.⁷³ Customary law in Nigeria does not recognize polyandry, i.e one woman having more than one husband. The practice is however recognized by the Tibetan community in China and by the Indians, particularly among Himachal Pradesh in the Himalayan traditions. In *Kpelanya v Tsoka and Anor*,⁷⁴ it was held that under Tiv customary law a woman cannot lawfully be married to two men at the same time. Similarly, under Idoma customary law, it is an offence for a woman to be married to two men.⁷⁵

2.3.5. Islamic Marriage

Islamic marriage is a voluntary union between one man and one woman or more (Four wives are usually the maximum amount of wives a man married under Islamic law can marry at a time). This form of marriage is chiefly governed by the sharia law which obtains its validation from the Qur'an. This form of marriage is polygamous in nature, it allows a man to marry up to four wives at a time.⁷⁶ Islamic law operates both as a religion and as the personal law of its adherents. This institution plays a major role in the practice of child marriage in Nigeria. The Islamic religion believes that there is nothing wrong with marrying a minor; in

⁷³ Nwogugu (n60).

⁷⁴ (1971) NWLR 66.

⁷⁵ Ibid (n59).

⁷⁶ Ibid.

fact, it is considered lawful for a girl as young as age 9 to be given in marriage, so long as consummation is deferred until she reaches puberty, thus, Such a marriage is regarded as a valid union. But in reality, almost immediately after the man marries the child, he consummates the marriage. The Islamic religion is a dominant driver for the lack of a unified legal minimum age for marriage in Nigeria. In the Northern region, many Muslims tenaciously uphold the entitlements that permits child marriage, and this has largely contributed to the persistent refusal to domesticate the CRA, which sets a definitive threshold for marriage. The Northerners believe that if the full provision of the CRA becomes fully effective in the North, those aspects of the Act that conflict with their religion would operate to truncate the cannons of Islam. Given that marriages contracted under Islamic law are recognized as valid, and that the tenets of the institution recognize and uphold certain forms of marriage as valid, such as child marriage.

It is doubtful if the provisions of the CRA⁷⁷ are not fully brought into force through the medium of domestication in those regions that practice child marriage, who ground their defense on Islam, what alternative, and more effective legal tool is exist that appropriately guarantees an assurance of bringing an end to the practice of child marriage in Nigeria.

In conclusion, this work suggests that if the issue of child marriage is to become a thing of history in Nigeria, and if the rights of the girl child are to be rescued from being arbitrarily undermined. Firstly, it is imperative for all states in Nigeria to fully domesticate the Child Rights Act. Secondly, they should enact the provisions of the Act as found in it. Specifically, they should not reduce the legal minimum age contemplated by the CRA to conform to either socio-cultural or religious demands. It is of urgency that the rights of the child is comprehensively protected without prejudice, because the girl child is a human too. As such her rights child be adequately protected.

⁷⁷ Ibid (n45) section 27.

CHAPTER THREE

LEGAL FRAMEWORK FOR CHILD MARRIAGE IN NIGERIA.

Child marriage is a fundamental violation of human rights. It constitutes various forms of hazards to the girl-child, many of which are accompanied by a-volume of health complications.¹In most cases, she experiences domestic and sexual abuses, while also bearing the pressure of fulfilling marital roles and responsibilities-burdens that are often overwhelming even for adults. Yet, she has no control as a wife on how the household is managed but subjected to childbearing and strenuous domestic labour. When the abuse become unbearable, she often withdraws to her family home seeking refuge. Still, her family usually return her to her husband, disregarding her best interest and personal security. Some of the above description was the the situation in the instructive case of *Hauwa Abubakar*, in this case, Hauwa's father was indebted to Mallam Shehu Garuba Kiruwa a 40 year old cattle dealer, as a means of settlement of his debt, he gave out Hauwa to Shehu as wife at the age of 9. On two different occasions, she has fled from her husband's home back to her parent's house but each time, she was taken back by her father to Mallam Shehu's house. The third time she tried to escape, and her father brought her back, "the husband pinned her down and chopped off her legs with a poisonous cutlass."² In response to Huawa's case, the Government of Bauchi State at that time swiftly enacted a decree empowering government to prosecute any parent who withdraws a child from school for marriage.

According to a prominent legal scholar, child marriage can be accurately classified as human rights crisis for the girls.³ Turner viewed child marriage as a form of slavery.⁴ The description

¹ L Mwambene and O Mawodza, 'Children's Rights Standards and Child Marriage in Malawi' (2017) *African Studies Quarterly* 17(3):21-22.

² O A Adediran, 'Abolition of Child Marriage Practice in Nigeria: A Case Study of Girl Bride in the Northern part of Nigeria,' Department of Global Political Studies; Malmo University Sweden (2021), <https://www.diva-portal.org/smash/get/diva2:1562366/FULLTEXT02.pdf> (accessed 28 October July 2025).

³ M Adigun, 'Child Marriage: Does the Constitution Conspire with Islamic Law in Nigeria,' M C Green & F Kabata, (eds), *Law, Religion and the Family in Africa*, (Africa Sun Media, Stellenbosch 2021), <https://doi.org/10.52779/9781991201577/15>, (accessed 20 September 2025).

of both learned writers can be seen in the above case.⁵

Owing to the inhuman events and consequences that follow the institution of child marriage, there is an urgent need for a comprehensive legislation that prohibits any custom, religion, or statute that undermines or violates the rights of the child. The vulnerability of a child is not meant to be preyed on or exploited; rather, it is to be protected. Since laws exist to safeguard rights and sanction violators, the credence of the law should not be selectively observed, particularly in matters that relate to the right of the child. In essence, child rights are human rights; and they ought to be jealously protected with the greatest degree of vigilance, precisely because of the ingenuity of children.

3.1 Constitutional and Relevant Statutory Provisions for the Formation of Marriage.

The Constitution of Nigeria is the supreme law in Nigeria,⁶ this implies that all other legislation in Nigeria derives its validity from the it.⁷ Consequently, the Constitution renders invalid any law, customary practice or religious norm that are contrary to it. The provisions of the Constitutions apply even more conveniently to defeat any legislation that conflicts with it demands, particularly when its own provisions are clear and unambiguous. Hence, it follows that any legislation, cultural practice, or religious dogma which are in alignment with the Constitution will be valid within Nigeria-even if such practice offends the rights of a category of persons; such as child marriage. Thus, since the Constitution has not out rightly prohibited certain customs and religious practices that may infringe on the rights of a category of people, they continue to enjoy legal validity. In response to the foregoing position,

⁴ C Turner, '*Out of the Shadows: Child Marriage and Slavery*,' (Anti-Slavery International, April 2013). https://www.antislavery.org/wp-content/uploads/2017/01/child_marriage_final-1.pdf, (accessed 20 October).

⁵ C I Emelie and I C Nwigwe, 'Legal Analysis of Child Marriage in Nigeria,' Chukwuemeka Odumegwu Ojukwu University Journal of Commercial and Property Law (COOU -JCPL) (1, July 2025), Vol. 5. <https://www.journals.ezenwaohaetorc.org/index.php/COOU-JCPL/article/viewFile/3355/3484>, (access 28 October 2025).

⁶ Constitution of the Federal Republic of Nigeria, 1999 (as amended), Cap 23, Laws of the Federation 2004. s1.

⁷ Ibid s 1(3).

section 29(4)(b) of the Constitution has come under heated crossfire for being a tool of exploitation in the practice of child marriage. The section provides that “any woman who is married shall be deemed to be of full age”. This provision appears to suggest that marriage itself confers the status of majority rather than majority being a prerequisite for the capacity to marry.⁸To further cement this position, the Constitution provided through Item 61 of the Second Schedule that, the issues of marriage conducted within the auspices of customary or Islamic law are beyond the scope of the exclusive list. Also, section 4(7) has been argued to complement the provisions of Item 61 of the Constitution.⁹ Furthermore, section 315(3)(a) provides that, nothing in the Constitution shall be construed to affect the provisions of any existing law that is not inconsistent with the provisions of the Constitution. Since customary and religious laws are recognized existing laws in Nigeria, its provisions, such as the practice of child marriage, which appear not to be inconsistent with the provisions the Constitution, are therefore valid by virtue of the foregoing provision. The question this part of this work seeks to answer is as follows: since section 29 is often invoked to justify child marriage, while customary and Islamic laws are renowned for their role in sustaining the practice, do the Constitution and other sources of law correspond with these legal systems to permit and survive the practice of child marriage in Nigeria? According to a reputable writer,¹⁰it can be concluded from the Constitution that adulthood begins at 18 years. For instance, considering the issue of fundamental right to personal liberty, any person who has not attained the age of 18 is regarded as a minor or a child for the purpose of welfare and education.¹¹ Again, For the purpose of citizenship, a person is deemed to be of full age in respect of acquiring citizenship

⁸ Adigun (n3).

⁹ T Braimah, ‘Child marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the Protection of Children against Child Marriage,’ (2014), 8 (2), AHRLJ, 24.
https://www.ahrlj.up.ac.za/images/ahrlj/2014/ahrlj_vol14_no2_2014_chapter8.pdf, (Accessed 3 October).

¹⁰ A Ukwuoma, ‘*Child Marriage in Nigeria: The Health Hazards and Socio-Legal Implications*,’ (Lulu Publishers) 2014).https://books.google.com.ng/books?hl=en&lr=&id=uCHwBQAAQBAJ&oi=fnd&pg=PR3&dq=pdf+materials+on+the+legal+framework+of+child+marriage+in+Nigeria&ots=ey_wBvwX8o&sig=s4EUBkhCOoQFP7GijahG4596r3c&redir_esc=y#v=onepage&q&f=false (accessed 30 October 2025).

¹¹ Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 35(1)(d).

by any means other than by birth if he or she has attained the age of 18.¹² Furthermore, the age threshold of 18 years for adulthood have been christened in the Electoral Act by virtue of section 12(1)(b),¹³ which provides that, “A person shall be qualified to be registered as a voter if he has attained the age of 18 years.” Hence, by the provisions of the Constitution and the Electoral Act, it can be concluded that adulthood begins at 18 years. Since the contract of marriage is intended to be entered into by adults, any person below the age of 18 cannot validly enter into the institution of marriage, because such a person is duly considered a child by the Constitution.

On a similar note, Adigun, posited that the provision of section 29 of the Constitution has been wrongly interpreted over time to qualify the practice of child marriage. According to him, the provision of section 29 provides an instance where a Nigerian who acquires Nigerian citizenship by birth can lose his citizenship when he acquires the citizenship of another country or combines the citizenship of another country with that of Nigeria. He, however explained further that section 28 of the Constitution affords a person who acquires the citizenship of Nigeria by birth to combine his Nigerian citizenship with the acquired citizenship and not lose his Nigerian citizenship, unlike a person who acquires Nigerian citizenship by registration in the case of a woman who married a Nigerian or by naturalization.¹⁴ Renunciation under Section 29 flows from dual citizenship under Section 28 of the Nigerian Constitution. According to author’s logic, for instance, a man marries a foreigner who, by virtue of the marriage acquires Nigerian citizenship by registration and however, subsequently divorce the man, or where her husband is from a country where dual citizenship is not permitted and she intends to renounce her Nigerian citizenship. She can only renounce her Nigerian citizenship under section 29 of the Constitution, this is because

¹² Ibid section 26-29.

¹³ Electoral Act, Cap. E6, Laws of the Federation of Nigeria 2004, s 12(1)(b).

¹⁴ Adigun (n3).

she can combine her Nigerian citizenship with her citizenship of origin acquired by birth. In accordance with the provision of section 29(4)(a), she can renounce the Nigerian citizenship if she is already 18 years at the time she intends to renounce. Nevertheless, if she is still less than 18 years at the time she intends to renounce the Nigerian citizenship, she will do so under section 29(4)(b).¹⁵ The implication of the foregoing is that, in a situation where a woman who has acquired Nigerian citizenship but have not attained the age of 18 and her marriage is recognized by her husband's country, she will be deemed to be of legal age in Nigeria under section 29(4)(b) for the purpose of being able to renounce her Nigerian citizenship.

However, Fayokun considers 29(4)(b) of the Constitution as a setback for recognizing that a woman who is married to be of full age for the purpose of renouncing Nigerian citizenship. According to him, in other areas of law, such provisions do not exist to accord a minor the capacity to marry, since marriage is generally considered a contract, and a person under the age of 18 is incapable of entering into such contract, she therefore lacks the requisite capacity to enter into a contract of marriage. Also, she cannot vote at the elections neither obtain driving licence. Following the foregoing reasons, it is therefore strange and a matter of great concern that a person with such multiple disabilities is suddenly endowed with maturity under the Constitution irrespective of her age ¹⁶

¹⁵ Adigun (n3).

¹⁶ K O Fayokun, 'Legality of Child Marriage in Nigeria and Inhibitions Against Realisation of Education Rights,' *US-China Education Review B*, July 2015, Vol. 5, No. 7, 460-470, (davidpublisher.com. David Publishing, 11 July 2015), <http://www.davidpublisher.com/Public/uploads/Contribute/55bb43bda2e6a.pdf>, (accessed 20 February 2022).

Ukwuoma does not expressly agree with Fayokun’s criticism of section 29(4)(b). Instead, describes the debate that surrounding section 29(4)(b), in respect to its proper interpretation as a “source of heated argument”. According to the learned author, section 29(4)(b) have been sought by patrons of child marriage as a Constitutional authority to validate and formalize child marriage. However, an open minded interpretation of the section reveals that the Constitution does not support such practice or any part of it.¹⁷ He further asserted that the entire concern of section 29 of the Constitution is centered on renunciation of citizenship and not age of marriage. Categorically, section 29(4)(b) addresses the issue of who is to be deemed of full age as to renunciation of citizenship and not as to be capable of getting married or being led into marriage.¹⁸ According to the learned writer, a proper interpretation of the section reveals that its purpose is confined to subsection (1), which deals specifically on renunciation of citizenship. Consequently, any interpretation of 29(4)(b) outside the scope of renunciation of citizenship with the intent of manipulating the section as a Constitutional validation of child marriage is “preposterous and highly offensive to the letters, spirit, tenets, and ideals in the Constitution on the protection of underage female Nigerians.¹⁹

In reference to section 29(4)(a) of the provision on the recognition of citizenship, a threshold which is in tandem with section 12(1)(b) of the Electoral Act,²⁰ The author contended that it is difficult to comprehend how a person under the age of 18, who is expressly prohibited from voting, can, by virtue of marriage, be regarded as an adult having full capacity to vote in an election. Moreso, how then can a person incapable of participating in electoral matters reach maturity solely on the basis of marriage?²¹ This question presented by the author can simply be answered by stating that the issue of election matters fall within the Exclusive legislative

¹⁷ Ukwuoma (n10).

¹⁸ Ibid

¹⁹ Ibid.

²⁰ Ibid (n13) s 12(1)(b).

²¹ Ukwuoma (n10).

list. In fact, Item 22 of the Second Schedule Part II, provides that, Any office to which a person may be elected under this Constitution, excluding a local government council, shall be regulated by the National Assembly”.²²

Conversely, it is only marriages conducted under the Marriage Act that falls within the scope of the Exclusive Legislative List (Item 61 of the Second Schedule). Consequently, matters of marriages conducted under customary or Islamic law fall under the Residual Legislative List, which is within the jurisdiction of each state in Nigeria. It then follows that, where a state’s legislation recognizes and gives effect to a dominant custom or religion by providing that a person below the age of 18 (say 15 or 16),²³ is to be considered an adult in line with the applicable custom or religion for the purpose of marriage. Consequently, If the conferment of adulthood by virtue of the state’s legislation, which grants such recognition is to be stretched to touch on all purposes, then it can be strongly argued that a child thus recognized as an adult, is invariably conferred the right to vote within such conferral state by virtue of his adulthood. However, this position is highly contestable.

It is evident from the foregoing contention that, if the Constitution does not clearly stipulate a definite legal minimum age for marriage, section 29(4)(b) will continue to endure the debate of whether or not the Constitution conspires with other sources of laws to permit child marriage in Nigeria. On this point Ukwuoma noted as follows;

While it is clear that the provisions of section 29(4)(b) of the Constitution does not support the practice of child marriage. It is however instructive to caution that the section is capable of creating opportunities for perpetrators of the practice of child marriage to mischievously and treacherously manipulate the provision in support of the whims of their practice of abusing and violating the

²² Ibid (n11).

