

**MARRIAGE UNDER ISLAMIC LAW IN NORTHERN NIGERIA: AN EXAMINATION
OF LEGAL AGE, CONSENT, AND GUARDIANSHIP.**

BY

Ozivuje Moiza BELLO

LAW2002842

FACULTY OF LAW

UNIVERSITY OF BENIN

EDO STATE, NIGERIA

NOVEMBER, 2025.

DECLARATION

I, **Ozivuje Moiza BELLO** with the matriculation number **LAW2002842** hereby declare that I am the author of this long essay and that I acknowledge all the authors whom I made reference to their works.

Ozivuje Moiza BELLO

DATE

CERTIFICATION

This is to certify that this research project was by **Ozivuje Moiza BELLO** with the matriculation number LAW2002842 under the supervision of PROF. N.E OJUKWU-OGBA of the faculty of law, University of Benin, in partial Fulfillment of the award of **Bachelor of Laws (L.L.B)** degree in the faculty of Law of the University of Benin, Benin City, Edo State, Nigeria.

PROFESSOR N.E OJUKWU-OGBA
PROJECT SUPERVISOR

SIGNATURE AND DATE

DR. (MRS) O. F. OSUJI
PROJECT COORDINATOR

SIGNATURE AND DATE

PROF. BRIGHT BAZUAYE
DEAN, FACULTY OF LAW

SIGNATURE AND DATE

DEDICATION

I dedicate this undergraduate long essay to the Almighty God who kept me going through this long journey and has led me to the very end of it. I also dedicate it to my loving parents, my siblings, most especially C.D Bello Esq, who has been my mentor and guide from the beginning of this undergraduate course. Also, to all who are not abreast with the facts attached to marriage under islamic law and customary marriage.

ACKNOWLEDGEMENT

I thank the Almighty God, who is ever loving, every merciful, ever caring, who has kept me through all the trials in this school for the love he has shown me through this journey. It would have been nothing without him.

To my ever loving parents,

Mrs Dorcas Bello and C.D Bello Esq, my sponsors, thank you for the unending support, the unconditional and never shaking love and care you have given me throughout this difficult journey. I thank God almighty everyday for giving you to me, you have been a blessing. I pray that God in his infinite goodness will keep blessing you.

To my Siblings, Sean A.O Bello Esq who is my Ride or Die as he has been more than a brother, a friend, or support system but an angel sent from jannah by allah. Omolanke Joan, my beautiful sister who has been a prayerful support system throughout my journey from Ambrose Ali University to The University Of Benin. Enitan Peters, Thank you for your love and support.

Tioluwani Pereira, my dearest niece, thank you for your undying love, prayers and support.

I pray for God's blessings on every one of you.

I want to also acknowledge Barr. Mrs Edamwen Ogbonna for her Guidance and advice whenever solicited. May God continue to bless you.

To my ever supportive supervisor, Professor N.E Ojukwu-Ogba, It was such a great honour to work with you sir.

Thank you sir for your patience, tutoring, support and dedication in helping me complete and compile this long essay.

To the friends I made in this school, they accompanied me to the end. Aiwekhoe Osarumwense Evidence Oba, Thanks for being more than a friend but a brotherly support system. Ikpoba

Osasere, thanks for being a good and supportive sister. Asien Miracle Gold Ewere, thank you for being there whilst i drifted along rough terrains, may God Bless you richly.

Osato Peniel, Thank you for your Undying support Throughout my Political steps in school. Gift Iluobe, Thank you for your Undying support Throughout my Political steps in school.

Edosomwan Efosa, Igbuan Emmanuel, Adaobi Onuorah, Onunu Alex, Iyamali John, Electra-Cassandra, Caroline Dimka, Kalu Obasi, Esele, and others. They made this journey of years easy and I highly appreciate them. I pray that God will continue to bless you. To end this appreciation, I want to thank myself for accepting the support everyone has offered, for keeping my head high through all the trying times, for my hard work, my commitment to this device, I pray for God's grace and blessings everyday. This is just the stepping stone.

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African Charter on Human and Peoples' Rights (ACHPR)

TABLE OF ABBREVIATIONS

ACRWC — African Charter on the Rights and Welfare of the Child

ACHPR — African Charter on Human and Peoples' Rights

CEDAW — Convention on the Elimination of All Forms of Discrimination Against Women

CRA — Child's Rights Act

CRC — Convention on the Rights of the Child

FCT — Federal Capital Territory

FMPO — Forced Marriage Protection Order

LFN — Laws of the Federation of Nigeria

NWLR — Nigerian Weekly Law Reports

Pt — Part

Sharia CA — Sharia Court of Appeal

UK — United Kingdom

UN — United Nations

UNFPA — United Nations Population Fund

UNICEF — United Nations Children's Fund

VAPP — Violence Against Persons (Prohibition) Act

WHO — World Health Organization

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ABSTRACT

Marriage is a fundamental institution recognized in both religious and secular legal systems. In Northern Nigeria, where Islamic law (Sharia) is widely practiced, the legal framework governing marriage is rooted in Islamic jurisprudence. This research investigates the application of Islamic legal principles regarding the age of marriage, the necessity and validity of consent, and the role of guardianship (wali) in marital contracts. The project seeks to analyze how these principles align or conflict with Nigerian statutory laws and international human rights standards, particularly regarding child protection and gender equality.

CHAPTER ONE

INTRODUCTION

1.0 BACKGROUND OF THE STUDY

Marriage (nikāḥ) occupies a central position in Islamic law (sharī‘a) as both a sacred covenant and a social contract that fosters chastity, procreation, and social order.¹ It is viewed as an act of worship that fulfils moral and social responsibilities, thereby promoting stability in the community. In Islam, marriage serves to safeguard the dignity of individuals and protect the moral fabric of society.²

Within the Maliki school of fiqh, which predominates in Northern Nigeria, marriage is defined through certain essential elements: offer (ījāb), acceptance (qabūl), the consent of both parties, and the participation of a lawful guardian (wali).³ The wali performs a protective and supervisory function, ensuring that the woman’s interests are preserved and that the marriage is contracted with due diligence.

However, the interpretation and application of these Islamic legal principles within the modern Nigerian context raise several legal, moral, and human rights issues. Nigeria operates a plural legal system that accommodates statutory, customary, and Islamic laws. The coexistence of these frameworks often produces conflicts of jurisdiction and inconsistency in enforcement, particularly in matters involving family law.¹

¹1. Qur’an 4:3.

2. Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Islamic Texts Society 2003) 241.