²³ The minimum age for marriage in Enugu is pegged at 16 by virtue of section 3(1) Customary Marriage (Special Provision) Law, Cap 33 Laws of Enugu State 2004. Similarly in Bayelsa State in Section 2 Age of Customary Marriage Law, Cap A5 Laws of Bayelsa State 2006, the minimum age for marriage is 16 years.

rights of the girl child in the guise of marriage. Therefore deleting the provision of section 29(4)(b) from the Constitution is a viable, proactive, and largely a progressive legislative step to protect the girl child and shut the door against manipulation of the Constitution to the detriment of the rights and well-being of the child.²⁴

Thus, to effectively eliminate the practice of child marriage in Nigeria, the Constitution should unequivocally provide that 18 years is the legal minimum age for marriage. By so doing, the exploitation of section 29(4)(b) will be cushioned. Alternatively, section 29(4)(b) should unambiguously state that “a woman who is married shall be deemed to be of full age for the purpose of renouncing her citizenship, save where such marital status is recognized by the law of her husband’s country ” (lex domicile). Thus, where the laws of her husband’s country recognizes the marriage of a woman below the age of 18 as a valid marriage, and the woman intends to renounce her Nigerian citizenship, the section would recognize her as an adult through her marital status. The crux here is that the Constitution should be amended to clarify that section 29(4)(b) applies exclusively to a woman below the age of 18 years who seeks to effectively renounce her Nigerian citizenship. This work, does not recommend that section 29(4)(b) should be deleted as suggested by Ukwuoma, rather, the relevant and often exploited section should be amended as recommended above, because its extant provision proves useful when a situation-where a woman below 18 marries a foreigner and her marriage is recognized by the husband’s country and seeks to renounce her Nigerian citizenship-surfaces.

While section 29(4)(b) is still in debate of whether it supports child marriage or not, Item 61 Second Schedule of the 1999 Constitution have been a tool for the exploitation of child marriage. Item 61 provides that; “The formation, annulment and dissolution of marriages other than marriages under Islamic law and customary law including matrimonial causes relating thereto.” This provision expressly excluded marriages conducted in accordance with

²⁴ Ukwuoma (n10).

customary and Islamic law, which falls outside the competence of the federal government (the National Assembly). The effect of this is that, even with a law such as section 21 of the CRA, where a person marries in contravention of the CRA but in accordance to the customary and Islamic law applicable to him, he cannot be prosecuted pursuant to the provisions of the CRA, because the federal government would be said to be interfering with an Islamic marriage or the customary law applicable to the person. Hence, such an interference will be in violation of Part 1 Section 61 of the 1999 Constitution.²⁵ According to according to a prominent legal jurist, Item 61 of the 1999 Constitution renders the CRA useless and ineffective, as the Constitution by virtue of section 1 serves as the supreme law of the land in Nigeria, overriding all other legislation, including the CRA.²⁶ According to him, an example of how Part 1 Section 61 of the 1999 Constitution can be used as a constitutional backing for child marriage was shown in 2010, when Yerima married a 13 year-old Egyptian girl. Regardless of the outrage the union sparked, as it was in contravention of Section 21 of the CRA, Yerima justified the marriage on religious grounds.”²⁷ the learned writer further cited that Tardzer, who lamented that although Yerima’s conduct appeared reprehensible, there was nothing anyone could do about his marriage to the child.²⁸ The Attorney-General of the Federation, Mohammed Bello, submitted that, because Yerima’s marriage was contracted under Islamic law, he would not face prosecution. Thus, from the foregoing, it may be concluded that it is due to the existence of Item 61 of the Constitution that it remains difficult to invoke the laws prohibiting child marriage for the persecution of the violation of Section 21 of the CRA²⁹ even in some states that has domesticated the Act.

²⁵ Ibid (n9).

²⁶ Ukwuoma (n10).

²⁷ Braimah (n9).

²⁸ C S K Tardzer, ‘My odyssey, my country,’ (2012), <https://www.amazon.com/Odyssey-Country-Cephas-Sallem-Tardzer/dp/1469199262>, (accessed 3 November). pg 77.

²⁹ Braimah (n9).

3.2 The Child Rights Act

The Child Rights Act³⁰ is a comprehensive federal enactment of the Convention on the Right of the Child. Its provisions mainly focus on the protection of the right of children. Additionally, the Act prohibit all forms of violation galvanized against children, even up to the issue of marriage involving a child.³¹

The CRA expressly defined a child as a person under the age of 18,³²to further consolidate this provision, it categorically provides that a child's best interests shall remain paramount in all consideration.³³Some of the relevant sections which provide for the protection of children include, but are not limited to-the prohibition of the use of children in criminal activities,³⁴ the use of children in exploitative labour,³⁵ unlawful sexual intercourse with a child,³⁶ One of its most significant prohibition relates to child marriage.³⁷ In respect of the personal dignity of the child, the CRA provides that; every child is entitled to respect for the dignity of his person, and accordingly, no child shall be: subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse; or subjected to torture, inhuman or degrading treatment or punishment or held in slavery or servitude.³⁸The CRA expressly prohibits betrothal of children under the age of 18.The Act generally treats child marriage as a matter of particular concern, recognizing its practice constitutes a violation of the rights of children.

³⁰ Child's Rights Act, Cap C50 Laws of the Federation of Nigeria 2003.

³¹ C O Benson, 'Child Marriage in Nigeria: Enforceability of Age Limit,' (unpublished, Masters Thesis, Lead City University, 2023) 2. <https://repository.lcu.edu.ng/server/api/core/bitstreams/d8a468a0-d97f-45f6-85ba-0e6a632b28b8/content>>(Accessed, 10 August, 2025).

³² Ibid (n30). section 277.

³³ Ibid sec 1(1).

³⁴ Ibid sec 26.

³⁵ Ibid sec 28.

³⁶ Ibid sec 31.

³⁷ Braimah (n9).

³⁸ Ibid (n30) sec11

The primary objective of the CRA is to eliminate all forms of violation against the right of the child. Therefore, unless its provisions are effectively mechanized to prohibit child marriage, those objectives will not be met, because child marriage in itself is a fundamental violation of the right of the child. Section 21 of the CRA provides, “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.” Furthermore, section 22 provides that no person or guardian shall betroth a child to any other person, (whether to an adult or to another child). Subsection 2 then clarifies that, a betrothal in violation of subsection (1) of this section is null and void. Consequently, a contravention of either section 21 or section 22 amounts to a fine or imprisonment for a term of five years or to both a fine and imprisonment.³⁹

The major problem confronting the CRA lies within the uneven acceptance of the Act. When the Act was first domesticated, it was enacted as a federal legislation and was not enacted so that, by default, it would automatically have force within the legal systems of all 36 states in Nigeria. Thus, Each state have to pass the Bill into their state laws for it to become enforceable in order to safeguard and protect the rights of children and, essentially, to prevent child marriages.⁴⁰ A recent analysis on the domestication of the CRA stated that by November 2024, 34 out of the 36 states, including the FCT, had domesticated the Act, with Gombe and Bauchi states lagging.⁴¹ However, a more recent report by the Minister of Women Affairs and Social Welfare, Mrs Iman Sulaiman-Ibrahim, confirmed that, as at 2025, the Child Rights Act, has been in all states of the Federation.”⁴² Notwithstanding the 2024 and 2025 reports, their

³⁹ Ibid section 23(d).

⁴⁰ Benson (n31).

⁴¹ Coalition of Civil Society Organisations to End Child Marriage in Nigeria, ‘*Policy and Stakeholder Research and Analysis-on Child Marriage in Nigeria*,’ (December 2024, rev. February 2025). https://ecmcoalitionnigeria.org/wpcontent/uploads/2025/02/POLICY_ANALYSIS_REPORT.pdf?, (accessed 4 November 2025).

⁴² Kehinde Akintola, ‘36 States Have Domesticated Child Rights Act — Women Affairs Minister,’ *Tribune Online* (30 October 2025), <https://tribuneonlineng.com/36-states-have-domesticated-child-right-act-women-affairs-minister/>, (accessed 4 November 2025).

respective claim appear to be unsettled. This is because the states alleged to have domesticated the CRA have not officially recorded it in the official Gazette to indicate that the CRA now has full legal effect within their jurisdictions.⁴³ According to report, as at the end of 2024, only 26 states have officially gazetted the CRA out of 34 states that domesticated the Act. Thus, 11 states as at 2024 are yet to officially gazette the CRA.⁴⁴ What the foregoing implies is that children may have no rights as established by the CRA, in states that are yet to enact the Act, particularly in states where child marriage is allowed by the personal law applicable to the child. Consequently, such marriage remain valid.⁴⁵

Nwachuku argued in response to the foregoing position, that the child in states where the CRA has not been enacted is not entirely left vulnerable without rights and protection. According to him, the Constitution provides grounds under which, where the right of the child is violated, such violation can be prosecuted accordingly. These violations, he contends, include the practice of child marriage.⁴⁶ However, a prominent legal scholar observed that, if the CRA is not domesticated in a state, children within that state cannot enjoy the nourished protection and robust rights the Act provides to jealously safeguard their welfare. A practical analysis of the effect of non-domestication of the CRA can be illustrated as follows: Nigeria's geo-geographical allocations follow that the East, West, and South are dominated by Christians, while the North is largely dominated by Muslims, with Islam serving as both customary and religious law of the Muslims. Because Islam recognizes child marriage as a valid form marriage. Thus, it is not surprising that the domestication of the CRA has met the greatest resistance in the northern states. This is because some of the provisions of the CRA

⁴³ Kehinde Akintola, 'IHR 2024: Kalu tasks states to domesticate Child Rights Act, eliminate child labour,' *Tribune Online* (10 December 2024) <https://tribuneonline.ng/ihr-2024-kalu-tasks-states-to-domesticate-child-rights-act-eliminate-child-labour/>, (accessed 4 November 2025).

⁴⁴ HerStory OurStory, '*Maps of Compliance - Child Rights Act*,' (November 2024) <https://herstoryourstory.ng/wp-content/uploads/2024/12/Maps-of-compliance-A4-CRA.pdf>, (accessed 4 November 2025).

⁴⁵ Braimah (n9).

⁴⁶ MA 'Nwachuku, A Legal Analysis of the Nebulous Concept of Childhood in Nigeria,' (2016), (1)7, *Beijing Law Review*, 7, 122-126. <http://dx.doi.org/10.4236/blr.2016.72013> (accessed 6th August, 2025).

conflict with Islam, particularly those relating to the legal minimum age of marriage. While the CRA defines a child as any person under the age of 18, in Islam, there is no age that marks childhood. Instead, a child's maturity is established by signs of puberty such as menstruation and other factors evidencing puberty. To further adumbrate on the argument that age is a major factor contributing to the reluctance of many northern states to pass the CRA. For example, when Jigawa in its CRL, it provided that childhood shall be determined by puberty.⁴⁷

Another point of conflict between the CRA and Islam is the provision prohibiting child marriage, a practice that is part of Islam. Adherents of Islam consider the provision of the CRA as an invasion of Islamic practice. Section 262(2)(a) and (b) of the Constitution permits persons of Islamic faith to have questions of Islamic personal law in respect to marriage concluded in accordance with Sharia law, including questions relating to the validity or dissolution of such marriage or issues arising from such a marriage relating to family relationship, or the guardianship of an infant, and where all the parties to the proceedings are Muslims, to be determined by the Sharia Court in accordance with Sharia law. A strong argument can be made that the provision of Section 262(2)(a) and (b) of the Constitution can be used as a tool to be exploited by the Muslims to revive the practice of child marriage, since matters that concern marriage and issues that borders on the rights of a child is to be determined by the Sharia court in accordance with the personal law of the child. It can be further argued that, even if the CRA is domesticated in a dominant Muslim state, the foregoing section can be used to defeat the provision of the CRA that prohibits child marriage that was concluded in accordance with Islamic law. While this work clamour for the CRA to be domesticated across all states in Nigeria to fully guarantee the rights of every child. It further recommends that the Constitution should be amended to reflect 18 years as the legal

⁴⁷ Jigawa Child Rights Law, 2008.

minimum age for marriage. So doing will expel every attempt to exploit any provision of the Constitution to support the practice child marriage in Nigeria.

3.3 Marriage Act

The Marriage Act is one of the two apex legislations in Nigeria that regulates statutory matters relating to marriage. By virtue of section 18,⁴⁸ the Act provides that the consent of person is indispensable. However, where the person is not a widow or widower and the person is under the age of 21, the consent of the parents or guardian is required. This provision has been criticized for creating an opportunity for the practice of child marriage, this is because the Marriage Act did not go further to define a legal minimum age for marriage. A major argument generated is that, the Act does not delineate the extent to which a parent or guardian can give their consent to validate a marriage. Thus, where a parents or guardians arrange a marriage for a child under the age of 18 (say 13 years), and give their consent, by virtue of section 18 of the Marriage Act, such a marriage may be considered legal and valid. This is because parental consent can be regarded as the consent of the child-and it is assumed that the parents have the best and paramount interest of the child in mind, which is not always so in matters of child marriages. Because child marriage in itself is a violation of the right of the child. A provision like this, without stipulating a legal minimum age, which should be 18 years, can be exploited by parents and guardians to statutorily marry out their minors validly on the account of the Marriage Act.

In response to the absent of a legal minimum age in the Marriage Act, Nwogugu suggests that recourse may be made to the common law of England which specifies the age of puberty, being 14 years for boys and 12 for girls.⁴⁹ It is instructive to note that this proposition does not hold water in contemporary times. Interestingly, the common law of England to which

⁴⁸ Marriage Act Cap M6, Laws of the Federation of Nigeria 2004, s. 18.

⁴⁹ E I Nwogugu, *Family Law in Nigeria* (Ibadan: Heinemann Educational Books Nigeria Plc. 1974), 23.

Nwogugu appears to direct us for guidance, has of 2023 amended its laws to establish 18 years as the legal minimum age for marriage.⁵⁰ However, Obiageli has submitted that there is no need for recourse to be had to common law, rather, recourse is to be made to the Child Rights Act, which is extensively efficient to end child marriage. In contrast to the Marriage Act, 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.⁵¹ It further prohibits child betrothal by parents or guardian, thereby criminalizing the practice and providing for the punishment for offenders who may be the parents or guardians, or the person who marries or is betrothed to the child.⁵² The Act prohibits unlawful sexual intercourse.⁵³ It follows that sexual intercourse in a marriage with a child may be concluded or deemed unlawful sexual intercourse and a violation of section 31 of the CRA. Furthermore, the Act goes onwards to specify various forms of sexual abuse and exploitation, as well as providing a comprehensive protection to shield the child from those abuses.⁵⁴ To further guarantee the rights of the child, section 14 of the CRA 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.⁵⁵

From the foregoing, it is clear that although the Marriage Act does not provide for a legal minimum age for marriage in Nigeria. Recourse can be made to the provisions of the CRA combat the menace of child marriage, which harasses underage minors. However, the effectiveness of the CRA is can only operate to address the practice in states that fully domesticate the CRA into their local laws as the Act originally envisaged.

⁵⁰ United Kingdom, *Marriage and Civil Partnership (Minimum Age) Act 2022* (c. 28), passed 28 April 2022, entered into force 27 February 2023. <https://www.legislation.gov.uk/ukpga/2022/28>, (accessed 12 November 2025).

⁵¹ Ibid (n30) section 21.

⁵² Ibid section 22 and 23.

⁵³ Ibid section 31.

⁵⁴ Ibid (n30) section 33.

⁵⁵ Ibid section 14.

3.4 Matrimonial Causes Act

The Matrimonial Causes Act is the second principal statutory legislation in Nigeria that regulates issues relating to marriage, which range from matters relating to the formation, dissolution, maintenance, custody, and other marriage related issues. Section 3(1)(d) provides that a marriage is void where the consent of either of the parties is not a real consent because it was obtained by duress; or that party is mistaken as to the identity of the other party; or that party is mentally incapable of understanding the nature of the marriage contract.⁵⁶ Clearly, children are often incapable of giving genuine consent to marriages materially arranged by their parents or guardians. Often time, such marriage proposals are imposed on the children without seeking their opinion and paying attention to their wishes and best interests. These children are sometimes made to believe that it is their duty to marry at a tender age for reproduction purposes-especially in the rural area-hinged on the rationale that themselves which are their parents married when they were about the same age as the minors. It is evident that most minors under the age of 18 years do not understand the nature or the expectations required of them as spouses, this is because they are essentially still children. According to Ashiru, child marriage is like “asking a baby who has not developed teeth to start chewing. The baby may get choked with the food and become constipated because the digestive process is not yet fully developed.”⁵⁷ Nevertheless, the Matrimonial Causes Act has been criticized for not providing for a legal minimum age for marriage. The Act, by virtue of section 3(1)(e), provides that a marriage is void where either of the parties is not of marriageable age.⁵⁸ But nowhere in the Act the term marriageable age is interpreted. This ambiguity has led to several controversies as to what constitutes a marriageable age, especially in a pluralistic legal system like Nigeria.

⁵⁶ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004. section 3(1)(d).

⁵⁷ Jemi Ekunkunbor, 'Section 29(4)(b) 1999 CFRN: Any woman who is married shall be deemed to be of full age', Vanguard Newspaper, August 25, 2013, <https://www.vanguardngr.com/2013/08/section-294b-1999-cfrn-any-woman-who-is-married-shall-be-deemed-to-be-of-full-age/>, (accessed 5 November 2025).

⁵⁸ Ibid (n30) section 3(1)(e).

3.5 International Treaties on the Right of the Child

In recognition of the extensive harm caused by the practice of child marriage, which have become deeply entrenched in the fabrics of various societies as a cultural and religious value. it became necessary for international organizations to intervene by formulating treaties and conventions to which State parties are expected to adhere in the global effort to end child marriage and thereby guarantee the rights of the child across the world. In a pursuit of achieving this task, several International conventions have made efforts to establish a legal minimum age for marriage and encourage member states to adopt this minimum age for marriage into their domestic legal systems. Some of these conventions will be examined briefly.

3.5.1 Convention on the Rights of the Child

As a member of the United Nations, Nigeria is a party to major international child specific instruments which have also been domesticated into Ngeria's municipal legislation for the prohibition of child marriage.⁵⁹The Convention was adopted on 20 November 1989, it is the first legally-binding international instrument that comprehensively deals with a full range of human rights issues pertaining to children.⁶⁰ Because of the comprehensiveness and the protection of a wide range of rights it affords children, stretching from political to civil rights, legal scholars have uniformly commended the charter for been the first comprehensive legal framework that elaborately provide for the rights of children.⁶¹However, Warner does not share this view. According to the legal critic, the CRC contains no explicit provision for the prohibition of child marriage, an omission which she describes as “odd and downright

⁵⁹ G A Arowolo, ‘*Preventing and Eliminating Child Marriage in Africa: The Perspective from Nigeria*,’(2022) Vol.119 *Journal of Law, Policy and Globalization* 27–42, DOI: 10.7176/JLPG/119-03, <https://www.iiste.org/Journals/index.php/JLPG/article/view/58422>. (accessed 22 September 2025).

⁶⁰ Braimah (n104).

⁶¹ B Woodhouse, ‘Hidden in plain sight: The tragedy of children’s rights from Ben Franklin to Lionel Tate,’ (2008) 32.

baffling”.⁶² However, the legal author went further to propose that perhaps the drafters of the Charter presumed that the subject of child marriage has exhaustively been covered by the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (Marriage Convention), thus, the matter have been settled; therefore, it was unnecessary to further adumbrate on the issue of child marriage in the CRC.⁶³ Askari, on the other hand, does not share from Warner’s deferential presumption. According to the legal critic, the omission of the provision of child marriage is a result of gender biases, which he contends are inherent in the CRC.⁶⁴ In spite of these criticism, a number of provision of the CRC can be deployed to apply to children-to protect them from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.⁶⁵ The charter also guarantees the child’s right to health,⁶⁶ education,⁶⁷ and protection from economic exploitation,⁶⁸ all of which are realities inherent in child marriage. In terms of the criticisms directed towards the CRC for not expressly addressing the issue of child marriage. The learned writer however submitted that Article 24(3) which provides that, states should take effective measures to abolish traditional practices that are prejudicial to the health of children,”can appropriately address such harmful traditional practices like child marriage when invoked. Nevertheless, Article 1 of CRC 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”.

⁶² E Warner ‘Behind the wedding veil: Child marriage as a form of trafficking in girls,’ (2004) 12 Journal of Gender, Social Policy and the Law

⁶³ Braimah (n9).

⁶⁴ L Askari, ‘The Convention on the Rights of the Child: The necessity of adding a provision to ban child marriages,’ (1998-1999) 5 ILSA Journal of International and Comparative Law 124.

⁶⁵ United Nations, *Convention on the Rights of the Child*, (adopted 20 November 1989, entered into force 2 September 1990) art 19 <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>, (access 6 November 2025).

⁶⁶ Ibid Art 24.

⁶⁷ Ibid Art 28.

⁶⁸ Ibid Art 32.

Legal scholars have questioned the practical essence of Article 24(3) of the CRC in contexts where national laws consider a child to have reached maturity as early as 15.⁶⁹ Can the provision of Art 24(3) of the CRC still be relied on to address the issue of child marriage under such circumstance? Furthermore, the drafters of the Charter cannot be justified in assuming that all State Parties of the treaty may have or will always elect to adopt 18 years as the legal minimum age for marriage for the article to be said to have appropriately extend its protection of the rights of a child to children trapped in child marriage unions. For instance, in the northern part of Nigeria, maturity is determined by puberty, and the laws within the region are heavily influenced by Islamic principles, which incidentally is the traditional practice of the Muslims. In a situation like this, the provisions of Art 1 and Art 24(3)⁷⁰ of the CRC presents a problem of application. Apparently, the Muslims will simply go by the provisions of Art 1⁷¹ which permits them to accord maturity to a person based on the laws of the jurisdiction, which in this case can be before or at puberty. Consequently, even under the watch of the CRC, child marriage in the Northern parts of Nigeria may still persist.

3.5.2 African Charter on the Rights and Welfare of the Child (African Charter)

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 plethora of rights of children, including [child] marriage.⁷² Also, unlike CRC, the African Children's Charter explicitly sets the age of childhood below 18 years.⁷³ The African Charter does not give states the opportunity to select a contradictory definition of

⁶⁹ The minimum age for marriage in Enugu is pegged at 16 by virtue of section 3(1) Customary Marriage (Special Provision) Law, Cap 33 Laws of Enugu State 2004. Similarly in Bayelsa State in Section 2 Age of Customary Marriage Law, Cap A5 Laws of Bayelsa State 2006, the minimum age for marriage is 16 years.

⁷⁰ Ibid (n66) 24(3).

⁷¹ Ibid Art 1

⁷² Organization of African Unity, *African Charter on the Rights and Welfare of the Child* (adopted 11 July 1990, entered into force 29 November 1999) art 1 <https://au.int/en/treaties/african-charter-rights-and-welfare-child>, (accessed 6 2025), Art 1.

⁷³ Ibid Art 2.

what qualifies a person to be a child. While the practice of child marriage in northern Nigeria may not offend article 1 of CRC, it outrightly offends article 2 of the African Children's Charter. In contrast to the CRC, the prohibition of child marriage is explicitly included in the African Children's Charter under article 21(2), which states that; "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".

Similarly, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (African Women's Protocol), defines women as including girls⁷⁴ and further stipulates 18 years as the minimum age of marriage for women.⁷⁵ To comprehensively safeguard the right of the child in relation to child marriage, the Charter did not just establish 18 years as the legal minimum age, it provided further security of the child categorically against child marriage. Some of these provisions of the African Charter includes, the protection of children from sexual abuse.⁷⁶ Under article 21 of the Charter, State Parties are exhorted 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 article seeks to annihilate the principal causes of child marriage, namely, customary and traditional practices. In the Nigerian context, the Islamic adherents who continue to practice child marriage are undoubtedly in violation of article 21 of the African Children's Charter.

⁷⁴ African Union, *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (adopted 11 July 2003, entered into force 25 November 2005) art 1 <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa>, (accessed 6 2025). Art 1(g).

⁷⁵ Ibid Art 6(b).

⁷⁶ Ibid Art 16 (1).

Interestingly, in a bid to promote and protect the rights of children, Nigeria have domesticated the CRC and the African Charter,⁷⁷ intended to safeguard children from abuse.

3.5.3 The African Charter on Human and Peoples Right (Banjul Charter)

The African Charter was adopted on 27 June 1981, in Nairobi, Kenya, by the Organization of African Unity (OAU) (now the African Union), and entered into force on 21 October 1986. The Charter was domesticated in Nigeria by virtue of section 12 of the 1999 Constitution on 17 March 1983.⁷⁸ The Charter provides that every individual (including the girl-child) shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the Charter without distinction of any kind as to race, ethnic group, colour, sex, language, and religion among others.⁷⁹

The Charter further provides that human beings are inviolable as every human being shall be entitled to respect of his life and integrity of his person, and no one may be arbitrarily deprived of his rights.⁸⁰ The Charter also prohibits any practice that subject any human being to slavery. According to the Charter, “Every individual shall have the right to the respect of the dignity inherent in a human being... All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”⁸¹ Furthermore, the Charter further urged States Parties to ensure the mental and physical health of every one of its citizens” The practice of child marriage directly contravenes this provision. One of the significant perils associated with child marriage is health decline or health deterioration-which is caused as a result of

⁷⁷ Braimah (n9).

⁷⁸ Federal Republic of Nigeria, *African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act*, Cap A9, Laws of the Federation of Nigeria 2004.

⁷⁹ African Union, *African Charter on Human and Peoples’ Rights (Banjul Charter)* (adopted 27 June 1981, entered into force 21 October 1986) <https://au.int/en/treaties/african-charter-human-and-peoples-rights>, (accessed 11 November 2025). Art 2

⁸⁰ Ibid Art 4.

⁸¹ Ibid Art 5.

premature childbirth or the child taking up adult roles in the form of marital responsibilities that are even burdensome to mature adults-in the guise of performing her duties as a wife. Also, in an effort to solidly cement the rights of the child against violation. The Charter commendably provides that, “States shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions.”⁸² One of the major drivers of child marriage is patriarchy, within it confines there are notorious elements of discrimination to the girl child. However, From the foregoing, it is evident that International instruments are designed to protect the rights of the child against all forms of violation. These instruments make specific prohibition against the discrimination of woman and guarantee their safety.

3.6 Comparative analysis of legal minimum age for marriage in Nigeria and selected jurisdiction

The issue of child marriage is not peculiar to a designated continent, country, state, or region. It is a common socio-cultural practice around the world. Even the civilized countries at a point in their history predominantly celebrated child marriages. one of the reasons tendered for the prevalence of child marriage was low life expectancy, which was essentially ranged from 40 to 45 years, due to factors such as war, invasion, or illness, compounded by the absence of effective medical treatments. Hence, these events led to arranged child marriages.⁸³ Some girls were even married at puberty or at birth-a practice known as betrothal-as soon as the child reached puberty or less, she is taken to her husband’s house to assume marital duties. However, this practice began to change with social and economic development. Women started receiving education, acquired voting rights, and entered

⁸² Ibid Art 18 (3).

⁸³ S N Oishimaya, ‘Child Marriage – Rationale, Historical Views, And Consequences.’ *WorldAtlas.com*, (25 Apr. 2017) , <https://www.worldatlas.com/articles/child-marriage-rationale-historical-views-and-consequences.html>, (accessed 8 November).

workforce, thereby improving their economic relevance. At the time, life expectancy improved as a result of decline in wars and advance medical intervention. As a result of increased access to education, women and other concerned individuals began to question and antagonize the practice of child marriage. Soon after, the government started enacting legislation to establish a legal minimum age for marriage in an effort to eliminate the practice.⁸⁴ Although many patriarchs protested against this attempt. Subsequently, several countries have now set 18 years as the legal minimum age for marriage. Some of the countries that have established this legal minimum age for marriage which will be examined are as follows;

3.6.1 The United Kingdom

Historically, the minimum age for marriage in England can be traced to canon laws and integrated by medieval practices. During the medieval period (5th-15 centuries), marriages in Europe were governed almost entirely by the Catholic church through its canon law-which regarded marriage as a sacrament rather than a civil contract. The foundation of marriage in canon law according to Justinian, was mutual consent, and not age or parental consent.⁸⁵ Under the canon law, an individual who has reached puberty is deemed capable to marry.⁸⁶ Under the law, legal age for marriage was 12 for girls and 14 years for boys.⁸⁷ Subsequently, this age requirement of 12 years and 14 years for boys and girls was codified into the ecclesiastic laws across christian Europe as the legal minimum age for marriage.⁸⁸ However, in 1753, the ever first Marriage Act was enacted by Lord Chancellor Hardwicke.

⁸⁴ Ibid (n84).

⁸⁵ O Bandrovskia, 'Betrothal in Medieval Canon Law from Decretum Gratiani (1140) to Liber Sextus (1298),' Doctoral Thesis, University of Vienna, Vienna 2016.
<https://services.phaidra.univie.ac.at/api/object/o:1329786/get>, (accessed 10 November 2025). pg 17.

⁸⁶ Ibid.

⁸⁷ Gregory IX, *Decretales Gregorii IX* (Liber IV, Tit. 2, Cap. 14: *De deponsationibus impuberum: "puberes autem sunt masculi decem et quattuor annorum, feminae duodecim"*), in *Corpus iuris canonici*, ed. E Friedberg (Leipzig: Druck von B.G. Teubner, 1879-81) X 4 2 14.

⁸⁸ According to the *Decretales Gregorii IX* a central collection of papal canon law issued in 1234 which applied across much of medieval Europe, "Males are deemed pubescent at 14 years, females at 12 years."

The Act still maintained the legal minimum ages of 12 for girls and 14 for boys, but further regulated the formalities of marriage in England.⁸⁹ The Act additionally provided that no marriage of a person under the age of 21 shall be valid without the consent of parents or guardians. In 1929, in a response to a campaign by the National Union Societies⁹⁰ for Equal Citizenship, the legal age for marriage was raised to 16 years for both male and female with the consent of parents or guardian and 21 without such consent. These ages were codified in the Age of Marriage Act. Subsequently, the 1949 Marriage Act reduced the age for marriage without parental consent to 18. The implication of this Act was that, marriages conducted by persons under the age of 16 were void under the Act.⁹¹ This principle was instructive in the case of *Pugh v Pugh*,⁹² in that case, the court held that, the English law governed the capacity of a person to marry domiciled in England. Since the husband of the woman was domiciled in England, the English statutory rule under the Age of Marriage Act 1929, (re-enacted in s.2 of the Marriage Act 1949), which prohibit a party under the age of 16 from entering into a marriage contract-the marriage was void. Although valid in Austria and Hungarian law (the woman's domicile), in England, she lacked the legal capacity to enter into such contract.

There has however, been a significant shift in the legal minimum age requirement for marriage in England and Wales by virtue of the Marriage and Civil Partnership (Minimum Age) Act 2022 (c28). The Marriage and Civil Partnership (Minimum Age) Act was enacted on 28 April 2022, and it effectively came into force on 27 February 2023. The Act repealed the previous provisions that allowed children between the ages of 16 and 17 to marry with

⁸⁹ UK Parliament, 'The law of marriage', *About Parliament / Living Heritage: Private Lives – Relationships: Overview*, <https://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/relationships/overview/lawofmarriage-/>, (accessed 12 Nov 2025).

⁹⁰ National Union of Women's Suffrage Societies", Wikipedia, https://en.wikipedia.org/wiki/National_Union_of_Women%27s_Suffrage_Societies, (accessed 12 Nov 2025).

⁹¹ 'Marriage Act 1949,' *Wikipedia*, https://en.wikipedia.org/wiki/Marriage_Act_1949, (accessed 11 November 2025).

⁹² [1951] 2 All E.R. 680.

parental consent, specifically Sections 2 and 3 of the Marriage Act 1949. By virtue of Section 1(2) of the 2022 Act, Section 2 of the Marriage Act 1949 was amended by substituting “16” years which was the acceptable legal minimum age for marriage in England and Wales to “18”, while Section 3, of the 1949 Marriage Act, which previously addressed parental consent for individuals between the ages 16 and 17, was omitted entirely.⁹³

The implication of the new legislation is that, individuals under the age of 18 can no longer enter into a contract of marriage or a civil partnership in England and Wales, irrespective of parental consent.⁹⁴ The Act further made it a criminal offence, attracting a maximum sentence of 7 years in custody to punish violators convicted of arranging either underage marriage or civil partnerships for children below the age of 18 years.⁹⁵ This penal provision extends to situations where a person under the age of 18 is induced to enter into a religious or civil ceremony that is not legally binding, such as forced marriages.⁹⁶ The objective of this new legislation is to protect vulnerable children from coercion and abuse by curbing forced marriages and punishing those who arranged them.⁹⁷

3.6.2 INDIA

Just like Nigeria, India operate a pluralist legal system, particularly in respect to marriage and family law. Each of these legal systems in India have its stipulation on the legal minimum age for marriage conducted by them, which some of the acceptable legal minimum age would certainly be in contrast with that provided by the national statute. According to UNICEF

⁹³ United Kingdom, *Marriage and Civil Partnership (Minimum Age) Act 2022* (c. 28), passed 28 April 2022, entered into force 27 February 2023. <https://www.legislation.gov.uk/ukpga/2022/28>, (accessed 12 November 2025).

⁹⁴ Public Defender Service, ‘The minimum age of marriage & civil partnership now 18,’ *News – Public Defender Service*, 17 March 2023, <https://publicdefenderservice.org.uk/news/the-minimum-age-of-marriage-civil-partnership-now-18/>, (accessed 12 November 2025).

⁹⁵ UK Government, ‘Legal age of marriage in England and Wales rises to 18,’ *GOV.UK – News*, 27 February 2023, <https://www.gov.uk/government/news/legal-age-of-marriage-in-england-and-wales-rises-to-18>, (accessed 12 November 2025).

⁹⁶ Ibid (n93).

⁹⁷ Ibid (n95).

report in 2023, India is home to the largest total number of girls and women who married in their childhood.⁹⁸

The principal facilitator for the continued prevalence of child marriage in India is as a result of diverse legal systems which regulates the institution of marriage that relates to its adherents. Historically, it was the British for the first time enacted laws to regulate child marriage in India.⁹⁹ According to Francavilla, “British colonial government generally decided not to intervene in the family laws of ruled subjects, because of the complexities of laws in that area, it was easier to apply Hindu law to Hindus and Muslim law to Muslims as far as family matters were concerned.”¹⁰⁰ This reluctance of the British government to interfere with the family and personal law issues was demonstrated in the decision of the case of *Venkatacharyulu v. Rangacharyulu*,¹⁰¹ the court held as follows asserting the supremacy of cultural and religious tenets;

There can be no doubt that a Hindu marriage is a religious ceremony. According to all the texts, it is a sacrament, the only one prescribed for a woman and one of the principal religious rites. It is binding for life by...religious tie once completed cannot be untied. It is not a mere contract in which a consenting mind is indispensable. The person married may be a minor or even of unsound mind, and yet, if the marriage rite is duly solemnized, there is a valid marriage.