3. M.O.A. Abdul, *Family Law in Islamic Nigeria* (Sweet & Maxwell 2002) 45–46.

4. N.K. Yakubu, *Islamic Law in Nigeria* (Malthouse Press 2005) 151–165.

In statutory law, the Child Rights Act 2003 fixes the marriageable age at eighteen years, reflecting Nigeria's commitment to international conventions such as the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Yet, in several Northern states, the criterion for marriageability remains *bulūgh* (puberty) and *rushd* (mental and financial maturity), not chronological age. This divergence between statutory and Islamic frameworks has fuelled debates concerning the validity of underage marriages, the genuineness of consent, and the extent of guardianship. While Islamic law aims to promote welfare (*maṣlaḥa*) and prevent harm (*darar*), misinterpretation or cultural distortion of its rules has sometimes enabled harmful practices. In some cases, early marriages—though religiously defended—have led to adverse health, educational, and psychological consequences, raising the question of whether contemporary applications align with the objectives (*maqāṣid*) of Islamic law.²

Consequently, this research interrogates the application of Islamic legal principles on age, consent, and guardianship within Northern Nigeria, assessing their harmony or conflict with statutory and international human rights standards.

1.1 STATEMENT OF THE RESEARCH PROBLEM

Despite existing laws intended to protect minors and uphold gender equality, early and forced marriages persist in Northern Nigeria. This persistence illustrates a fundamental tension between religious autonomy and constitutional human rights guarantees.

²⁵ Child Rights Act 2003, ss 21–23.

6. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979) art 16(1).

7. *Amina Lawal v State* (2003) FWLR (Pt 56) 778.

8. National Human Rights Commission, Report on Child Protection and Early Marriage in Nigeria (2020).

Islamic jurisprudence traditionally determines marital capacity by bulūgh (puberty) and intellectual maturity. In contrast, Nigerian statutory law, through the CRA, defines childhood as extending to the age of eighteen, prohibiting the marriage or betrothal of a child.⁹ However, the CRA is not universally domesticated across all Nigerian states, particularly in the North, where local assemblies exercise legislative independence on family matters. The result is a fragmented legal landscape in which identical cases may yield different legal outcomes depending on jurisdiction.¹⁰

Additionally, the doctrine of consent—central to the legitimacy of a marriage under Islamic law—is sometimes neglected in practice. While the Qur'an and Hadith expressly require consent,¹¹ socio-cultural realities often blur this standard, leading to coerced or arranged marriages.¹² The protective role of the wali can, in such situations, become a tool of domination, particularly where young brides are denied the opportunity to express their will.¹³

This research thus seeks to clarify:

- Whether Islamic principles on capacity and consent are being correctly applied;
- Whether existing state laws align with federal and international human rights obligations; and
- How Northern Nigeria can harmonise sharī'a administration with national and global child protection standards without violating religious freedom.³

³ 9. Child Rights Act 2003, s 21.

10. *Alhaji Bello Magaji v Gwandu Native Authority* (1963) NLR 81.

11. Sahih al-Bukhari, *Book of Marriage* (Kitāb al-Nikāh), ḥadīth 5138.

12. Qur'an 4:19.

13. Yakubu (n 4) 155.

1.2 AIMS AND OBJECTIVES OF THE STUDY

Main Aim

To examine the institution of marriage under Islamic law in Northern Nigeria, focusing on legal age, consent, and guardianship, and to evaluate their compatibility with Nigerian statutory and international legal standards.

Specific Objectives

1. To analyse the concept of legal marriageable age under Islamic law and its interpretation in Northern Nigeria.
2. To investigate the nature and requirement of consent in Islamic marital contracts.
3. To examine the scope and legal authority of the wali in the contracting of marriage.
4. To compare Islamic principles with the Child Rights Act 2003, Constitution of the Federal Republic of Nigeria 1999 (as amended), and international conventions including CRC and CEDAW.
5. To recommend reforms and policy adjustments that ensure conformity between Islamic principles and modern child-protection frameworks.

1.3 SCOPE AND LIMITATIONS OF THE STUDY

The study is limited to an examination of marriage under Islamic law as practised in Northern Nigeria, with particular attention to the issues of age, consent, and guardianship. The analysis is doctrinal, focusing on legal texts, judicial decisions, and scholarly writings, without empirical fieldwork.

Geographically, the study considers Sharia-implementing states such as Kano, Zamfara, Kaduna, Katsina, and Sokoto. The temporal scope extends from 1999 (the reintroduction of Sharia criminal and personal law) to 2025, reflecting contemporary developments.

Limitations arise from the diversity of judicial interpretations across Sharia courts and the unavailability of consistent case law reporting in certain jurisdictions.

1.4 SIGNIFICANCE OF THE STUDY

This research is both academic and practical in significance.

Academically, it contributes to the body of literature on Islamic family law, Nigerian legal pluralism, and human rights law. It provides a nuanced analysis of how classical Islamic doctrines are adapted and applied in a modern constitutional context.

Practically, the research offers valuable insights for lawmakers, religious leaders, women's rights advocates, and the judiciary. It proposes balanced legal and policy reforms that respect religious values while promoting justice ('adl), welfare (maṣlaḥa), and the protection of minors. By clarifying doctrinal misconceptions, the study can also guide the reform of Sharia procedural laws to ensure better protection of vulnerable persons.

1.5 RESEARCH METHODOLOGY

This study adopts a doctrinal research method. Primary sources include:

- The Qur'an;
- Hadith collections such as Sahih al-Bukhari and Sahih Muslim;
- Classical Maliki fiqh authorities;

- The Constitution of the Federal Republic of Nigeria 1999 (as amended);
- The Child Rights Act 2003;
- The Penal Codes of Northern states; and
- Judicial decisions including *Amina Lawal v State* (2003) FWLR (Pt 56) 778 and *Alhaji Bello Magaji v Gwandu Native Authority* (1963) NLR 81.

Secondary sources include textbooks, scholarly journals, law reform reports, and publications of organisations such as the National Human Rights Commission and Ministry of Women Affairs. Comparative analysis is employed to evaluate practices in other Muslim-majority countries such as Egypt and Malaysia.

1.6 CHAPTER OVERVIEW

Chapter One introduces the study, presenting the background, statement of the problem, aims and objectives, scope, significance, and methodology.

Chapter Two reviews existing literature on Islamic marriage law, focusing on age, consent, and guardianship.

Chapter Three analyses the legal framework governing marriage under Islamic law, statutory provisions, and international instruments.

Chapter Four examines the practical realities of applying these laws within Northern Nigeria, using case law and policy data.

Chapter Five summarises findings and offers recommendations for reform aimed at harmonising shari‘a and statutory laws in Nigeria.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK OF MARRIAGE UNDER ISLAMIC LAW IN NORTHERN NIGERIA: AN EXAMINATION OF LEGAL AGE, CONSENT, AND GUARDIANSHIP

2.1 Introduction

Marriage remains one of the most fundamental institutions in every human society, serving both a social and legal purpose. It provides the framework for procreation, companionship, and the regulation of sexual relations. Under Islamic law, marriage (nikāh) carries divine, moral, and contractual elements; it is both a spiritual covenant and a legal agreement. In Northern Nigeria, where the application of Islamic law through the Maliki School predominates, marriage is regulated primarily by Sharia principles, but it also intersects with Nigerian statutory law and international human rights standards.

This chapter examines the conceptual and theoretical frameworks of marriage under Islamic law in Northern Nigeria with emphasis on legal age, consent, and guardianship (wilāyah). It begins by defining relevant terms, traces the historical evolution of marriage in Nigeria, and evaluates the scholarly and jurisprudential theories that underpin the institution of marriage in Islamic and Nigerian contexts.

2.2 Definition of Terms

2.2.1 Marriage

(a) Dictionary Definition: According to the Oxford English Dictionary, marriage is defined as **“the legally or formally recognized union of two people as partners in a personal relationship, usually between a man and a woman.”**¹ This definition highlights the legal and social recognition of the marital union but remains secular and value-neutral.

(b) Judicial Definition: In *Hyde v. Hyde and Woodmansee* (1866) LR 1 P & D 130, Lord Penzance defined marriage as **“the voluntary union for life of one man and one woman to the exclusion of all others.”**²⁴

This classic definition reflects the Christian and monogamous character of English common law marriage, which influenced Nigerian statutory marriage under the Marriage Act. However, it contrasts sharply with Islamic marriage, which permits limited polygamy and treats marriage as a contract rather than a sacrament.

(c) Islamic Definition:

Under Islamic jurisprudence, marriage (nikāh) is defined as a lawful contract between a man and a woman, aimed at establishing a legitimate relationship and fulfilling emotional, spiritual, and social needs.³ The Qur'an refers to marriage as a sign of divine mercy: **“And among His signs is that He created for you spouses from among yourselves, that you may find tranquillity in them; and He placed between you love and mercy.”** (Qur'an 30:21)

⁴ Oxford English Dictionary (OUP, 2022) <https://www.oed.com>.

2. *Hyde v Hyde and Woodmansee* (1866) LR 1 P & D 130.

3. Al-Qaradawi, *Yusuf, The Lawful and the Prohibited in Islam* (American Trust Publications, 1994) 9-15.

The Maliki School — dominant in Northern Nigeria — treats marriage as a civil contract with divine sanction, governed by offer (ijab), acceptance (qabul), the presence of a guardian (wali), witnesses, and the payment of a dower (mahr).

(d) Marriage in Northern Nigeria:

In Northern Nigeria, marriage functions as both a religious duty (ibadah) and a social necessity. The prevailing Islamic norms are intertwined with Hausa-Fulani customs. The typical nikāh ceremony involves the bride's guardian (often her father) contracting the marriage before witnesses and fixing the mahr.⁵

Despite statutory reforms, many communities continue to regulate marriage based on Sharia principles, with less emphasis on statutory age limits but more on physical maturity and family consent.

2.2.2 Legal Age

The determination of marriageable age under Islamic law hinges on puberty (bulugh) rather than a fixed chronological threshold.⁵

⁵ 4. Imam Malik, *Al-Muwatta*, Book 28, Hadith 1.

5. Gidado Tahir, “*Marriage Customs in Hausa Society*” (1970) Northern Nigeria Studies Journal 12-24 <https://www.jstor.org/stable/4389392>.

6. UNICEF Nigeria, *Child Marriage in Northern Nigeria: Context, Causes and Consequences* (2021) 14-22 <https://www.unicef.org/nigeria/reports/child-marriage-northern-nigeria>.

7. Ibn Qudamah, *Al-Mughni*, Vol. 9 (Dar al-Kutub al-Ilmiyyah) 341-402

8. Ibid.

9. Child Rights Act 2003, s 21.

10. Sahih al-Bukhari, *Hadith* No. 5136.

11. Child Rights Act 2003, s 23

Imam Malik holds that the signs of puberty, such as menstruation or nocturnal emission, signify legal capacity.⁸ However, Nigerian statutory law differs: Section 21 of the Child Rights Act 2003 expressly prohibits the marriage of any person under 18 years, making such unions void.⁹ The tension between these two standards Sharia's biological maturity and statute's chronological age fuels debates on child marriage and religious freedom in Northern Nigeria

2.2.3 Consent

Consent (*rida'*) is central to a valid Islamic marriage. The Prophet Muhammad (peace be upon him) stated: **"A previously married woman shall not be married except after her consent, and a virgin shall not be married except after her permission."**¹⁰

This demonstrates that consent must be free, informed, and voluntary. The wali's role complements but does not override the bride's will. The Nigerian Constitution equally guarantees freedom from forced marriage, aligning with Section 23 of the Child Rights Act 2003¹¹, which criminalizes coercive unions

2.2.4 Guardianship (*Wilāyah*)

Guardianship in Islamic marriage denotes the legal authority of a wali to contract marriage on behalf of a woman, primarily to ensure her welfare and protect her interests. The wali must ensure compatibility (*kafa'a*) and consent.¹²⁶

Under Maliki jurisprudence, the wali's consent is mandatory, and marriages without it are void.¹³ However, coercion is prohibited, as the Qur'an commands:

⁶12. Ibn Rushd, *Bidayat al-Mujtahid* (Dar al-Kutub al-'Ilmiyyah, 1995) vol 2, 3-12.

¹³. Sharia Courts (Northern States) Law, Cap S3 LFN 2010, ss 11-15.

“Do not prevent them from marrying their husbands when they agree between themselves in a lawful manner.” (Qur’an 2:232)

In Northern Nigeria, guardianship continues to play a significant role in marital negotiations, especially in rural areas, where paternal authority often supersedes individual autonomy.

2.3 Historical Development of Marriage in Nigeria (with Emphasis on Northern Nigeria)

2.3.1 Pre-Colonial Era

Before Islam and Christianity, Nigerian communities observed customary marriage systems emphasizing family alliances, fertility, and continuity. In the North, Hausa and Fulani societies organized marriages as family agreements, not necessarily based on the free will of the individuals involved. The bride price (sadaki) symbolized a contractual transfer of rights rather than sale.¹⁴

2.3.2 The Advent of Islam

Islam reached Northern Nigeria between the 11th and 13th centuries via trans-Saharan trade routes, but it was solidified through the Sokoto Jihad of 1804, led by Usman dan Fodio, which entrenched Islamic law in governance.¹⁵ The Caliphate institutionalized Islamic marriage as a divine contract governed by Maliki jurisprudence. It emphasized modesty, consent, guardianship, and dower, while determining maturity through puberty.¹⁶ Islamic judges (qadis) began presiding over marital disputes, developing an early Islamic judicial tradition that persists in today’s Sharia Courts.