As a result of this reluctance which materially preserved the practice of child marriage in India, within the 19th century, public concern began to stir up by Indian social activism for the colonial government to make laws to eliminate native practices that were perceived

⁹⁸ United Nations Children’s Fund (UNICEF), ‘*Ending Child Marriage: A Profile of Progress in India*,’ New York, UNICEF Data, (May 2023) <<https://data.unicef.org/resources/ending-child-marriage-a-profile-of-progress-in-india-2023/>>(accessed 12 November 2025).

⁹⁹ WomenPowerConnect & Socio-Legal Information Centre, ‘*The Status of Child Marriage in India: A Guide for NGOs and CSOs on Using the Law to End Child Marriages in India*,’ (New Delhi: WomenPowerConnect / Socio-Legal Information Centre, June 2022), https://www.girlsnotbrides.org/documents/1783/Child_marriage_in_India_law_guide_and_directory.pdf, (accessed 12 November 2025).

¹⁰⁰ D Francavilla, ‘Interacting Legal Orders and Child Marriages in India,’ *Journal of Gender, Social Policy & the Law*, vol 19 (2011) 529–547. <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1514&context=jgspl>, (accessed 12 November).

¹⁰¹ (1891) I.L.R. 14 (Mad.) 318.

harmful and unacceptable. Consequently, the age for marriage and consent was fixed at age 10 in the Indian Penal Code in 1860.¹⁰² This was however done by criminalizing child marriage without intervening on the private family law.¹⁰³ In 1891, the age for marriage was raised to 12. This result was precipitated by the case of *Phulmoni Dasi*, a 10-year-old girl who died due to excessive bleeding when her husband consummated the marriage. The foregoing case among others, led to a widespread debate on the issue of child marriages and initiated the social reform movement. These the above case consequently led to the enactment of the Age of Consent Act in 1891 where the age of marriage for girls was raised to 12 years as the legal minimum age, as a result of the pressure imposed by the social reform movement.¹⁰⁴ According to report, the impact of the Age of Consent Act in 1891 was not significant.¹⁰⁵ The continued prevalence of child marriage prompted the introduction a new legislative initiative, which led to the enactment of the Child Marriage Restraint Act. The Act raised the legal minimum age for marriage to 14 years for girls and 18 years for boys and further established a criminal penalty of detention, fine, or the conjunction of both.¹⁰⁶ Additionally, The Indian Penal Code 1860 raised the age of consent to 16 years in 1940 for girls. The Act further provided that, sexual intercourse with a girl below the age of 16 amounted to rape, irrespective of consent; marriage was however-an exception, and a husband was permitted to consummate the marriage of a 15 to 18-year-old girl.

After Independence, the Child Marriage Restraint Act (“Sharda Act”) was amended in 1949 to raise the minimum age of marriage to 15 years for girls. The Sharda Act was amended again in 1978, to further increase the minimum age of marriage to 18 for girls and 21 for boys. Subsequently, in 2006, the Prohibition of Child Marriage Act (PMCA) reaffirmed the age

¹⁰² Ibid (n103).

¹⁰³ Ibid (n105).

¹⁰⁴ Ibid (n 103).

¹⁰⁵ Ibid (n105).

¹⁰⁶ Ibid (n103).

threshold in the 1978 Act, fixing the legal minimum age of marriage at 18 years for girls and 21 years for boys. The Prohibition of Child Marriage Act (PMCA). The Act out rightly rendered forced marriage of persons under the age of 18 void, and non-forced child marriages are legally valid but voidable at the option of the party who was a child at the time of the marriage to challenge the validity of the marriage within two years of attaining the age of marriageability.¹⁰⁷ Thus, girls, are given the option to seek a decree of nullity at any time until the age of 20 years. Also, the Act provides punishment for any parents that arrange a marriage ceremony for their female child.¹⁰⁸

As noted *supra* India operates a pluralist legal system that is quite similar to that of Nigeria. Its various legal system comprises of religious and customary tenets which regulate the marriages conducted by them. Hence, apart from the civil code, which establishes a legal minimum age for marriage, other legal systems that regulate the issue of marriage in India includes the Hindu Marriage Act 1955, Muslim personal laws, Parsi Marriage and Divorce Act 1936, Indian Christian Marriage Act, and the Jewish personal laws, among others. The coexistence of these personal laws alongside statutory provisions that prohibit child marriage, much like the Nigerian experience, serves as a channel or blanket cover that enables the persistence of child marriage. Under the Hindu Marriage Act 1955, (HMA), marriages of girls and boys below the age of 18 and 21 respectively are punishable. However, the punishment provisions apply to the parties of the marriage. There is no penalty for the parents or guardians who arranged the marriage or for the officials who solemnized it.¹⁰⁹ Marriages below the age of 18 are voidable only if a girl was married before the age of 15 and challenges the marriage before she turns 18.¹¹⁰ Thus, under the HMA, child marriages child

¹⁰⁷ India, *The Prohibition of Child Marriage Act 2006* (Act No 6 of 2007) (assented 10 January 2007; Gazette of India 11 January 2007). s.3(1).

¹⁰⁸ PCMA.s.9-11.

¹⁰⁹ The Hindu Marriage Act, No.25, 1955, s.18(3).

¹¹⁰ Ibid.

marriage is recognized if the marriage was conducted by the parents or guardian of the child.¹¹¹ The Muslim personal laws¹¹² in India establish puberty (which is presumed to be 15 years of age) as the minimum age of marriage. Under the law, a girl married before 15 years old can repudiate her marriage after attaining 15 and before she turns 18. For girls married after 15, the marriages are not voidable unless consent of her guardian was obtained by force or by fraud.¹¹³ Under the same law, parents or guardians are permitted to arrange marriages on behalf of girls below the age of 15, but girls can utilize the “option of puberty” to render such marriages void, however, this option is only available if a girl challenges the marriage before turning 18 and if the marriage has not yet been consummated.¹¹⁴ Under the Indian Christian Marriage Act 1872, child marriage is not expressly prohibited. The marriage of a under the age of 18 is only void when a preliminary¹¹⁵ notice or the consent of the parent of the child is not obtained.¹¹⁶ In spite of the plurality of legal systems regulating the institution of marriage, India has been able to set a uniform legal minimum age that is applicable and supreme to all other legal standards-of personal law which its provisions often contravene the standard established by the PCM. Such as permitting lower ages of marriage. Thus, the PCMA exercises primacy over customary practices which recognizes parental consent as sufficient to marry an underage minor. The supremacy of the PCMA over the personal law of an individual was illustrated in the case of *Independent Thought v. Union of India & Anor*,¹¹⁷ the court held in this case that the prohibiting child marriage in the context of the question of child rape by her husband, prevails over the provisions of the personal laws of the parties. Similarly, in *Seema Begum v. State of Karnataka*,¹¹⁸ the petitioner in this case argued that the PCMA did not apply to her, on the ground that under her personal law a girl who has

¹¹¹ Ibid S.12 (c).

¹¹² Muslim Personal Law (Shariat) Application Act, 1937.

¹¹³ Ibid

¹¹⁴ Dissolution of Muslim Marriages Act No.8, 1939.S.2.

¹¹⁵ Indian Christian Marriage Act No. 15, 1872.S.3 & 15.

¹¹⁶ Ibid (n120) s.70.

¹¹⁷ (2017) Writ Petition (Civil) No 382 of 2013 (Supreme Court of India) 11 October 2017.

¹¹⁸ (2013),WP 75889 of 2013 (High Court of Karnataka) 26 February 2013 (India).

attained puberty is competent to marry without parental consent. As such the Act should not apply to the case. The Court held that where there is a conflict between statute and personal law, the statute prevails. The Court refused to grant a declaration that the PCMA did not apply to the petitioner.

Although India shares a similar pluralist legal system with Nigeria, unlike Nigeria, India has taken a significant step by establishing a legal minimum age for marriage, and clearly defining who qualifies as a child. As seen above the Supreme Court of India have held that in the event of a conflict between the laws prohibiting child marriage and the personal law of a person, the law should prevail.

3.6.3 Kenya

Kenya has a dual legal system, which recognizes both statutory and customary laws, provided these (customary) laws do not harm or violate the rights of other people.¹¹⁹ Kenya has a clear uniform legal minimum age for marriage, the threshold of 18 years is enshrined in Kenya's Constitution, the Marriage Act and the Child protection law. The Constitution as the apex legislation in Kenya, although it expressly state that every person has the right to participate in the cultural life of their choice.¹²⁰ In fact, the Constitution recognizes Culture as the very foundation of the Nation.¹²¹ However, these cultural rights should not be exercised in such a way that it cause harm or violate the rights of other person.¹²² Section 44(3) of the Constitution of Kenya provides that, a person shall not compel another person to perform,

¹¹⁹ A Warri, 'Child Marriages, Child Protection and Sustainable Development in Kenya' (2019) *African Journal of Reproductive Health* 23(4) 35, <https://www.ajrh.info/index.php/ajrh/article/view/1815/pdf>, (accessed 14 November 2025).

¹²⁰ *Constitution of Kenya, 2010*. Nairobi: National Council for Law Reporting, 2010. sec. 44(1)

¹²¹ Ibid s.11(1).

¹²² T Nhlapo, 'Banning child and forced marriages is gaining traction in Africa. The Conversation,' Feb 1, 2016. <https://theconversation.com/banning-child-and-forced-marriages-is-gaining-traction-in-africa-53507>, (accessed 13 November 2025).

observe or undergo any practice or rite. Such practices or rites includes child marriage.¹²³ Section 45(2) of the Constitution provides that every adult has the right to marry a person based on free consent of the parties. According to section 260 of the Constitution, an adult means a person who has attained the age of 18 years. This means, pursuant to Kenya's Constitution, the legal minimum age for marriage within its jurisdiction is 18 years.

The Marriage Act 2014 is in harmony with the foregoing provision of the Constitution. According to Warria, a consistent legal minimum age laws is enshrined almost in every layer of Kenya's legislation to protect the girl child from early child bearing and from being exploited in early marriage.¹²⁴ Section 4 of the MA requires both parties getting married to have attained 18 years. Section 11(1)(a) a union will not be regarded a marriage if at the time of marriage either party was under the age of 18 or the consent was not freely given or they were absent from the ceremony.¹²⁵ In addition, Sec. 11(2) provides that Consent is not freely given if the child bride or groom is under 18.¹²⁶ The Act further prescribed penal consequences for such marriages. The Children Act, 2022 of Kenya, provides that no child shall be subjected to child marriage.¹²⁷ Thus, recognizing 18 years as the legal minimum age for marriage which is harmony with the Kenya's Constitution and the marriage Act. Nigeria could benefit from adopting a similar legal framework enshrining 18 years as the legal minimum age for marriage, and thereby strengthening protections for the girl child. Such an amendment will not only strengthen protection measures but also properly protect the rights of the girl child, which, are continually violated under the guise of marriage.

¹²³ Ibid (n66).

¹²⁴ Ibid (n124).

¹²⁵ Marriage (Kenya) Act 2014 s.11(2).

¹²⁶ Section 11 of the Marriage Act provides that, "Consent is not freely given where the party who purports to give it—(a) is influenced by coercion or fraud;(b) is mistaken as to the nature or purport of the ceremony; or(c) is suffering from any mental condition whether permanent or temporary, or is intoxicated, or is under the influence of drugs, so as not to appreciate the nature or purport of the ceremony."

¹²⁷ *Children (Kenya) Act, 2022*.s.23(1)(c)

CHAPTER FOUR

INTRODUCTION CHILD MARRIAGE

Child marriage is a social malaise and a subject of immense controversy around the world (particularly in countries where either the popular, indigenous tradition or religion endorses the practice of child marriage) that have been around for a long time, which practice is targeted towards the children in respect to the violation of their rights. The United Nations General Assembly, defined child marriage as any formal marriage or informal union in which at least one of the parties is under 18 years of age.¹ UNICEF adopted a similar definition of child marriage as any formal or informal union in which at least one of the parties is under the age 18 years.² Child marriage is considered to be a form of forced marriage, given that one or both parties have not expressed full, free and informed consent.³ The foregoing definition means that the core elements of child marriage is that: First, it must be a union, whether formal or informal with at least one of the parties being less than the age of 18. Secondly, It is either a forced union where one of the parties have not expressed or given their full consent, or the child is too young and categorized as a minor-on legal basis for them to validly give true consent to marry.

4.1 Child Marriage and the Way Forward

The practice of child marriage is a huge and persisting problem confronting many developing countries.⁴ The practice of child marriage without gainsaying is expressly a violation of human right, a form of abuse directed to undermine the rights of the most vulnerable

¹ United Nations General Assembly, *Child, Early and Forced Marriage*, GA Res 71/175, UN Doc A/RES/71/175 (19 December 2016).

² UNICEF, 'Is an End to Child Marriage within Reach? Latest Trends and Future Prospects,' (New York: United Nations Children's Fund, may 2023). https://data.unicef.org/wp-content/uploads/2023/05/Is_an_End_to_Child_Marriage_within_Reach-3.pdf. (accessed 9 August 2025).

³ UN Economic and Social Commission for Western Asia (UN-ESCWA), "Child marriage," SD Glossary. <https://www.unescwa.org/sd-glossary/child-marriage>. (accessed, 20 September).

⁴ G A Arowolo, 'Preventing and Eliminating Child Marriage in Africa: The Perspective from Nigeria,' (2022) Vol.119 *Journal of Law, Policy and Globalization* 27–42, DOI: 10.7176/JLPG/119-03, available at <https://www.iiste.org/Journals/index.php/JLPG/article/view/58422>. (accessed 22 September 2025).

members of the society.⁵ Due to the harm the custom of child marriage inflicts on its victims, the elimination of the practice has remained a top priority on the global agenda for several decades. In 2000, this urgency was reflected in the Millennium Development Goals (MDGs) which highlights the reduction of child marriage as a primary agenda. To further re-establish the goals of ending child marriage globally, in 2015 the agenda was further broadened in the UN Sustainable Development Goals (SDGs).⁶ The agenda of the SDGs comprises of 17 sets of goals that set out global development priorities to be achieved from 2015 to 2030.⁷ The resolution categorical stated by virtue of target 5.3, (gender equality) that its top tier agenda is to “Eliminate all harmful practices, such as child marriage by 2030.”⁸ The agenda advocates for all traditions and harmful practices that violate the human rights of women and girls should be abolished. The reason for the abolition of these discriminatory norms and practices particularly in a patriarchal society is not far fetched. It is simply based on the reason that woman rights are human right, as such, no part of those set of rights should be undermined as a result of societal norm. The objective of the SDGs was intended to be achieved by 2030, yet, as we stand in 2025, the menace of child marriage continues to harass children- disproportionately females-across the world, in spite of the existence of laws proscribing such practices. It is therefore worrisome to acknowledge that, despite the presence of comprehensive legislation-both international treaties and municipal legislation-formulated for the sole purpose of eliminating the practice of child marriage, the malaise is still on the rise, confronting many jurisdictions. This persistence owes to the fact that many parents and guardians observe these proscribing laws in breach. A good example of a country that

⁵ T Ahmed, ‘Child Marriage: A Discussion Paper,’ (2015), 6 (2) Bangladesh Journal of Bioethics, 8-14. cited in G A Arowolo, “*Preventing and Eliminating Child Marriage in Africa: The Perspective from Nigeria*” (2022) Vol. 119 *Journal of Law*.

⁶ E B Luca and M Pesando , ‘Trends in child marriage and new evidence on the selective impact of changes in age-at-marriage laws on early marriage,’ (2021), 14, SSM -Population Health, 100811.

⁷ Girls not Brides, ‘Child marriage and the SDGs,’ <https://www.girlsnotbrides.org/learning-resources/child-marriage-and-sdgs/>.(accessed 29 September 2025).

⁸ United Nations, Transforming our world: The 2030 Agenda for Sustainable Development, UNGA Res 70/1 (25 September 2015), UN Doc A/Res/70/1.

disregard significant strides to end child marriage globally through prohibitory legislation is Somalia. In 2018, a Sexual Offences Bill was passed into law, which expressly banned child marriage. This provision initiated nationwide protest in Somali for being against the teachings of Islam.⁹ In response to the protest 2018 bill was relaxed.¹⁰ Consequently, in 2020, a new, regressive bill was introduced which stripped most of the protections from the 2018 bill like omitting the minimum and legalize child marriage.¹¹ As expected, the 2020 bill was widely condemned by human rights groups and UN officials. Nevertheless, this provision remain till 2025, when a shocking and an unattractive event took place in Somalia in March 2025, after a public outrage erupted when an eight-year-old girl, went missing for about six months, who was later found living with a man, the man claimed to be her husband, allegedly with her father's consent for. This case prompted widespread protests and condemnation from rights groups. On this note the appropriate authorities intervened and returned the child to her family.¹² In response to the pressure mounted on Somalia's government from International organizations, Pressure among others. In early October 2025 Somalia's parliament ratified the African Charter on the Rights and Welfare of the Child. This ratification implied that the law effectively set 18 years as the legal minimum age for marriage in Somalia, and on account of proper enforcement, the issue of child marriage in Somalia would have been brought to the barest minimum.¹³ Again, this enactment provoked serious outrage among the Somalians. The law came under intense criticism on the grounds that it was in conflict with the Constitution of Somalia and its provisions were intended to stall the practice of Islam. In

⁹ A Ali, 'Outrage in Somalia after man says he married missing eight-year-old,' BBC Somali (1 April 2025) <https://www.bbc.com/news/articles/c0l0wwywn7no> (accessed 1 September 2025).

¹⁰ Creative Associates International, 'Creative's Ardo Aden Discusses the Controversial Sexual Offences Bill in Somalia,' (30 November 2020) <https://www.creativeassociatesinternational.com/story/creatives-arden-discusses-womens-rights-in-somalia-and-the-controversial-sexual-offenses-bill/#:~:text=The%20SOB%20offers%20protections%20against,is%20a%20religion%20of%20peace,> (accessed 30 September 2025).

¹¹ Ibid.

¹² Ibid (n9).

¹³ Impact International, 'Somalia Clarifies Position on African Children's Rights Charter Amid Islamic Law Concerns,' (4 October 2025) <https://impactpolicies.org/news/612/somalia-clarifies-position-on-african-childrens-rights-charter-amid-islamic-law-concerns> (accessed 10 October 2025).

response to this protest, the Somali Ministry of Family and Human Rights issued a statement clarifying the status of the African Charter on the Rights and Welfare of the Child. According to the Ministry, any provision of the African Charter that conflicts with the demands of Islam, in such occasion, the later shall prevail as the superior normative authority.¹⁴

The foregoing case of Somalia is one among many where, despite rich legislation against the incidence of child marriage, particularly through the mechanism of establishing a legal minimum age for marriage, yet, the practice of child marriage persists. According to UNICEF, in its estimate carried out in 2023, approximately 640 million girls and women alive today were married in childhood, and about 12 million girls still marry each year before the age of 18.¹⁵ The report further revealed sub-Saharan Africa account for 20% of the global total of child marriages. The report further disclosed that by its estimation, it will take sub-Sahara Africa about 200 years to eliminate child marriage.¹⁶ Again, six of the world's 10 countries with the highest rates of child marriage are in West and Central Africa. In these regions, about 41% of girls marry before reaching the age of 18.¹⁷ In a more recent UNICEF Data report revealed that, over 37% of young women in West and Central Africa get married before the age of 18; as against the previous report of 41%,¹⁸ with a decline indicating a 4% reduction in child marriage across the region by the end of 2023.¹⁹ Also, 12 percent of

¹⁴ Ibid (n13).

¹⁵ United Nations Children's Fund (UNICEF), '*Is an End to Child Marriage Within Reach? Latest Trends and Future Prospect*,' (April 2023) UNICEF Data <https://data.unicef.org/resources/is-an-end-to-child-marriage-within-reach/> (accessed 2 October 2025).

¹⁶ United Nations Children's Fund, '*Global polycrisis creating uphill battle to end child marriage – UNICEF: Slowing momentum toward eliminating child marriage most acute in sub-Saharan Africa, which is now over 200 years from ending child marriage*,' (2 May 2023) <https://www.unicef.org/press-releases/global-polycrisis-creating-uphill-battle-end-child-marriage-unicef> (accessed 2 October 2025).

¹⁷ United Nations Children's Fund (UNICEF), '*Child Marriage – Key Result for Children: What's at Stake?*' (UNICEF West and Central Africa Regional Office) <https://www.unicef.org/wca/child-marriage> (accessed 26 October 2025).

¹⁸ O A Bolarinwa and others, 'Spatial distribution and multilevel analysis of factors associated with child marriage in Nigeria, *International Health*,' Volume 15, Issue (2 March 2023), <https://doi.org/10.1093/inthealth/ihac030>. (accessed 2 October 2025).

¹⁹ United Nations Children's Fund (UNICEF), '*Child Marriage in West and Central Africa: A Statistical Overview and Reflections on Ending the Practice*,' (Child Protection Programme Group, UNICEF Headquarters, June 2022) [PDF] <https://data.unicef.org/wp-content/uploads/2022/06/Child-Marriage-in-West-and-Central-Africa-June-2022-UNICEF-web.pdf> (accessed 2 October 2025).

women get married before the age of 15 in the same regions.²⁰ The report further found that “the region is home to nearly 60 million child marriages, with the largest share in Nigeria.”²¹

The report further predicted that it will take about 100 years to end child marriage in West and Central Africa.²²

In Nigeria, Four out of every ten girls are married before the age of 18.²³ According to the Nigeria Tribune, the “United Nations Children’s Fund (UNICEF) disclosed that there are nearly 25 million child marriages in Nigeria”. This figure was disclosed by UNICEF’s Representative, Ms Cristian Munduate, who noted that child marriage phenomenon in Nigeria is prevalent in Bauchi, Jigawa and Zamfara.²⁴ Thus, in Nigeria, there are nearly 25 million child brides with an alarming prevalence rate in states such as Bauchi, that has 74% of child marriages, Jigawa with 72%, Katsina with a little less than 69% and Zamfara with nearly 67% of its children getting married before the age of 18.”²⁵ As the most populous country in the sub-Sahara Africa region, Nigeria has the highest number of child marriages, with more than 3.5 million women married before the age of 18.²⁶ With the highest prevalence in 12 Muslim dominated northern states.²⁷

Child marriage has been identified as one of the major causes of high population growth in Nigeria, with an adverse effect on Nigeria's economy.²⁸ The practice of child marriage is no

²⁰ Ibid (n19).

²¹ B Afolabi and SM Abatan, ‘Early Marriage and Its Implications on the Nigerian Economy,’ USA (2014), <https://ssrn.com/abstract=2528255> or <http://dx.doi.org/10.2139/ssrn.2528255>. (accessed 3 October 2025).

²² Ibid

²³ United Nations Children’s Fund (UNICEF), ‘*Nigeria Takes Bold Steps to End Child Marriage and Protect the Rights of Children*,’ (Abuja, 16 February 2024) UNICEF Nigeria <https://www.unicef.org/nigeria/press-releases/nigeria-takes-bold-steps-end-child-marriage-and-protect-rights-children> (accessed 2 October 2025).

²⁴ Nigerian Tribune, ‘*Nigeria has nearly 25 million child brides — UNICEF*,’ (18 February 2024) <https://tribuneonline.ng/nigeria-has-nearly-25-million-child-brides-unicef/>, (accessed 26 October 2025).

²⁵ J S Clarke, ‘Nigeria: Child brides facing death sentences a decade after child marriage prohibited’, <https://www.theguardian.com/global-development-professionals-network/2015/mar/11/the-tragedy-of-nigerias-child-brides> (accessed 5 July 2025).

²⁶ Ibid (n21).

²⁷ Ibid

²⁸ Ibid

doubt an extreme violation of children's rights and a serious form of child abuse.²⁹ This is because the situation creates an opportunity in which the child is easily intimidated, suppressed, and harassed, leaving her without a succour of hope or remedy. In most cases, when the child can no longer tolerate the ruins of child marriage and flees home in search of refuge in an attempt to save herself. Her parents, guardians, or other family members, are often of the habit of compelling her to return to her husband's house to continue enduring the abuse, which in certain circumstances may cost her life. Consequently, where the husband happens to habitually abuse or violate her, she is left with no protection, except recourse to the law or the option of fleeing but as noted above these children are not accommodated in their maternal homes. Thus, the practice of child marriage inflicts torture on the child by no other than the husbands who were supposed to be a protector to these minors. In such circumstance, the child may rationalize the abuse and further internalizes the violation to make sense. However, this is usually not the case for all female-minors forced into child marriage. Some child marriage victims who do not have the fortitude to tolerate abuse, go as far as either stabbing their husbands to death while sleeping or poisoning him. The foregoing approach was the case of Wasila (Tasi'u) Umar, Wasila,³⁰ a 14 year old girl, who was given out in marriage to a 35 year old man, was accused of murdering Umar her husband and three of his friends by food poisoning served to them by her during a celebration. Upon her trial where she was charged for murder. She told her lawyer that, she had been tied to the bed and raped by Umar on their wedding night. However, following a settlement arrangement between Wasila's family and the family of the deceased, Wasila was not sent to serve the capital punishment for murder. She was however placed on death row for about five months

²⁹ Save the Children, 'Still Left Behind: Tracking children's progress against the pledge to Leave No One Behind,' (2018), https://resourcecentre.save-the-children.net/node/13589/pdf/still_left_behind_low_res.pdf, accessed October 3, 2025).

³⁰ 'Nigerian child bride, 14, accused of killing her husband and three others with rat poison,' *ABC News* (26 November 2014) <https://www.abc.net.au/news/2014-11-27/murder-case-opens-against-nigerian-child-bride/5921202>. (accessed, 6 September 2025).

before the ECOWAS court discharged her.³¹ Similarly, Maimuna Abdulmunini a 15 year old girl in 2015 set her 35 year old husband ablaze and burnt him to death. Her death sentence was upheld when she turned 18.³²

Several girls who were not brave or malicious enough to either kill (as seen in the foregoing case of Wasila) or inflict grievous harm on their purported husbands in his most vulnerable moment, and could not tolerate his hostility, have attempted and some have succeeded in committing suicide.³³ Thus, the practice of child marriage can be rightly described as child slavery imposed by societal norm or religious dogma.

With the controversy surrounding the issue of child marriage and the definition of who qualifies as a child, the question that has been asked is whether there exist an established uniform legal minimum age for marriage in Nigeria has domesticated or adopted as a standard for regulating the events and formation of marriage across Nigeria? In Nigeria, by virtue of section 29(4)(a) of the 1999 Constitution, full age means the age of 18.³⁴ which implies any person below the age of 18 is a child. According to UNICEF while defining child marriage (as noted earlier), said child marriage is any formal or informal union between a child under the age of 18 and an adult or another child.³⁵

The adherents of Islam have not dealt with the provisions prohibiting child marriage in Nigeria softly. Apparently, this is because their cultural and religious tenets strongly promote child marriage. Also, report has it that child marriage is prominent in the northern Muslim states than in other territories in Nigeria combine. According to the CIA World Factbook,

³¹ Voice of Africa, 'Nigerian Child Bride Accused of Killing Husband to Be Freed,' <https://www.voanews.com/a/nigerian-child-bride-accused-of-killing-husband-to-be-freed/2815935.html> (accessed 5 July 2025).

³² Ibid

³³ Ibid (n31).

³⁴ *Constitution of the Federal Republic of Nigeria* (1999, as amended). s. 29(4)(a).

³⁵ United Nations Children's Fund (UNICEF), 'Gender Equality: Child Marriage – UNICEF Data,' <https://data.unicef.org/topic/gender/child-marriage/> (accessed 3 October 2025).

over half the Nigeria's population are Muslims.³⁶Categorically, Islam occupies about 53.5% of Nigeria's population, while Christians are at 45.9%, and other adherents of Nigeria's indigenous religions and others constitute about 6.0% of Nigeria's population.³⁷These statistics reveal why the incidence of child marriage in Nigeria is relatively high, even when the practice is predominant concentrated in Muslim states. Many Islamic followers believe that 'Islam does not prohibit underage marriage (*Nikkah*).³⁸Their believe is that, if a child is given out in marriage before reaching puberty, consummation of the marriage (*Rukhsati*) is allowed only when the child reaches puberty.³⁹This practice flows from the practice of Prophet Mohammed who married his wife Aisha when she was only six years old and consummated the union when she turned 9. Although the practice of child marriage is not peculiar to the Muslims alone, however, as previously noted, it is a prevalent practice in the north. On this note Braimah observed as follows;

Muslims show strict adherence to the Quran and the Prophet Muhammad's Sunnah. As Islam plays an essential role in the lives of most Northern Nigerians, the culture and traditions of the Muslims are intertwined with the Islamic religion. Therefore, due to the influence of Islam and Muhammad's marriage to Aisha, as reported in the Hadiths, it is not surprising that Muslims promotes the practise of child Marriage.⁴⁰

This practice is deeply ingrained within the Muslim community that even (Muslim) politicians who ought to be at the forefront of safeguarding the rights of children, recognizing that (child rights are human rights), are often complicit and involved in the perpetuation of

³⁶ 'House of Commons Library, *Religious minorities in Nigeria*, ' (Debate Pack CDP-2023-0081, House of Commons Library, 12 April 2023) <https://commonslibrary.parliament.uk/research-briefings/cdp-2023-0081/>, (accessed 4 October 2025).

³⁷ Central Intelligent Agency [CIA], 'Demographics of Nigeria.' The World Fact Book Marc,' https://www.cia.gov/library/publications/the-world-factbook/geos/print_ni.html, (accessed 4 October 2025).

³⁸ C R Otaru and T O Aderibigbe , 'A Social-Legal Insight into Child Marriage and Islam under COVID-19 Pandemic in Nigeria,' (2022) Vol 1 No 2 *Current Trends in Humanities and Law Research (CTHLR)* (Babcock University),<https://cpgsjournals.babcock.edu.ng/journals/CTHLR/article?aid=90708946>,(accessed 4 October 2025).

³⁹ Nigerian Tribune 'Peer Mohammed,'Marital matters: Underage marriage [Nikkah] not un-Islamic: CII,' <https://tribune-com.pk/story/681784/marital-matters-underage-marriage-nikkah-not-un-islamic-cii/>,(accessed 4 October 2025).

⁴⁰ T Braimah, 'Child marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the Protection of Children against Child Marriage,' (2014), 8 (2), AHRLJ, 24. https://www.ahrlj.up.ac.za/images/ahrlj/2014/ahrlj_vol14_no2_2014_chapter8.pdf, (Accessed 3 October).

child marriage.⁴¹ A clear illustration of this practice by politicians is the marriage of Sen. Yerima, who married a 13 year old girl (child) from Egypt. His unapologetic response to the public outcry on the porousness of the union while justifying his marriage with the 13 years old child, was that he was simply following the teachings and practice of Prophet Mohammed who married Aisha at the age of nine.⁴² The Muslim society was aggrieved at the attacks directed to Sen. Yerima's marriage to the Egyptian minor by the public. On this ground, in a reaction to a request by the Nigeria National Human Rights Commission for intervention by the Senate and the House of Representatives (the National Assembly),⁴³ the Registered Trustees of Supreme Council for Sharia in Nigeria instituted an action against the heads of the two chambers of the National Assembly, and the National Human Right Commission (NHRC),⁴⁴ before a Federal High Court in Abuja over Senator Yerima's controversial marriage⁴⁵ which the commission regarded as unconstitutional and a total violation of the right of the child even though she was not a Nigerian. The council categorically instituted the action against the Senate president, the speaker of the house of Rep, and the NHRC. The counsel for the Supreme Sharia council argued that the NHCR probing into Yerima's marriage to the Egyptian minor amounts to an infringement and invasion of the Sen. Yerima's right to institute a family, and further constitutes a breach to his right to privacy (private life) and his right to practice, propagate and manifest the doctrine of his religion as enshrined in section 37 and 38 of the Nigerian Constitution.⁴⁶ The council asserted that section 1(3) of the CFRN as the supreme law of Nigeria, through section 37 guarantees the

⁴¹ R Taylor, 'The Role of the Law in Eliminating Child Marriage in the Commonwealth: Why More Action is Needed,' 2018, Commonwealth Lawyers Association, <http://www.commonwealth-lawyers.com/wp-content/uploads/2019/05/CLA-Role-of-the-Law-in-Eliminating-Child-Marriage-T-Braun-2018-FINAL.pdf>, (accessed 4 October 2025).

⁴² Braimah (n40).

⁴³ Arowolo (n4).

⁴⁴ *Vanguard*, 'Sharia Council Drags Mark, Bankole, NHRC to Court over Yerima's Marriage,' (2 June 2010) <https://www.vanguardngr.com/2010/06/yerima-sharia-council-drags-mark-bankole-nhrc-to-court/> (accessed 5 October 2025).

⁴⁵ K. Nwezeh, 'Yarima-Sharia, Council drags FG, National Assembly to court,' 4 June 2010, <http://www.allafrica.com/stories/201006071572.html>, (accessed 5, 2025).