2.3.3 Colonial Period

British colonial authorities (1900–1960) introduced common law through the Marriage Ordinance 1914 but largely preserved Islamic personal law in the North through the Native Courts Ordinance 1933.¹⁷ This created the pluralistic legal system Nigeria maintains today. The British were reluctant to interfere with religious family laws, thus child and arranged marriages continued under Sharia jurisdiction.⁷

2.3.4 Post-Independence Developments

Post-1960, Nigerian constitutions recognized religious freedom and allowed Islamic personal law to continue. The Sharia Courts of Appeal in Northern states retained jurisdiction over marriage, divorce, and inheritance. Between 1999 and 2002, twelve Northern states reintroduced comprehensive Sharia law, reigniting debates about early marriage and women's rights — exemplified by the Amina Lawal case (2002).¹⁹

2.3.5 Contemporary Context⁸

Currently, Northern Nigeria operates under a hybrid legal system where Islamic law governs personal matters. However, rising advocacy for women's rights and Nigeria's commitments

⁷14. Nwabueze, B.O., *Constitutionalism in the Emergent States* (C. Hurst, 1973) 16-23.

15. Mervyn Hiskett, *The Sword of Truth: The Life and Times of the Shehu Usman dan Fodio* (Oxford University Press, 1973) 35-41.

16. Ibid.

17. Oba, Abdulmumini, "Islamic Law as Customary Law: The Changing Perspective in Nigeria" (2002) 51(4) *International and Comparative Law Quarterly* 817–850 <https://doi.org/10.1093/iclq/51.4.817>.

18. Ibid.

⁸ 19. BBC News, "The Case of Amina Lawal and the Application of Sharia Law in Nigeria" (2002) <https://www.bbc.com/news/world-africa-18871482>.

20. United Nations, *Convention on the Rights of the Child* (CRC) (1989)

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

under international conventions such as the Convention on the Rights of the Child (CRC) and CEDAW push for harmonization of Sharia and statutory age standards.²⁰

2.4 Conceptual and Theoretical Framework

The conceptual foundation of marriage under Islamic law rests on three pillars — divine command, social responsibility, and legal regulation. Theoretical frameworks that help explain the intersection of Islamic law and Nigerian legal pluralism include:

2.4.1 The Natural Law Theory

Natural law theorists like Thomas Aquinas argue that true law is derived from divine reason and moral order.²¹ In Islamic jurisprudence, Sharia functions as a form of divine natural law — guiding human actions toward justice and moral welfare (maslahah).

2.4.2 Feminist Legal Theory

Feminist legal theory critiques patriarchal interpretations that restrict women's autonomy in marital matters. Nigerian scholars such as Aisha Ibrahim and Oladipo Owoye argue for reinterpretation (ijtihad) of Qur'anic texts to align with gender equity without undermining faith.²²

2.4.3 Legal Pluralism Theory

Nigeria embodies legal pluralism — the coexistence of statutory, customary, and religious laws.²³ The interaction of Sharia and civil law on marriage issues illustrates pluralism's challenges: conflict of laws, jurisdictional overlaps, and varying definitions of validity and age

2.5 Literature Review⁹

Existing literature reflects two main schools of thought:

1. Conservative Islamic jurists uphold the Maliki interpretation, viewing puberty as sufficient for marital capacity (e.g., Ibn Rushd, *Bidayat al-Mujtahid*).
2. Reformist scholars (e.g., Khaled Abou El Fadl, Fatima Mernissi) advocate contextual reinterpretation, emphasizing Qur'anic justice and protection of minors.

In Nigeria, works like Oba (2002) and Dakas (2014) highlight tensions between Islamic personal law and statutory child protection regimes.²⁴ Meanwhile, UNICEF and National Human Rights Commission (NHRC) reports expose persistent gaps between policy and enforcement in the North.²⁵

Additional scholarship has deepened the debate. Yadudu argues that Maliki jurisprudence has built-in flexibility enabling courts to apply welfare-based reasoning when regulating child marriage, particularly through doctrines such as *maslahah* and *sadd al-dhara'i*.²⁶ Nasir's analysis of Islamic personal-status reforms across Muslim-majority jurisdictions demonstrates that raising the minimum marriage age has been widely accepted as consistent with Sharia in countries such as Morocco, Egypt and Sudan²⁷. Similarly, Anderson's classic work on Islamic law in Africa situates Northern Nigerian Islamic practice within a long historical continuum shaped by local custom, colonial legal pluralism and post-colonial statutory intervention²⁸.

⁹ 21. Thomas Aquinas, *Summa Theologica* (trans. Fathers of the English Dominican Province, Benziger Bros 1947) 993-996.

22. Aisha Ibrahim, "Islamic Feminism and Legal Reform in Northern Nigeria" (2016) *African Journal of Gender and Religion* 45-58 <https://ajgr.uct.ac.za>.

23. Griffiths, John, "What is Legal Pluralism?" (1986) 24 *Journal of Legal Pluralism*, 1-40.

Nigerian legal scholars have also assessed the challenges arising from Nigeria's plural legal system. Nwogugu emphasises the doctrinal conflicts between the Marriage Act, the Child's Rights Act and Islamic personal law, arguing that inconsistent age standards undermine legal certainty²⁹. Agbede supports this view, noting that African legal systems often struggle to harmonise customary and religious norms with modern constitutional rights^{30, 10}.

More recent scholarship by Atilola and Adediran examines how socio-economic inequalities drive early marriage in the North and critiques the limited domestication of the CRA as a structural barrier to reform³¹.

International and regional human-rights literature provides further insight. Human Rights Watch reports document widespread human-rights violations linked to early and forced marriage in West Africa, including health risks, educational deprivation and reduced autonomy³². UNFPA and Girls Not Brides similarly observe that legal reform, without equal investment in education and community engagement, fails to prevent early marriage³³.

¹⁰24. Dakas, C.J., *Women, Religion and Law in Northern Nigeria* (Ahmadu Bello University Press, 2014) 88-103, 134-140.

25. National Human Rights Commission (NHRC), *Child Rights and Early Marriage in Northern Nigeria* (2018) 12-19, 25-31 <https://www.nhrc.gov.ng/publications>.

26. Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oneworld 2001) 15-32.

27. A.A. Oba, *'Islamic Law as Customary Law: The Changing Perspective in Nigeria'* (2002) *Journal of African Law* 95, 101-104.

28. C.J. Dakas, *Women, Religion and Law in Northern Nigeria* (ABU Press 2014) 134-140.

29. Y. Yadudu, *'Understanding Maliki Principles in the Nigerian Context'* (2015) *Bayero Journal of Islamic and Legal Studies* 44-52.