⁴⁶ Ibid

right to privacy and establish a home and section 38 CFRN guarantee the right of sen. Yerima to practice his religion.⁴⁷ Thus, the council sought an order of nullification of some aspects of the CRA 2003, including section 21 which sets the minimum age for marriage in Nigeria at 18 years. The Council further alleged that section 21 of the CRA was inconsistent with Islam and the practice of Sharia, as well as Yarima's right to a private and family life, which could not be subjected to invasion, intrusion or interference by any person, group of persons or institutions.⁴⁸ The Council then submitted that the Holy Quran and the traditions of the Holy Prophet Muhammad were in support of Yerima's marriage to the girl as his fourth wife.⁴⁹

The foregoing conflicts portray how deep the practice of child marriage is integrated in the Muslim society. What is more is that, the Supreme Sharia Council built its argument in support of child marriage on the basis of the provisions of the Constitution. On the foregoing grounds, a prominent legal writer noted that, beyond the fact that Islam strongly promotes child marriage, states declared Terrorists organizations and non-state Armed groups employ child marriage as an instrument of war.⁵⁰ He further explained that, a practical case study of this event was the kidnapping of more than 270 girls from a school in Chibok community, Borno State in 2014, followed by another 110 schoolgirls aged 11–19 years from the Government Girls' Science and Technical College (GGSTC) Dapchi, Yobe State in February 2018 in the same region. These Terrorists and Arm groups forcefully marry these kidnapped girls off to their faithful soldiers as an incentive for their work and courage.⁵¹ The learned author further lamented, stating that, due to the pervasive insecurity in that in the northern region, especially the attitude of kidnapping minors by terrorist groups, many parents driven by fear. In their plight, resorted to child marriage to protect their daughters from the violence

⁴⁷ Ibid

⁴⁸ E S Nwauche, 'Child Marriage in Nigeria: (Il) legal and (Un)constitutional?' (2015) 15 African Human Rights Law Journal, 421-432.

⁴⁹ Ibid

⁵⁰ Arowolo (n4).

⁵¹ N A Ujam, 'Child marriage in Nigeria: Wedded to Poverty,' (2019) <https://yale.global.yale.edu/content/child-marriage-nigeria-wedded-poverty>, (accessed September 6 2025).

and abuses that are associated with insurgency.⁵² Furthermore, a distinguished legal scholar noted that child marriage is one of the strongest social disorders which must be eradicated.⁵³ However, the conservative Muslims regarded his expression as an intrusion upon an Islamic practice that has endured for decades. The promoters of child marriages fail to recognize the child's welfare, the child's profound mental and reproductive health as well as the social deprivations the child suffers as a result of child marriage.

Nevertheless, there are instances where child marriage could arise from a good intention, for example, in times of insecurity, the parents of a girl-child could arrange marriage for the female minor to prevent abuse and guarantee the child get marriage as a virgin. Also, the parents or guardian of a child may give a female minor out for marriage to prevent promiscuity which could lead to pregnancy out of wedlock, and to protect the family honour.

Kanem, UNFPA Executive Director, said in her 2020 report that "Good intention mean little to a girl child who must abandon school (education) and forced to wed possibly someone that is twice her age, or to the girl who faces a lifetime of health problems because of mutilation from harmful rite of passage."⁵⁴

From the foregoing statement of Kanem, good intention by the parents or guardian of a child cannot be used as an appropriate parameter to legalize the practice of child marriage. This is because such practice, irrespective of the umbrella it comes under, its still a violation of the right of the child, and such union poses a large volume of risks on the child, which can ultimately lead to her death.

Under customary law, the concept of a child does not have a universal definition; what constitutes a child differs among different communities in Nigeria, including the communities

⁵² Arowolo (n4).

⁵³ K O Fayokun, 'Legality of Child Marriage in Nigeria and Inhibitions Against Realisation of Education Rights,' *US-China Education Review B*, July 2015, Vol. 5, No. 7, 460-470, (davidpublisher.com. David Publishing, 11 July 2015), <http://www.david-publisher.com/Public/uploads/Contribute/55bb43bda2e6a.pdf>, S(accessed 20 February 2022).

⁵⁴ UNFPA, Relief Report, 'Five things you didn't know about practices that harm girls,' <https://reliefweb.int/report/world/five-things-you-didn-t-know-about-practices-harm-girls> (accessed 9 October 2025).

of the north where Islam is the predominant religion. Puberty is usually the determinant for majority in many customary law.⁵⁵ Consequently, in such communities, unless a child has fulfilled the necessary requirement to ascend to the status of majority through the vehicle of specific rites as required by the custom, the child, though having reached puberty, will still be regarded as a child.⁵⁶ Usually, in these communities, a girl is considered to have reached puberty-and thus of marriageable age once she experiences her first menstrual flow. Thus, according to the teachings of the Hadith, her second menstrual cycle should not meet her unmarried in her father's house⁵⁷.

Otaru and Aderibigbe, observed that, "in a number of communities in Nigeria, it was believed that a young girl who had reached puberty and was not married at that stage was a social outcast, in an attempt to avoid the stigma of a girl who have reached puberty not to be treated as an outcast by the community, fathers married their daughters early to seal friendships, as political cohesion between nations and economic sustenance for families".⁵⁸ According to a reputable legal scholar, the absence of a specific age for marriage in customary law has encouraged the practice of child marriage.⁵⁹ Due to the absence of a uniform marriageable age, one would expect the law to establish a uniform legal minimum age for marriage across Nigeria, to protect the right of children. On this note, a legal critic argued that the laws governing marriage in Nigeria do not seem to specify any minimum age threshold for marriage.⁶⁰ Rather, they merely state that unless the party is a widow or widower, there is need to obtain the written consent of either the parents or guardian, where such party

⁵⁵ A M Bokani, 'Right to Education of the Girl Child and Practice of Child Marriage in Northern Nigeria: Challenges and Way Forward,' (2025) *LexScriptio: A Journal of the Department of Jurisprudence and Public Law, Kwara State University, Malete* Vol 2 No 1 394-413. <https://journals.kwasu.edu.ng/index.php/lexscriptio/article/download/309/252/644>. (accessed 10 October 2025).

⁵⁶ T O Elias, *The Nature of African Customary Law* (Third Impression, Manchester University Press, 1972) 103.

⁵⁷ Bokani (n55).

⁵⁸ Otaru (n38).

⁵⁹ E.I. Nwagugu, *Family Law in Nigeria*, (Heinemann Educational Books Plc, 1974) 2.

⁶⁰ Bokani (n55).

is below the age of 21 years.⁶¹If the law governing marriage in Nigeria set a uniform age for marriage across Nigeria, the reasoning of Fayokun where the learned author opined that, since the application of Islamic law is considered personal law in Nigeria, Islam in that note is therefore treated as part of the nation's customary law.⁶² is consistent with the reasoning of other legal writers like Otaru and others, who stated that some scholars advocate that if child marriage is practiced under Islamic personal law, such marriage should pass through the validity test prescribed for customary law. In fact, any Islamic personal law that is contrary to the provisions of the Constitution should be declared invalid through the passage of the foregoing process.⁶³This proposal of a validity test in respect to the controversial issue of child marriage would have brought the issue of child marriage to rest have it been the Marriage Act or the Constitution had established a uniform legal minimum age for marriage in Nigeria. Furthermore, when Item 61 restricted the issue of marriage conducted under customary or Islamic law as being out of the scope of the Act, which in effect implies that, however the marriage is conducted, in so far it is in tandem with the spouses' applicable custom, such marriage is deemed legal and valid.

The Constitution of Nigeria ought not to have left the regulation of marriage conducted under customary and Islamic law to be entirely governed by their own tenets. It should have clearly declared a legal minimum age for marriage along with its provision while recognizing the power of other sources of law to institute a valid marriage; and such proposed legal minimum age would be recognized anywhere, in every custom and by every religion in Nigeria. However, this kind of provision would have been criticized for interfering with the autonomy of other systems of law to independently regulate and establish the institution of marriage in accordance to its principles. But the right of the child would have been sufficiently protected, and the issue of child marriage would have been effectively struck down whenever a contest

⁶¹ M C Onokah, *Family Law* (Spectrum Books Ltd, Ibadan, 2003) 13.

⁶² Fayokun (n53).

⁶³ Arowolo (n4).

in favor of its formation arose with respect to the provision establishing a uniform legal minimum age. It, however, appears that the drafters of the Constitution did not intend to interfere with the formation of marriage under customary and Islamic law, even if the relevant custom's prescription for marriage violates the right of a class of people. Some legal scholars are quick to rely on the definition of a child by the CRA and the minimum age established by the Act. The CRA by virtue of section 277,⁶⁴ a child is any person under the age of 18. It is pertinent to note that the CRA is not an instrument enacted to regulate the issue of marriage. In fact, it is a domestication of the CRC, an international treaty that protect the right of children. On the question of child marriage, a prominent legal writer interrogated the controversial question of what age a person can enter into a contract to marry in Nigeria? According to the learned writer, This inquiry is important because it determines whether a particular marriage is a child marriage or not.⁶⁵ Before the advent of the CRA, it was believed that the age a person could lawfully contract marriage was age 16, which was the applicable age under English law. As noted in the previous chapter, English law has raised the minimum legal age for marriage to 18 years, and this was done in 2023. this approach thereby informs that countries are obligated to take legislative actions to specify a legal minimum age for marriage.⁶⁶ Thus, no marriage shall be legally entered into by any person under the age of 18 except, in the case where a competent authority in a peculiar case has granted an exemption for cogent reasons which is targeted to protect the interest of the minor below the age of 18 years.⁶⁷ Regardless of the foregoing position, the Child Rights Law of some states in the northern region does not seem to expressly outlaw the problem of child marriage. It can however, be argued that the provisions of the CRL of the northern

⁶⁴ Child Rights Act 2003.section 277.

⁶⁵ Bokani (n55).

⁶⁶ Ibid

⁶⁷ Article 2 of the Convention on Consent to Marriage, Minimum age for Marriage and Registration of Marriages Opened for Signature and Ratification by General Assembly resolution 1763 A(XVII) of 7th November, 1962 which into force 9th December, 1964.

states, which omitted certain provisions of the CRA based on religious faith, nevertheless provide a leeway for child marriage to be concluded in those states. For example, the Niger State Child Rights Law prohibits both marriage and betrothal with a child. In fact, the law makes it an offence punishable with a term of imprisonment not less than 6 months or a fine.⁶⁸ The legislation further provided that, where there is a conflict involving the question of Islamic law and any of the provisions of the law, Islamic personal law shall prevail. From this penal provision, it is clear that the law 'does not provide an explicit exception of child marriage on the basis of faith or personal law of the child'.

An argument of this nature premised on the above provision, falls below the standard of credence, where the foregoing provision of the CRL cannot be invoked against a marriage of a minor (below 18) under Islam, based on the subject of religious faith. This is because, according to the CRL of Niger state, where there is a conflict involving the question of Islamic law and any of the provisions of the law, Islamic personal law shall prevail.⁶⁹ A provision like this can be used as a tool by the Muslims to defeat the provision prohibiting child marriage however the contention against the union may arise.

Similarly, Kano State Child Protection law, by virtue of section 16(2), prohibits child marriage, stipulating that a girl is not capable of contracting a valid marriage and such marriage is invalid unless the culture of the girl permits so.⁷⁰ Thus, the prohibition is subject to an exception that marriage with a child is permitted under the law, where the custom permits. The obvious implication of this provision is that customs that promote child marriage will continue to be observed despite the prohibition in the law.⁷¹ The foregoing provision on one hand seems to prohibit the practice of child marriage and safeguard the right of the child. While on the other hand, the law expressly permits the practice of child marriage

⁶⁸ Niger State Child's Right Law, 2021, s 16(1)(2)(3).

⁶⁹ Niger State Child's Right 2010 (re-enacted in 2021).s. 33.

⁷⁰ Kano State Child Protection Law, 2023, s 16(2). (cited) in Bokani (n79).

⁷¹ Ibid (n70).

where the custom applicable to the child or the husband permits so. A provision like this is analogous to moving aimlessly in a circuit then subsequently returning matters to the status quo, thereby legitimizing child marriage. In contrast, Zamfara state Child Protection Law does not prohibit child marriage, yet it provided that where there is a conflict between the Child Protection Law and the personal law of a child, the personal law of the child should prevail.⁷² Again, the necessary implication of this provision is that, where the personal law of the child permits child marriage, the issue of the legality of the union will not be in contention. This is simply because the Child Protection Law has not only unilaterally recognized it but has also subjected its provisions to the personal law of the child.⁷³ a prominent legal critic interrogated the phrase personal law, and submitted that the phrase used in the foregoing provision is ambiguous, this is because personal law can be defined as the faith of the child,⁷⁴ it can also mean the personal custom of the child.⁷⁵

The point of tension of the Zamfara state Child Protection Law stems from the fact that. Since the child may not be experienced enough to take a crucial decision as to the faith she prefers to profess, which obviously, the faith she professes is manifestly of her parents or guardian. It therefore seems vague and a point of confusion that the child with whom marriage is prohibited can choose her faith by reference to which legality of her marriage is to be determined. The implication of this provision is simply that, the legality of the marriage with the child is to be determined by the child's religion and not the Child protection Law which is enacted to protect the child.⁷⁶

In light of the above, it is clear that some states that have domesticated the CRA into its law, but somehow, go around the very essence of the peculiar provisions of the CRA to permit child marriage either on religious grounds or on the basis of the custom of the child, such as

⁷² Zamfara Child protection Law 2022, s.169.

⁷³ Bokani (n55).

⁷⁴ Zamfara Child Protection Law, 2022, s. 2.

⁷⁵ CFRN, 1999, s.38 and CRA, 2003 s.7.

⁷⁶ Bokani (n40).

determining the age for marriage by the attainment of puberty. It has been established from the foregoing that the instruments that were enacted for the sole purpose of governing the institution of marriage do not set a legal minimum age for marriage. Since the CRA does not automatically come into force in a state except through domestication. It follows that states are entitled to adopt the CRA but not obligated to do so. Several northern states have refused to domesticate the CRA. Those who domesticated it altered the provisions of the CRL to admit child marriage, especially where the personal law or Islam permits. The heart of the conflict between the CRA and customary and Islamic law is that, while the legal minimum age for marriage under the CRA is 18 years. Under customary and Islamic law, marriages below the age of 18 are allowed.⁷⁷ Adeyemi and others observed with heartfelt concern that, due to the exception of the permission of child marriage by customary and Islamic law, it is nearly impossible to eradicate child marriage in Nigeria, especially in the northern parts of the country.⁷⁸ The domestication of the CRA into state laws was intended to be a guarantee that, across Nigeria, with the coming in force of section 277 of the Act setting the legal minimum age for marriage at 18 years, the practice of child marriage would effectively be prohibited in all states that adopted it. But on the contrary, as examined above, many northern states selectively domesticate the CRA, subjecting their CRL to the personal or Islamic law of the child. And both sources of law-the customary and the religious law of the child fails to prescribe a specific age for marriage. Consequently, permitting the very practice of child marriage, an act which the CRA was enacted to defeat. An act that rather serve to preserve child marriage than eradicate it. A better approach would have been for the Constitution to expressly stipulate a legal minimum age for marriage to bring an end to the issue. On this note, it has been argued that since the Constitution recognizes customary and Islamic

⁷⁷ Child Protection Law of Katsina State, 2020, s. 3.

⁷⁸ N K Adeyemi and others, 'Causes and Challenges of Girl- Child Marriage in North West Nigeria,' (2023) 21 (1)*African Anthropologist*, 22-67.
https://www.researchgate.net/publication/369945083_Causes_and_Challenges_of_Girl-Child_Marriage_in_Northwest_Nigeria, (accessed 30 October 2025).

marriages as valid under Item 61 of the Second Schedule, the manner with which the marriage come into force is irrelevant; what is relevant is whether, under the religion or customary law applicable to the parties the marriage is valid.⁷⁹ Also, the provision of section 29(4)(b) of the Constitution which provides any woman who is married shall be deemed to be of full age, has, over time, been exploited to justify child marriage. A learned scholar was of the opinion that,

In resolving the issue of child marriage, it must be noted that the issue is intricately linked to the pluralistic nature of the Nigerian legal system which recognizes customary and Islamic law as sources of law. Therefore, it seems the issue cannot be effectively resolved by reference to the Child Rights Act independent or in isolation of Islamic and customary laws recognized in the Nigeria Constitution.⁸⁰

The learned scholar further contended that the CRA cannot independently bring an end to the issue of child marriage in Nigeria since the Constitution recognizes marriages such as child marriage as a valid under customary or Islamic law. Moreover, as section 29(4)(b) is usually exploited; once a woman gets married, she is considered by the Constitution to be of full age. As examined above, one major reason the CRA has been unable to establish a uniform legal minimum age for marriage across Nigeria, is that, in the process of adopting or domesticating to the CRL, many states (especially the northern states) usually elevate either the personal law of the child to have primacy over the CRL in the event of a conflict between its provisions and the applicable custom or religious norm. Instead, in their CRL, a child is merely defined as a person below the age of 18. Consequently, the CRA cannot effectively and independently bring child marriage to an end in Nigeria. This is because matters relating to the rights of children fall within the residual legislative list, and states have responded on this strength to adopt the CRA subjecting its provisions to the customs and religion predominant within its jurisdictions. As such, it will be difficult for the CRA to independently annihilate the practice of child marriage in Nigeria.⁸¹ The question that follows is that, how do Nigeria establish a uniform legal minimum age since the CRA cannot on its own bring the practice to an end? First, the

⁷⁹ Nwauche (n 48).

⁸⁰ Ibid (n 78).

⁸¹ Nwauche (n48).

provision of the Marriage Act⁸² which requires the consent of a parent or guardian to validate a marriage where the child is below the age of 21 should be amended to read that “the consent of a parent or guardian is required when the child is above the age of 18 years but below 21”. Furthermore, “the consent of a parent or guardian shall not validate a marriage of a minor below the age of 18”. If necessary, the requirement should be dispensed with entirely. This is because, when a child is above the age of 18, according to section 29(4)(a) of the Constitution is deemed to be of full age and, therefore does not require parental consent to enter into a contract of marriage. At best, such consent may be regarded as a cultural or religious requirement or formality rather than a legal necessity. Thus, where a child is above the age of 18, the consent of the parents becomes legally irrelevant, whether it was obtained or not, since the child is considered an adult. This was the decision in the case of *Ugboma v Morah*,⁸³ where the court held that the consent of a parent is not a necessary element to institute a marriage. The only permissible exception for admitting child marriage should be where it is demonstrably in the best interest and for the protection of the child’s right. In such event, approval must be sought from appropriate authority to validate the union and to interrogate the motive behind the proposed marriage.

The structure of the extant provision of section 18 of the MA affords the opportunity for the practice of child marriage, as it allows parents to consent to the marriage of their minor children who are below the age of 18. If the Marriage Act amend the provision of section 18 to expressly stipulate that the legal minimum age for marriage to be 18 years. It will as the principal legislation governing the institution of marriage, serve as a significant step towards eradicating the practice of child marriage in Nigeria.

Secondly, section 3(1)(a) of the Matrimonial Causes Act⁸⁴ should define marriageable age to mean the age of 18. Thus, a marriage that takes place after the commencement of this Act is void if either of the parties is below the age of 18.

⁸² *Marriage Act*, Cap M6, Laws of the Federation of Nigeria 2004. section 18.

⁸³ (1940) 15 NLR.

⁸⁴ *Matrimonial Causes Act*, Cap M7, Laws of the Federation of Nigeria 2004. section 3(1)(d).

A uniform amendment of the Marriage Act and the Matrimonial Causes Act to expressly stipulate 18 as the legal minimum age for marriage in Nigeria, thereby prohibiting the practice of child marriage, would be a sound approach in mitigating the marriage of minors below the age of 18. However, this approach can be contested on the ground that such amendments (proposed approach), if effected, would apply only to marriages conducted under the Act, and by virtue of Item 61 of the Second Schedule of the Constitution, the provisions of the MA and the MCA do not extend to marriages conducted under the customary or Islamic law. Furthermore, section 114(6) of the MCA provided that, the provisions of this Act shall not have effect in relation to a marriage which is not a monogamous marriage or which is entered into in accordance with Muslim rites or with any customary law in force in Nigeria.⁸⁵ Again, section 35 of the Marriage Act, implicitly exclude the provisions of the Act to interfere with customary and Islamic law marriages.⁸⁶ Thus, since customary and Islamic marriages are not regulated by either the MA or the MCA, and these sources of laws permit child marriage, it is suspect how the proposed recommendation will help expunge the practice of child marriage in Nigeria.

Nonetheless, the central aim and concern of the legislature should be to establish a uniform legal minimum age for marriage across Nigeria. Establishing such a legal threshold is necessary because, many persons in contemporary Nigeria marry under the Act even after conducting a customary marriage.⁸⁷ Thus, where the custom of certain individuals permits child marriage, any attempt to formalize such a union under the Act whether for the purpose of obtaining a marriage certificate or otherwise, would be invalid. If the MA and the MCA uniformly prohibit child marriage, such a union would be dissolved on the basis that the union is void because one of the parties under the Act is considered a child. Although such a

⁸⁵ *Marriage Act*, Cap M6, Laws of the Federation of Nigeria 2004.s.114(6).

⁸⁶ *Ibid* (n85) section 35.

⁸⁷ *Ibid* section 34.

marriage would still be valid under customary or Islamic law. However, the express stipulation of the prohibition of child marriage would have essentially acted as a watchdog to reject an otherwise legal matrimony involving a minor, which, by the extant provision of the MA or the MCA, such a marriage involving a child below the age of 18 may be legally recognized.

However, the ultimate approach to annihilating the practice of child marriage in Nigeria is for the Constitution of Nigeria to appropriately address the issue of legal minimum age by providing that no person under the age of 18 may enter into a contract of marriage. Section 29(4)(b)⁸⁸ should be amended to be more explicit in referring to its function for the purpose of renunciation of citizenship. It should be unambiguously amended to state that “a woman who is married shall be deemed to be of full age for the purpose of renouncing her citizenship, save where such marital status is recognized by the law of her husband’s country ”(lex domicile). A provision of this nature clarifies that section ‘29(4)(b)’ exclusively applies to a woman below the age of 18 who seeks to effectively renounce her Nigerian citizenship. Alternatively, section ‘29(4)(b)’ may be unambiguously amended to state that “any woman married who is 18 years or above shall be deemed to be of full age.” In addition, the provision should insert a clear stipulation that “a marriage of a person under the age of 18 is invalid.”

If the foregoing provision is amended in line with this proposed form, the Constitution will effectively resolve and subsequently lay to rest the ambiguity surrounding the issue of child marriage in Nigeria. This adjustment is necessary because, the provision of 29(4)(b) when read alongside other Constitutional provisions that guarantee the right to freedom of religion, the right to own and establish a family and various state legislation that either permit or fail to

⁸⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended), Cap C23 LFN 2004.29(4)(b).

expressly prohibit child marriage-has created loopholes that can be exploited to justify the practice. By clearly stipulating a constitutional minimum age for marriage, all such provisions and state enactments would be subordinated to it, thereby eliminating the scope for manipulation or misinterpretation. If necessary, the Constitution should also include a penal clause similar to section 21 of the Child Rights Act,⁸⁹ prescribing sanctions for any person who attempts to contravene the prohibition of child marriage. A step like this will effectively set a general legal minimum age for marriage in Nigeria. Thereby compelling all legislation, including customary and Islamic law, to accept the age of 18 as the legal minimum for marriage. With the proper enforcement of the proposed provision of the Constitution the issue of child marriage will be appropriately addressed within a relatively short time.

4.2 Implication of Child Marriage to the Girl Child

According to Turner, Women and girls in situations of child and forced marriage may experience conditions inside the marriage which meet“ international legal definitions of slavery and slavery-like practices” including servile marriage, sexual slavery, child servitude, child trafficking and forced labour, and “a potentially high proportion of child marriage cases appear to constitute the worst forms of child labour under the 1999 International Labour Organization (ILO) Convention”⁹⁰ Child marriage is associated with a range of poor health and social outcomes followed with other negative consequences.⁹¹

⁸⁹ *Child Rights Act*, Cap C50, Laws of the Federation of Nigeria 2004. section 21.

⁹⁰ International Labour Organization, ‘*Worst Forms of Child Labour Convention, 1999 (No. 182)*,’ adopted 17 June 1999, entered into force 19 November 2000, Geneva: ILO. https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312327, (accessed 20 2025). Article 1 urges member state to effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. Article 2 stated that “For the purpose of this Convention, the term child shall apply to all persons under the age of 18”. While Article 3 of the Convention went further to provide that, For the purposes of this Convention, the term the worst forms of child labour comprises:(a) all forms of slavery or practices similar to slavery, such as child prostitution among others.

⁹¹ C Turner, ‘*Out of the Shadows: Child Marriage and Slavery*,’ (Anti-Slavery International, April 2013). https://www.antislavery.org/wp-content/uploads/2017/01/child_marriage_final-1.pdf, (accessed 20 October).

Child marriage has numerous adverse effects on the girl child; the union strips her of countless opportunities which every human is entitled to enjoy. When a girl child is exposed to the intricacies of marriage, the very first right she is deprived of is the right to education. Where children under the age of 18 who should be receiving basic education get married, they automatically abandon their educational pursuits to focus on the marriage and assume marital responsibilities. Another effect that confronts the child is the loss of childhood itself; the girl child is denied the opportunity to acquire skills or pursue her personal development, alas, she becomes completely dependent on the husband for every financial decision. Apart from reproduction and running errands in the home, she is unable to generate income to handle her basic needs. This pattern has clearly contributed to the growing number of children on the streets who resort into begging because it appears that pleading for alms is the easiest means the child could generate money to take care of her children as in the event when they are left destitute or abandoned by their husbands. Also, the incidence of child marriage has a significant impact on the country's economy. This passage is established by the fact that female minors are forced into lifelong obligation of marriage without being equipped for financial independence. Therefore, their potential contribution to national development is lost.

Child marriage are active contributors to Nigeria's population of high fertility rate. This, in turn spurs rapid population growth and exerts additional pressure on seemingly poor economies.⁹² In 2017, World Bank study estimated that child marriage costs Nigeria approximately USD 7.6 billion annually in lost earnings and productivity.⁹³ Another impact of child marriage on the girl child is the risk on her reproductive health. Serious medical complications such as Vesico-Vagina Fistula (VVF) and Rectum Vagina Fistula

⁹² Federal Ministry of Women Affairs and Social Development (FMWASD), 'National Strategy to End Child Marriage in Nigeria,' (2016–2021), https://www.girlsnotbrides.org/documents/633/Strategy-to-end-child-marriage_for_printing_08-03-2017.pdf, (accessed 15 October 2025).

⁹³ Q Wodon and C Male, 'Economic Impacts of Child Marriage: Global Synthesis Report,' (June 2017) Washington, DC: The World Bank and International Center for Research on Women,' (cited in Bokani, n1).

(RVF).⁹⁴Complications which could lead to the husband and the child's family abandoning her. According to Iyabode, "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 are divorced by their husbands."⁹⁵VVF 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). Similarly, there is a higher risk for a female minor under the young of 18 and even worse for a child under the young of 15, to experience Cephalopelvic Disproportion.⁹⁶The research revealed that female minors under the age of 18 are at a greater risk of neonatal, perinatal and fetal mortality.⁹⁷Neonatal mortality refers to the death of a live-born infant within the first 28 days,⁹⁸ Perinatal mortality ranges from both late fetal deaths (stillbirths) and early neonatal deaths (typically within the first 7 days after birth).⁹⁹

Child marriage increases the possibility of a child contacting STD, specifically HIV and Human Papilloma Virus (HPV). Females are by their biology 2 to 3 times more at risk of having HIV infection from just one unprotected sexual contact, compared to the male

⁹⁴ O Iyabode, 'Child Bride and Child Sex: Combating Child Marriages in Nigeria' (2011) 2 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 85.
<https://www.ajol.info/index.php/aujilj/article/view/82389> (accessed 11 October 2025).

⁹⁵ Ibid.

⁹⁶ M Amoade and others, 'Adverse obstetric and neonatal outcomes of adolescent pregnancies in Africa: a scoping review,' (2022), *BMC Pregnancy and Childbirth* 22:598, DOI: 10.1186/s12884-022-04821-w or <https://bmcpregnancychildbirth.biomedcentral.com/articles/10.1186/s12884-022-04821-w>, (accessed 15 2025)

⁹⁷ Ibid (n4).

⁹⁸ World Health Organization, 'Newborn mortality,' (fact sheet, 14 March 2024) <https://www.who.int/news-room/fact-sheets/detail/newborn-mortality>, (accessed 20 October 2025).

⁹⁹ World Health Organization, 'Endpoints and predictor definitions – Stillbirth: case definition and guidelines for data collection, analysis and presentation of maternal immunization safety data,' (2016) <https://pmc.ncbi.nlm.nih.gov/articles/PMC5139804/>, (accessed 20 October 2025).

counterpart.¹⁰⁰ The prevalence rate of HIV infection is observed in women within the age range of 15 to 24 years, whereas the peak of this risk for men occurs 5 to 10 years later. This findings can be confirmed by the fact that women might be more physically liable to HIV infection at younger ages due to the non-coverage of the lining of the vagina with protective cells and their seemingly easily damaged cervix, which may be caused due to cervical tears through having sexual relationships with men. Accordingly, young females, especially minors under the age of 18, are more vulnerable to HIV, owing to the presence of STDs, including chlamydia, gonorrhea, and herpes.¹⁰¹ Men who engage in child marriage are usually twice the age of the child, many of them must have had several sexual relations with other women which some of whom may be their older wives. It follows therefore, that there is a good chance that these men may be carriers of the Human Papilloma Virus (HPV), and then through sexual relations with these children, transmit this volume of virus to the children, which later gravitates to Cervical Cancer. The child may live with this virus for a considerable time without categorically knowing the reason she falls ill often, maybe get diagnosed when the virus has caused her damaged. A further research found that females married at a much younger age are more exposed to the risk of physical and sexual violence compared to women married at a much older age.¹⁰² The research went on to reveal that female minors who are within the age of 15 to 19 years are twice likely to die during pregnancy of childbirth compared to women over 20 years of age; while female minors under the age of 15 years are five times more likely to die during childbirth.¹⁰³ Their vulnerability is further jeopardized by inadequate access to healthcare, either due to poverty or absence of

¹⁰⁰ M Irani and R L Roudsari, 'Reproductive and Sexual Health Consequences of Child Marriage: A Review of Literature,' *Journal of Midwifery and Reproductive Health*. Doi:10.220381JMRH.2018.31627.1342 or https://jmrh.mums.ac.ir/article_11709.html. (accessed 15 October).

¹⁰¹ Ibid.

¹⁰² R d Groot and others, 'Child marriage and associated outcomes in northern Ghana: a cross sectional study,' (2018), 18, BMC Public Health.

¹⁰³ World Health Organization, '*Preventing Early Pregnancy and Poor Reproductive Outcomes Among Adolescents in Developing Countries: WHO Guidelines*,' (2011) <https://www.who.int/publications/i/item/9789241502214>, (accessed 15 November 2025).

medical facilities within their rural communities. According to a further research carried out by Adedokun and others, female minors commenced childbearing between the age of 14 and 18 years, consequently, 71% of these girls experience at least one serious pregnancy or birth related problem. 19% experience excessive bleeding during labour, 49% undergo obstructed and prolonged labour, while 12% experience frequent miscarriages and 20% experience prolonged sickness after childbirth.¹⁰⁴

From the foregoing, it is clear that female minors below the age of 18 who were forced into child marriage undergo several stages of abuses, which ranges from domestic, sexual and other forms of abuses. Turner rightly observed that, child marriage is a form of slavery, as it inevitably compromises the rights of the child and subjects her to conditions of forced and heavy labour. Apart from the various forms of abuse the child inevitably suffers as a result of child marriage. The child experiences numerous of health complications that often lead to ostracization or complete abandonment by her husband and her family members. As a result of such abandonment many of these girls are forced onto the streets, scouting for alms to sustain themselves and their children.¹⁰⁵

The above case is similar to the controversial issue of Ochanya Elizabeth Ogbanje, who was sexually abused (raped) by her uncle Andrew Ogbuja and his son Victor Ogbuja since she was 8 years old till when she was 13 years of age.¹⁰⁶ According to Ochanya's father, Mr. Ogbanje before the death of Ochanya "When Ochanya returned home, she continuously and uncontrollably urinates on her body, an event that made us to continuous use diapers on her. So, I told the mum to check and ask Ochanya when bathing her. It was at this point that

¹⁰⁴ O Adedokun and O Adeyemi, 'Child marriage and maternal health risks among young mothers in Gombi, Adamawa State, Nigeria: implications for mortality, entitlements and freedoms,' (2016 16 December), *Africa Health Science Journal*. <https://pmc.ncbi.nlm.nih.gov/articles/PMC5398445/#abstract1> or doi:10.4314/ahs.v16i4.15 (accessed 15 2025).

¹⁰⁵ World Health Organization, '10 facts on Obstetric Fistula (Geneva: WHO, 2023),' <https://www.who.int/news-rooms/fact-sheets/detail/obstetric-fistula>. (accessed 20 October 2025).

¹⁰⁶ G Adaoyichie, 'The untold story of how 13-yr-old Ochanya died while seeking an education,' *Pulse Nigeria* (1 Feb 2019), <https://reportwomen.org/the-untold-story-of-how-13-yr-old-ochanya-died-while-seeking-an-education/> (accessed 20 2025).

Ochanya's mother discovered that she had been sexually abused". Ochanya's caregiver ran a series of test on her, which revealed that Ochanya was sexually molested through her vagina and anus." According to Ochanya's caregiver, "before she died, she (Ochanya) was in so much pain but she could not talk or eat. That girl went through so much. From age eight to thirteen, she was constantly in and out of the hospital."¹⁰⁷ Although Ochanya's case is not directly linked to child marriage, but the circumstances that led to her death mirror the experiences of many minors who are forced into such unions. From the description of Ochanya's health complication, it is clear that she suffered from VVF, which ultimately led to her death.

The negative implication of child marriage abound, it violate the right of the child in every aspect of life, on extreme cases the practice end their lives. Children are humans too; as such, any right available to an adult should be available to a child, hence, child rights are human rights. The right of children through the passage of child marriage should never be made subordinate to those of adults. This harmful implications of child marriage therefore call form stiffer measures to curb the practice through legal framework.