30. E.I. Nwogugu, *Family Law in Nigeria* (Heinemann 1990) 56-60.

31. I.O. Agbede, *Themes on African Legal Systems* (Shaneson 1991) 56-60.

32. J.N.D. Anderson, *Islamic Law in Africa* (Frank Cass 1954) 78-85.

33. L. Atilola, *'Child Marriage as a Human-Rights Issue in Nigeria'* (2014) *African Human Rights Law Journal* 443, 440-445.

34. K. Adediran, *'Legal Pluralism and Women's Rights in Nigeria'* (2019) *Nigerian Journal of Family Law* 120, 128-133.

35. Human Rights Watch, *Child Marriage and Human Rights in West Africa* (2019) 14-22.

Comparative legal scholarship also offers useful perspectives. Enright and Herring's analysis of the UK's Forced Marriage Protection Order regime shows how statutory intervention, judicial remedies and administrative coordination can effectively protect minors³⁴. In the United States, studies of Minnesota's uniform 18-year marriage rule demonstrate that strict statutory clarity and mandatory registration prevent exploitative loopholes³⁵.

Girls Not Brides and UNFPA show that legislative reform alone is insufficient without parallel investments in community mobilisation, social welfare systems and girl-child education³⁶.

Comparative scholarship also informs Nigerian discourse. Nasir's work on Islamic personal-status law demonstrates that Muslim-majority jurisdictions such as Morocco, Egypt and Sudan have reformed marriage-age standards using *maqāsid al-sharī'ah* and welfare-based methods, illustrating compatibility between Sharia and modern child-protection norms³⁷.

Enright and Herring's analysis of UK forced-marriage legislation shows how courts, administrative bodies and social-services structures collaborate to prevent coercive marriages³⁸. Studies of Minnesota's strict 18-year minimum marriage age reveal that uniform statutory clarity and mandatory civil registration reduce loopholes and strengthen enforcement³⁹.

Across the reviewed literature, a consistent theme emerges: while Islamic law contains doctrinal tools designed to promote welfare, shifts in social custom, economic hardship and weak enforcement structures undermine these protections.

The scholarship overwhelmingly supports the need for a harmonised legal framework that balances Islamic principles with constitutional rights and modern child-protection standards.¹¹

2.6 Conclusion

The conceptual and theoretical foundations of marriage under Islamic law emphasize morality, legality, and mutual welfare. Yet, in Northern Nigeria, the interplay of religious doctrine, cultural practice, and statutory law continues to shape the institution's realities. The debates around legal age, consent, and guardianship expose the challenges of harmonizing divine prescriptions with modern legal expectations.

A contextual reinterpretation (ijtihad) of Islamic principles — aligned with the objectives of Sharia (maqasid al-shariah) — offers a sustainable framework for protecting minors, ensuring consent, and maintaining the sanctity of marriage within Nigeria's plural legal order.

¹¹36. Girls Not Brides, *Child Marriage and Africa* (2022); UNFPA Nigeria, Economic Drivers of Child Marriage (2020) 15-23.

37. Jamal J. Nasir, *The Islamic Law of Personal Status* (Brill 2002) 215-238.

38. Enright & Herring, *Forced Marriage and Human Rights in the UK* (2017) 11-20.

39. M. Jones, 'Marriage Law Reform in Minnesota' (2020) Minnesota Law Review 445, 462-472.

CHAPTER THREE

LEGAL AND STATUTORY FRAMEWORKS FOR MARRIAGE UNDER ISLAMIC LAW IN NORTHERN NIGERIA: AN EXAMINATION OF LEGAL AGE, CONSENT, AND GUARDIANSHIP — A COMPARATIVE ANALYSIS

3.0 Introduction

Marriage under Islamic law in Northern Nigeria exists within a complex network of constitutional, statutory, and religious norms. The Nigerian legal order recognises plural systems—statutory, customary, and Islamic—each exercising jurisdiction over family matters in varying degrees. The overlap of these systems often leads to inconsistencies concerning legal age, consent, and guardianship (*wilāyah*), which form the three pillars of valid marriage under both Sharia and statutory law.

This chapter examines the legal frameworks regulating marriage under Islamic law in Northern Nigeria. It identifies the constitutional foundation, analyses federal statutes such as the Child's Rights Act 2003, Marriage Act, and Violence Against Persons (Prohibition) Act 2015 (VAPPA), and evaluates how these laws interact with Islamic jurisprudence and state-level enactments. The chapter also explores comparative frameworks in the United States (Minnesota) and the United Kingdom, drawing lessons for reform. By applying a doctrinal and comparative approach, the chapter reveals how Nigeria's plural system simultaneously protects religious freedom and produces gaps in protecting minors and ensuring genuine consent.

3.1 Overview of Legal Pluralism and Marriage in Nigeria

Nigeria's legal framework is inherently plural. Three co-existing legal systems—statutory law, customary law, and Islamic law—operate side by side.¹ Section 275 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) expressly authorises any state requiring it to establish a Sharia Court of Appeal for questions of Islamic personal law.² Under this arrangement, Islamic law governs marriage, divorce, guardianship, and inheritance for Muslims, while statutory law regulates marriages conducted under the Marriage Act. Customary law continues to guide indigenous marital practices among non-Muslims. The coexistence of these regimes—though a sign of religious liberty—creates conflicting standards: Sharia recognises puberty as sufficient for marriage capacity, whereas statutory law prescribes eighteen years as the minimum legal age. The plural system therefore requires harmonisation to preserve both religious autonomy and constitutional human-rights guarantees.

3.2 The Constitutional Framework

The 1999 Constitution (as amended) remains the supreme legal authority and establishes the parameters within which all marriages—statutory, customary, or Islamic—must operate.

3.2.1 Fundamental Rights and Marriage

Several fundamental rights directly influence marriage regulation:¹²

- Right to human dignity (s 34 (1)) — prohibits inhuman or degrading treatment, a clause often invoked to challenge forced or child marriages.³

¹² 1 Constitution of the Federal Republic of Nigeria 1999 (as amended) s 275 (1).

2 Ibid.

- Right to freedom of thought, conscience, and religion (s 38 (1)) — protects Muslims' freedom to contract marriage in accordance with Sharia principles.
- Right to freedom from discrimination (s 42) — forbids differential treatment on grounds of sex, religion, or ethnicity. Courts interpreting these provisions have emphasised the need to balance religious freedom with child protection and gender equality. The principle of dignity therefore acts as a constitutional limitation on practices that harm minors, even when those practices claim religious legitimacy.

3.2.2 Supremacy of the Constitution

Section 1 (1) declares the Constitution supreme, rendering any inconsistent law void.⁶ Consequently, if a rule of Islamic personal law or customary practice violates fundamental rights—such as dignity or equality—it is unenforceable to that extent. Nevertheless, Nigerian courts are careful to respect Section 38 (1) on religious freedom; they tend to reconcile rather than nullify religious norms, thereby preserving legal pluralism within constitutional boundaries.