4.3 Causes of Child Marriage

One of the major drivers of child marriage is cultural orientation. Many individuals who partake in the practice justify its legality and legitimacy of the union through cultural claims. Such claims are often rooted in patriarchal societal structures, where parents and elders play significant or domineering roles in selecting spouses for their children. According to a reputable legal writer, Strong cultural norms place emphasis on a girl's virginity, which is closely tied to a family honour. Consequently, parents are disposed to marrying off their

¹⁰⁷ Ibid.

daughters at a very tender age to ensure they marry as virgins, to avert promiscuity, and retain the family honour.¹⁰⁸ Another predominant driver of child marriage is religious precepts, particularly among some Muslims in Nigeria. They regard Sharia as immutable and superior to man-made laws, deriving its authority from divine revelation.¹⁰⁹ According to a Muslim jurist, a child “experiencing *ihtilam* (wet dream)” or “experiencing *haidah* (menstruation),” as stated in the Quran in relation to the age of marriage, indicates the age of maturity for males and females.¹¹⁰ Thus, the moment a child have any of these element, that child will be considered an adult irrespective of age.¹¹¹ This notion is further anchored on the precedent of Aisha’s marriage to Prophet Mohammed at a very young age (when she was 9 years old). Accordingly, it has been unanimously agreed by all four Sunni schools,¹¹² that there is no fixed minimum age prescribed for marriage, provided that the child has reached puberty.¹¹³ Archbishop Desmond Tutu in his blunt expression noted that, 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.¹¹⁴ This work does not entirely agree with Archbishop Tutu on the point where he opined that religious customs that allow child marriage are not religion at all. As has been highlighted above, Islamic law is the personal law of the Muslims; Islam accommodates child

¹⁰⁸ Fayokun (n53).

¹⁰⁹ Iyabode (n94).

¹¹⁰ M A Ambali, *The Practice of Muslim Family Law in Nigeria* (Tamaza Publishing Co. Ltd, Zaria, 2003), pp.154-155.

¹¹¹ C Buzome and others, *Early Child Marriage in Nigeria: Causes, Effects and Remedies*, ’ (2018) 4(1) *Social Science Research* 62–68, <https://journals.aphriapub.com/index.php/SSR/article/view/890> (accessed 23 October 2025).

¹¹² The Hanifi, Malik, Shafi’I, and Hanbali schools,

¹¹³ Center for Islamic Studies, ‘*Promoting Women’s Rights through Sharia in Northern Nigeria*, ’ (Zaria: Centre for Islamic Legal Studies, Ahmadu Bello University, 2005), Ahmadu Bello University, Centre for Islamic Legal Studies; Department for International Development (United Kingdom); and British Council, <https://nigerianlawguru.com/wp-content/uploads/2024/11/PROMOTING-WOMENS-RIGHTS-THROUGH-SHARIA-IN-NORTHERN-NIGERIA.pdf>, (cited in O Iyabode, “*Child Bride and Child Sex: Combating Child Marriages in Nigeria*” (2011) 2 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 85. (accessed 3 November 2025).

¹¹⁴ D Tutu ‘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.

marriage as a religious tenet enshrined in precedent and crystallized by the Qur'an. Thus, the custom of Muslims features child marriage as a religious practice. It won't be accurate to say that the entire doctrine of Islam or the part of Islam that permits child marriage is no religion at all. However, Archbishop Tutu was right when he stated that traditions that are harmful or have outlived their purpose must be challenged. It is suspect that a religious practice that violates the inherent right of the child could be reasoned as a valid religious practice immune from criticism or deemed too sacred to be antagonized.

Poverty is another significant cause of child marriage. Many poor families see giving their daughter out for marriage as a means of economic survival, especially when she is a virgin. Also, poverty makes the child's parents view child marriage as a palatable platform to take the child's expenses off their hands and shift the obligation to her husband. According to Amanuel, "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".¹¹⁵ Envuladu, in his empirical socio-legal research, discovered that child marriage in Nigeria is largely driven by poverty.¹¹⁶ According to the findings of Jaiyeola and Choga, child marriage is majorly caused by poverty, according to the learned writers, 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%.¹¹⁷ Poor families who are yet to have a complete square-meal, it becomes a challenge to provide accommodation, clothing, payment for education materials, health care, and so on. These poor families are left with little or no choice but to opt for other means of survival without thinking of the long-term damage the child may

¹¹⁵ A T Mamo, 'An incisive diagnosis of Child Marriage in Nigeria,' published in September 2021 www.savethechildren.org (accessed 20 October, 2025).

¹¹⁶ E Envuladu, 'The determinant factors for underage in Nigeria', a paper presented to the department of Economics, University of Ottawa, LLM. (unpublished), (2020) 28.

¹¹⁷ A O Jaiyeola and I Choga, 'Assessment of poverty incidence in Northern Nigeria,' (2021) 25(2) *Law Journal* 155 -172 <https://doi.org/10.1080/10875549.2020.1783424> (accessed 3 November 2025).

suffer. Poverty do not only impose a strain on people, it further extends its whims to weaken the enforcement of laws and promote negative traditional practices.¹¹⁸ Poor parents can use the subject of custom or religion to validate child marriage. This was the case of Yerima's driver, the father of the 13 years old child Yerima got married to in 2010, where the Senator paid \$100,000 dollars as the bride price is a good example of how poverty influences child marriage.¹¹⁹ According to the organization Girls not Bride, when experiencing acute poverty, families and sometimes girls themselves see marriage as a way to reduce family cost and gain financial security.¹²⁰

Lack of education and inequality is another facilitator of child marriage. Alabi lamented that, owing to the patriarchal structure of Nigeria society girls are treated as second class citizen, simply because of their sex. According to the learned writer, "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." the learned writer further posited that that education stands in favour of the male-child compared to their female counterpart due to gender inequality.¹²¹ According to Girls not Bride, child marriage is one expression of gender inequality.¹²² A prominent writer observed that, virtually all married female minors are out of school. Child marriage abruptly terminates any form of schooling and introduces the girl child to early sexual life, early motherhood with a myriad of health problems and a cycle of illiteracy and poverty.¹²³ according to the learned writer;

Education rights are essential for the exercise of all other human rights... Education enhances individual freedom, provides empowerment and promotes multiple developmental gains. Millions of young girls however remain deprived of educational opportunities as a result of early marriage.¹²⁴

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Girls Not Brides, '*Why child marriage happens*,' (Girls Not Brides), <https://www.girlsnotbrides.org/about-child-marriage/why-child-marriage-happens/>, (accessed 23 October 2025).

¹²¹ T Alabi and others, 'The girl-child: 'A sociological view on the problems of girl-child education in Nigeria,' (2014) Vol.10(2) *European Scientific Journal*.

¹²² Ibid (n118).

¹²³ Ibid (n121).

¹²⁴ Ibid (n64).

The prevalence of child marriage is directly linked to the lack of access to education, and girls greatly disproportionately suffer and bear blunt the adverse consequence that follow. If the practice persist, over 100 million children will be married as minors before reaching adulthood in the next ten years.¹²⁵ Thus, a girl child who does not have access to education is also likely to marry at a young age.¹²⁶ When the child is placed in this position, the education of the child will certainly be disrupted as she is now saddled with family responsibility as a wife and subsequently mother.¹²⁷ Akande and Aminu observed that the level of [girl] child education is generally low due to cultural issues such as child marriage. The notion that a girl's primary aim is to strive to become a good housewife has led to the girl child being relegated to the kitchen. Thus, her education is disrupted while her male counterparts enjoy all opportunities for education which place them at a disadvantage position in the society.¹²⁸ This notion must be the reason the erstwhile Nigerian President, late Muhammadu Buhari, in 2016, during a joint press conference with Chancellor Angela Merkel (a female) of Germany. When asked on his take on what Aisha Buhari statement that she might not support her husband in the subsequent election unless he got a grip on his government. Late Muhammadu Buhari responded that "I don't know which party my wife belongs to, but she belongs to my kitchen and my living room and the other room." This statement sparked widespread outrage among well-meaning Nigerians criticizing the late president for his remarks, condemning it as a reflection of patriarchal reasoning that confines women to domestic roles, particularly by associating women solely with the kitchen. This was a one-time president who, through his statement, evaluated women as a little more than caretakers

¹²⁵ Council on Foreign Relations, 'Child Marriage' (InfoGuide) <https://www.cfr.org/article/child-marriage> (accessed 23 October 2025).

¹²⁶ Girls Not Brides, 'Addressing child marriage through education: What the evidence shows,' (Knowledge Summary) <https://www.girlsnotbrides.org/documents/857/Addressing-child-marriage-through-education-what-the-evidence-shows-knowledge-summary.pdf>, (accessed 23 October 2025).

¹²⁷ Buzome (n112).

¹²⁸ I F Akande and S A Aminu, 'A Comparative Analysis of the Political Rights of Women under Shari'ah and Statutory Laws in Nigeria,' (2020)(1)(2), Annur Chambers Annual Journal of Contemporary Issues in Shariah and Comparative Law, 428.

of the home. Many other men, especially in the northern, share similar view; to them, there is no need to send their daughters to school to acquire a formal education, since they will end up in the kitchen of their husbands.¹²⁹ A Verified data has been presented to establish the fact that an increase in educational achievement is often linked to delay in early marriage.¹³⁰ Thus, guaranteeing the [girl] child's access to education hitherto reduces the risks and incidence of child marriage. Statistics illustrated that for every year a [girl] child delays marriage, her chance of education increases pursuant to that delay by 5.6% while the chances of accessing secondary education further increases by 6.5%.¹³¹

Parents or guardian give their daughters who are minors, not up to the age of 18, in marriage as a response to insecurity, which often leads to displacement (according to the UN General Assembly report; As at July 2015, there were 1.3 million internally displaced persons (56 per cent of which are children) in Nigeria with the State of Borno hosting the largest population),¹³² rape, starvation and even death (Government sources in the States concerned have estimated that some 20,000 civilians, including an undetermined number of women and children, have been killed by Boko Haram since 2009.¹³³ Consequently, parents reason that the interest of the child will be protected and her safety will be guaranteed if the children are

¹²⁹ M Amoadu and others, 'Adverse obstetric and neonatal outcomes of adolescent pregnancies in Africa: a scoping review,' (2022), BMC Pregnancy and Childbirth 22:598, DOI: 10.1186/s12884-022-04821-w or <https://bmcpregnancychildbirth.biomedcentral.com/articles/10.1186/s12884-022-04821-w>, (accessed 15 2025)

¹³⁰ L Wetheridge, 'Negotiated Realities: Adolescent Girls, Formal Schooling, and Early Marriage in Kaduna State, NorthWest Nigeria,' (2022 Doctoral thesis (Ph.D), UCL (University College London), 50. https://discovery.ucl.ac.uk/10142595/1/Wetheridge_10142595_Thesis.pdf, (accessed 23 October 2025).

¹³¹ J A Walker, 'Why Ending Child Marriage Needs to Be an Education Goal: The Case for Improved Coordination between Ending Child Marriage and Girls,' *Education Movements in West Africa* (Center for Universal Education, Brookings Institution, April 2013) https://www.brookings.edu/wp-content/uploads/2016/07/walker_girls_education.pdf accessed 23 October 2025).

¹³² UN General Assembly, Human Rights Council, Thirtieth session, Agenda item 2, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, "Violations and abuses committed by Boko Haram and the impact on human rights in the countries affected," Report of the United Nations High Commissioner for Human Rights. UN Doc A/HRC/30/67. <https://docs.un.org/en/A/HRC/30/67>, (accessed 24 October 2025).

¹³³ Ibid (n133).

married off, if possible, relocating them from the territories plagued by violence.¹³⁴ Moreover, the bride-price that is paid for the child will be channeled into improving the family's living condition.

Thus, there is dire need for Nigeria legal framework to establish a legal minimum age for marriage, particularly in the Constitution and other principal legislation that regulate the institution of marriage to harmonize with the reality of the Intention of the CRA in protecting the child.

¹³⁴ Human Rights Council, 'Violations and abuses committed by Boko Haram and the impact on human rights in the countries affected, 2015; and CARE, Rapid gender and GBV assessment: Yobe State, 2018,' <https://docs.un.org/en/A/HRC/30/67>, (accessed 24 October).

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSION

5.1 Recommendations

- 1) Establishment of a uniform legal minimum age: For the issue of child marriage to be relaxed in Nigeria, the rights of every child have to be adequately insured. This insurance should extend to every form of violation, including child marriage. Thus, the Constitution, should explicitly set 18 years as the legal minimum age for marriage, alongside relevant statutes, like the MA and the MCA.
- 2) Registration of customary marriages: A provision should be made requiring every customary marriage to be compulsorily registered in every local government secretariat or at a public town hall (for the purpose of facility/accessibility), with a marriage certificate issued to the couples upon registration, evidencing their marriage. Where couples fail to adhere to this procedure, there should be penal consequences similar to that of Kenya.
- 3) Implementation of Child marriage prohibition officers: For the purpose of enforcement and implementation of the protective laws against child marriage. Child marriage prohibition officers, who may fit in the shoe as “guardian or next friend” for minor girls seeking decrees of nullity and move the court for an order of dissolution of the marriage, should be appointed to prosecute violation of the laws prohibiting the practice of child marriage
- 4) Education: According to a reputable legal scholar, education rights are essential for the exercise of all other human rights. Education enhances individual freedom, provides empowerment, and promotes multiple developmental gains. When a minor marries, the first right she loses is her right to education. To encourage more girls whose family may be poor to send their female children to school. The government should ensure free and compulsory

education for both male and female minors and further create a programme that will occasionally provide incentives for the parents of these children.

5) Sensitization programmes: The government should formulate programmes that extend from schools to communities, villages, and social gatherings, aimed at sensitizing parents and children about the harm of child marriage, particularly the health risk it bring to the girl child. they should be made to understand that child marriage not only violates the rights of the child, that the practice can ultimately lead to the death of a child.

6) Access to Healthcare: The government should ensure the provision of at least a primary functioning healthcare system in every rural community. Children who are raped and impregnated in the process stand a risk of being given away for child marriage to the readily available suitor-seeking the child's hand in marriage. As parents may consent to such union to absolve themselves of perceived shame of the child's predicament, irrespective of the child's age. If there were available primary health care in those areas, immediately after the rape, the child can find her way to the facility or with her parents, and the necessary steps could have been taken to avoid the futuristic possibility of child marriage.

7) Insecurity: The issue of insecurity is one of the valid grounds parents or guardians contract child marriage for their children. In the event of the consequence of insecurity, laws prohibiting child marriage cannot be invoked to punish those who perpetuate the practice, as an attempt to protect the Child and ensure her survival. Thus, the government should ensure its primary duties of defending the lives and property of Nigeria is fulfilled.

5.2 Conclusion

The issue of child marriage is both a legal and socio-cultural problem in Nigeria. It is a socio-cultural problem because, within the customs and the regions where the practice is most prevalent, it is considered a legitimate tradition handed down through generations. In fact, it

is the same process through which many of the current perpetrators themselves were married. Thus, it becomes a herculean task to merely persuade individuals who have had the practice of child marriage enshrined in their cultural sense to abandon it merely because of the harm it inflicts on the child or on the state at large. Moreover, the practice of child marriage accrues a number of benefits to the parents or guardians of the child, such as the alleviation of poverty, forging of political alliances, and the preservation of a patriarchal societal structure. According to Chianu, the plague of child marriage is a social ill which the black and white in the cold book cannot effectively arrest. It therefore follows that, for an ill-cultural or religious practice entrenched in the fabric of society to be eradicated, there must be legal intervention. The required legal intervention should have the capacity to crash down this cultural practice by providing clear and unambiguous laws to address the issue, which in this case is child marriage. The ambiguous provisions in the Constitution, together with some provisions which explicitly exclude the issue of marriages conducted outside the Act out of the legislative competence of the National Assembly, constitutes a primary legal challenge that has been exploited to formalize and legalize the practice of child marriage in Nigeria. Also, the subjugation of the Child Rights Act when replicated in other states, together with the provision that elevates customary or religious norms over the CRA, further deepens the problem. Some states where the CRA has been replicated have compromised its provisions by inserting that, in the event where the provisions of the Act conflicts with those of the predominant custom or religion, the demands of such custom or religion shall prevail over the Act, in matters relating to the determination of the child's rights. Ironically, child marriage is highly promoted in these same states. An example of such state is Zamfara. Situations like this serve as a major legal challenge. To address this challenge, it is therefore important for the Constitution to unambiguously establish a legal minimum age for marriage in Nigeria,

which should be 18 years, and provide strict punishment to be imposed where violations occurs.

Child marriage remains a violation of the rights of children. The practice can be best described as an abuse of the rights of the child without according them the opportunity to express their opinion in a decision that will change their fate forever, which may even cause them death. To this end, various international instruments and local legislation have made laws to prohibit the practice. Regardless of these laws, the practice of child marriage persists. However, the persistence of the practice owes to the absence of a uniform legal minimum age for marriage in the Constitution and other statutes relevant to marriage. Because of the compromise of essential provisions of the CRA by in the process of domesticating it. The Act cannot independently end child marriage in Nigeria. Nevertheless, where the Constitution is amended to meet with the reality of the CRA, together with other relevant statutes, coupled with effective enforcement. The problem associated with the legal minimum age of marriage in Nigeria-which will be set at 18 years-will be effectively resolved.

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