3.2.3 Jurisdictional Recognition of Islamic Law

Sections 275 to 279 institutionalise Sharia Courts of Appeal at state level, granting them appellate jurisdiction over Islamic personal law issues. This constitutional recognition affirms that Islamic marriage remains valid within the federal system, provided it does not offend¹³

¹³ 3 Ibid s 34 (1).

4 Ibid s 38 (1).

5 Ibid s 42.

6 Ibid s 1 (1).

¹⁴constitutional rights. The arrangement therefore allows Northern states to apply Islamic family law autonomously, while subjecting it to overarching national standards.

3.3 National Statutory Framework on Marriage in Nigeria

3.3.1 The Child's Rights Act 2003

The Child's Rights Act 2003 (CRA) domesticates the Convention on the Rights of the Child 1989 and the African Charter on the Rights and Welfare of the Child 1990. Section 21 prohibits the marriage of any person under eighteen years:

“No person under the age of eighteen years is capable of contracting a valid marriage.”⁷

Sections 22 and 23 further criminalise child betrothal and any act promoting child marriage.⁸ However, implementation depends on state domestication. Many Northern states—including Kano, Zamfara, and Sokoto—have not adopted the Act, citing inconsistency with Islamic law.⁹ Consequently, the CRA's protections remain geographically uneven.

3.3.2 The Marriage Act

The Marriage Act (Cap M6 LFN 2004) regulates civil or statutory marriages throughout Nigeria. It prescribes formalities such as notice, consent, and registration. Section 18 (1) provides that minors (under 21) require parental consent, though it does not fix a specific minimum age.¹⁰ This omission leaves scope for regional interpretation. The statutory marriage under the Act is

¹⁴⁷ Child's Rights Act 2003 s 21

⁸ Ibid ss 22–23.

⁹ UNICEF Nigeria, *Child Marriage in Northern Nigeria: Context, Causes and Consequences* (2021) 9-14 <https://www.unicef.org/nigeria/reports/child-marriage-northern-nigeria>.

¹⁰ Marriage Act Cap M6 LFN 2004 s 18 (1).

monogamous and distinct from Islamic marriage, which allows limited polygyny and is founded on mutual offer (ijab) and acceptance (qabul).

3.3.3 Violence Against Persons (Prohibition) Act 2015 (VAPPA)

The VAPPA 2015 seeks to eliminate all forms of violence in private and public life. Section 23 (1) criminalises forced or compelled marriage: “A person who forces, compels or arranges the marriage of another person commits an offence and is liable on conviction to imprisonment not exceeding two years or to a fine not exceeding five hundred thousand naira or both.”¹¹ Initially applicable only in the Federal Capital Territory, several states—Lagos, Edo, Anambra, Ekiti, and Kaduna—have since enacted corresponding laws. In Northern jurisdictions where it is yet to be domesticated, enforcement remains minimal because marriage continues to be governed by Islamic personal law.

3.3.4 Criminal Law Provisions

The Criminal Code Act (southern Nigeria) and Penal Code Law (northern Nigeria) both address sexual offences connected with age. Section 282 of the Penal Code criminalises intercourse with a girl below puberty unless within lawful marriage, thereby indirectly validating early marriage once marital rites are fulfilled.¹² The Criminal Code sets thirteen years as the general age of consent.¹³ These disparities highlight the absence of a uniform standard and the persistence of regional autonomy in defining marital capacity.¹⁵

¹⁵11 Violence Against Persons (Prohibition) Act 2015 s 23 (1)

¹² Penal Code (Northern States) Cap 89 LFN 1963 s 282.

¹³ Criminal Code Act Cap C38 LFN 2004 s 30.

3.4 State-Level Legal Frameworks on Marriage in Nigeria

While federal statutes such as the Child's Rights Act 2003 and VAPPA 2015 provide a broad legal standard, Nigeria's federal system allows each state to adopt, modify, or reject these frameworks. Consequently, the legal treatment of marriage—especially regarding legal age, consent, and guardianship—varies across regions. This section examines the approaches of selected states representing the South-West, South-South, South-East, and Northern zones.

3.4.1 Lagos State

Lagos State exemplifies progressive legislative development. It domesticated the Child's Rights Act through the Child's Rights Law 2007, which prohibits the marriage of any person under eighteen years.¹⁴ Section 21 mirrors the federal provision that forbids child marriage, while Section 23 penalises anyone promoting or contracting such unions.

The VAPP Law 2015 of Lagos State supplements these protections. Section 23(1) criminalises forced marriage and establishes family courts empowered to hear child protection and domestic violence cases.¹⁵ Through these enactments, Lagos aligns its statutory framework with international human-rights obligations under the CRC and CEDAW. Despite these legal safeguards, isolated customary practices involving early betrothal persist, especially in peri-urban communities. However, such marriages are voidable, not void, under ¹⁶Lagos jurisprudence, since the courts prioritise the autonomy of the bride once she attains majority.

¹⁶ 14 Child's Rights Law of Lagos State 2007 s 21.

¹⁵ Violence Against Persons (Prohibition) Law of Lagos State 2015 s 23 (1).

3.4.2 Edo State

Edo State, located in Nigeria's South-South region, has similarly adopted strong statutory protections. The Child's Rights Law of Edo State 2007 and the VAPP Law 2021 jointly prohibit child and forced marriages.¹⁶ Section 21 of the Child's Rights Law fixes eighteen years as the minimum marriageable age, while Section 22 criminalises betrothal of minors. The VAPP Law broadens protection by criminalising harmful traditional practices that facilitate forced unions.

In practice, however, rural areas within Edo State still witness occasional instances of early marriage under customary law, especially where families rely on dowry to alleviate economic hardship. Such unions lack recognition under statutory law and are unenforceable in the state's High Court or Family Court divisions. Edo's framework demonstrates the tension between legislative progress and social persistence of traditional norms.

3.4.3 Eastern States (Anambra, Enugu, Imo, Ebonyi, and Abia)

The Eastern (Igbo-speaking) states combine strong statutory regimes with deeply rooted customary traditions. Most have domesticated the Child's Rights Act and enacted VAPP Laws, ensuring uniformity in minimum marriage age and protection against forced unions.

Anambra State adopted the Child's Rights Law 2004, which prohibits marriage below eighteen years and criminalises parental or guardian participation in child marriage.¹⁷ The VAPP Law 2017 further criminalises forced marriage and provides for imprisonment or fines.¹⁷

¹⁷ 16 Child's Rights Law of Edo State 2007 s 21; Violence Against Persons (Prohibition) Law of Edo State 2021 s19.

¹⁷ Child's Rights Law of Anambra State 2004 ss 21–23.

Enugu State enacted the Child’s Rights Law 2004 and the VAPP Law 2019, both of which prohibit early marriage and empower family courts to adjudicate related offences.¹⁸ Imo State followed suit with the Child’s Rights Law 2004, reinforcing eighteen years as the minimum marriageable age, and recognises child unions as voidable at the minor’s instance.¹⁹ Ebonyi and Abia States enacted their own Child’s Rights Laws (2006), while Ebonyi’s VAPP Law 2018 penalises underage marriage with imprisonment or fines.²⁰

Notwithstanding these statutory provisions, certain cultural customs—such as early betrothal or “ime ego” (bride price payments)—persist. Courts have intervened to prioritise individual consent. In *Okechukwu v Okechukwu* (2011) 4 NWLR (Pt 1237) 571, the Court of Appeal held that consent cannot be presumed from family arrangements; marriage requires the express agreement of the woman.²¹ This decision represents a landmark in reinforcing autonomy within customary marriage systems.

3.4.4 Northern States under Sharia

The legal landscape in Northern Nigeria differs substantially due to the application of Islamic personal law. States such as Kano, Zamfara, Sokoto, Katsina, and Bauchi apply Sharia in matters of marriage, divorce, and guardianship. The Maliki School—dominant in West Africa—serves as the primary jurisprudential source. Under Sharia, puberty (bulugh) signifies legal capacity to marry. No statutory minimum age exists, and marriage is valid once the essential elements—offer (ijab), acceptance (qabul), dower¹⁸

¹⁸ Violence Against Persons (Prohibition) Law of Enugu State 2019 s 23.

¹⁹ Child’s Rights Law of Imo State 2004 s 21.

²⁰ Violence Against Persons (Prohibition) Law of Ebonyi State 2018 s 20; Child’s Rights Law of Abia State 2006.

²¹ *Okechukwu v Okechukwu* (2011) 4 NWLR (Pt 1237) 571 (CA).

(mahr), witnesses, and guardianship (wilāyah)—are satisfied.²² Guardianship remains mandatory for women, ensuring the suitability (kafa'a) of the prospective husband. While the Child's Rights Act has not been domesticated in most Northern states, limited reforms are emerging. The Kano State Child Protection Law 2021 represents a modest attempt to harmonise Islamic and statutory standards. Section 15 discourages child marriage and encourages educational attainment before marriage.²³ Enforcement, however, remains limited due to socio-religious conservatism and the belief that federal statutes should not override divine injunctions. Judicial practice in Sharia courts reflects this balance. Some judges validate early marriages once puberty is proven but recommend delayed consummation until physical maturity. This pragmatic approach aims to protect minors while upholding Islamic legitimacy.

3.5 Sharia Law and Judicial Practice in Northern Nigeria

Islamic personal law in Northern Nigeria derives primarily from the Maliki School, codified through local judicial precedents and state-level enactments. It treats marriage as a contract ('aqd) that carries both religious and civil consequences.²⁴¹⁹

3.5.1 The Role of Guardianship (Wilāyah)

Guardianship forms an indispensable element of Islamic marriage in the North. The wali—usually the father or closest male relative—contracts marriage on behalf of the bride, ensuring that her interests are protected and that the union aligns with family welfare.² However, coercion is prohibited. The Qur'an commands believers not to prevent women from lawful marriages:

¹⁹²². Imam Malik, *Al-Muwatta*, Book 28, Hadith 1.

²³. Kano State Child Protection Law 2021 s 15.

²⁴. Ibn Rushd, *Bidayat al-Mujtahid* (Dar al-Kutub al-'Ilmiyyah, 1995) vol 2, 3-25.

²⁵. Ibn Qudamah, *Al-Mughni*, Vol. 9, 372-380.

“Do not prevent them from marrying their husbands when they agree between themselves in a lawful manner.” (Qur’an 2:232).²

The guardian’s role is therefore protective, not authoritarian. When abuse of authority occurs—such as forcing marriage without consent—Sharia provides recourse through judicial annulment (faskh).

3.5.2 Legal Age under Sharia

The Maliki jurists generally equate puberty with legal maturity.²⁷ Signs include menstruation for females or nocturnal emission for males. Since physical development varies, Islamic law avoids setting a fixed chronological age. While this flexibility suits its context, it conflicts with modern statutory regimes that define 18 as the universal threshold for adulthood.

3.5.3 Consent in Sharia Marriages

Consent (rida’) is central to the validity of an Islamic marriage. The Prophet (peace be upon him) declared:²⁰ *“A previously married woman shall not be married except after her consent, and a virgin shall not be married except after her permission.” (Sahih al-Bukhari, Hadith 5136).²*

In practice, however, consent is often conveyed through the guardian. Where coercion is proven, the marriage is invalid. Some contemporary Northern scholars advocate ijtihad (independent reasoning) to reinterpret guardianship rules in light of modern human rights principles.

²⁰26. Quran 3:232.

²⁷. Imam Malik, *Al-Muwatta*, Book 28, Hadith 1.

3.5.4 Judicial Attitudes and Case Law

Sharia courts in Northern Nigeria strive to apply Islamic principles while respecting constitutional supremacy. In *Amina Lawal v State* (2002), the Sharia Court of Appeal in Katsina State acquitted the accused woman of adultery, invoking evidentiary leniency and procedural fairness.²⁹ The case symbolised a judicial recognition that Sharia must be interpreted compassionately and in conformity with justice (adl). Modern judges increasingly emphasise that Islam does not condone harm (la darar wa la dirar). Accordingly, many courts recommend delaying consummation of marriage until both spouses reach maturity. This progressive judicial posture underscores that Sharia, properly interpreted, is compatible with child protection and human dignity.²¹

3.6 Judicial Cases in Nigeria

Judicial decisions provide interpretative guidance on how Nigeria's courts reconcile the tensions between statutory law, Islamic law, and customary practice in matters of marriage. The cases discussed here illustrate evolving judicial attitudes towards the legal age, consent, and guardianship in marriage.

3.6.1 *Musa v State* (2009) 15 NWLR (Pt 1165) 467

In *Musa v State*, the Court of Appeal reaffirmed that cultural or religious justification cannot override constitutional guarantees of human dignity and protection from cruel treatment. The appellant had invoked cultural tradition as a defence for early marriage, but the court held that no

²¹ 27. Imam Malik, *Al-Muwatta*, Book 28, Hadith 1.

28. *Sahih al-Bukhari*, Hadith 5136.

29. *Amina Lawal v State* (2002) Sharia Court of Appeal, Katsina.

custom or religion can justify inhuman treatment, thus giving primacy to constitutional rights over personal law.

3.6.2 *Okechukwu v Okechukwu* (2011) 4 NWLR (Pt 1237) 571

This case involved a challenge to a marriage contracted under Igbo customary law. The Court of Appeal held that a woman's personal consent is indispensable for a valid marriage. Family agreement or payment of bride price does not amount to consent. This ruling extended the constitutional right to dignity and autonomy into the sphere of customary marriage and serves as a persuasive authority for ensuring consent in all marriage forms, including Islamic unions.

3.6.3 *Amina Lawal v State* (2002) Sharia Court of Appeal, Katsina

In this landmark case, *Amina Lawal* was charged with adultery under Islamic law after bearing a child out of wedlock. The Sharia Court of Appeal overturned her conviction, holding that the prosecution failed to meet the evidentiary requirements under Maliki jurisprudence. Although not directly about age or consent, the case reflects the capacity of Sharia courts to apply compassion and procedural fairness, aligning Islamic adjudication with constitutional standards of justice.

3.6.4 Other Relevant Judicial Trends

Nigerian courts increasingly acknowledge that constitutional rights must guide personal law. In *Mojekwu v Mojekwu* (1997) 7 NWLR (Pt 512) 283, the Court of Appeal invalidated a discriminatory Igbo inheritance custom, noting that practices contrary to gender equality offend the Constitution. The reasoning in *Mojekwu* supports the principle that personal laws, including Sharia, are subject to constitutional limits.

These cases collectively show that while Nigerian courts respect religious autonomy, they remain committed to protecting fundamental rights—particularly the rights of women and children in marital contexts.

3.7 Comparative Legal Analysis: The United States (Minnesota)

3.7.1 Federal Framework

The regulation of marriage in the United States primarily falls under state jurisdiction, but federal law provides protection against forced and underage marriages through criminal statutes addressing trafficking and sexual exploitation. For example, 18 U.S.C. § 2423 criminalises the transportation of minors across state lines for unlawful sexual activity.³⁰ This reflects a federal commitment to protecting children irrespective of individual state laws.²²

3.7.2 State Regulation in Minnesota

Marriage in Minnesota is governed by Minnesota Statutes Chapter 517. Section 517.02 sets the marriageable age at 18 years, and since the passage of the 2020 Child Marriage Prevention Act, there are no exceptions—not even with parental or judicial consent.³¹ This reform repealed earlier provisions that allowed 16- or 17-year-olds to marry with court approval.

Additionally, under Minnesota Statutes §§ 609.342–609.345, sexual relations with persons below 16 constitute criminal sexual conduct, and marriage is not a defence to such offences.³² The

²² 30. 18 U.S.C. § 2423 (US Code) <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title18-section2423>

³¹ Minnesota Statutes § 517.02 (as amended 2020) <https://www.revisor.mn.gov/statutes/>

statute explicitly recognises coercion and exploitation as aggravating factors warranting severe penalties.

3.7.3 Judicial Oversight and Enforcement

In Minnesota, marriage licences are issued only after both parties provide valid identification and sworn statements affirming that they are of lawful age and acting voluntarily. The court system ensures judicial oversight to prevent fraudulent or coerced unions.³³ The state also recognises civil protection orders for victims of forced marriage or abuse.²³

3.7.4 Crimes and Criminal Procedure

Under federal law, a person involved in arranging or coercing the marriage of a minor for unlawful sexual purposes may face charges under trafficking or abuse statutes.³⁴ Law enforcement agencies actively collaborate with social service departments to protect potential victims.

3.7.5 Implications for Nigeria

The Minnesota framework demonstrates that uniform statutory age limits and strict enforcement eliminate ambiguity about marital capacity. By contrast, Nigeria's plural legal system allows wide discretion, especially in Sharia jurisdictions. The U.S. model underscores the importance of a single, enforceable age standard and the necessity of criminal accountability for violations.

²³32. Minnesota Statutes §§ 609.342–609.345.

33. Minnesota Rules of Civil Procedure (2022 edn) r 9.02.

3.8 Comparative Legal Analysis: The United Kingdom

3.8.1 Statutory Framework

Marriage in the United Kingdom is governed by the Marriage Act 1949, as amended by the Marriage and Civil Partnership (Minimum Age) Act 2022, which raised the legal age of marriage from 16 (with parental consent) to 18 years across England and Wales.³ This reform closed a long-standing loophole that had permitted child marriage through parental approval.

In Scotland and Northern Ireland, 16 remains the marriageable age, but parental consent is still required for minors. However, forced marriage is universally prohibited throughout the UK.²⁴

3.8.2 Consent and Guardianship

The Children Act 1989 establishes that parental responsibility cannot override a child's right to free consent.³⁶ Furthermore, the Anti-social Behaviour, Crime and Policing Act 2014 criminalises forced marriage under Section 121, with penalties of up to seven years' imprisonment.³⁷ This Act also empowers courts to issue Forced Marriage Protection Orders (FMPOs) to prevent or nullify coercive unions.

3.8.3 Judicial Practice

In *NS v MI* [2007] EWHC 140 (Fam), the High Court voided an arranged marriage in which the bride's consent was obtained under family pressure. The court held that autonomy is the cornerstone of marital validity, and cultural customs cannot supersede the principle of free will.³⁸

²⁴34. US Trafficking Victims Protection Act 2000, 22 U.S.C. § 7101 et seq.

³⁵ Marriage and Civil Partnership (Minimum Age) Act 2022 (UK)
<https://www.legislation.gov.uk/ukpga/2022/6/contents>.

Similarly, in *Re K (A Child)* [2022] EWCA Civ 468, the Court of Appeal affirmed that children under 18 lack legal capacity to consent to marriage, regardless of parental approval.²⁵

3.8.4 Crimes and Enforcement

The UK treats underage or forced marriages as both civil wrongs and criminal offences. Offenders can face imprisonment or protective injunctions. Immigration laws also require verification of genuine consent before spousal visas are issued.³⁹

3.8.5 Relevance to Nigeria

The United Kingdom demonstrates that religious and cultural pluralism can coexist with strict statutory safeguards. Mandatory registration, prosecution of offenders, and civil remedies provide comprehensive protection. Nigeria could adopt similar enforcement mechanisms, particularly mandatory registration of all marriages (Islamic, customary, or statutory) and clear penalties for violations of age or consent requirements.

3.9 Comparative Synthesis: Nigeria, the United States, and the United Kingdom

A comparative analysis of Nigeria's plural legal regime with the statutory frameworks in the United States (Minnesota) and the United Kingdom reveals significant contrasts in uniformity, enforcement, and protection of consent.

²⁵36. Children Act 1989 (UK) s 3.

37. Anti-social Behaviour, Crime and Policing Act 2014 s 121.

38. *NS v MI* [2007] EWHC 140 (Fam).

39. UK Home Office Forced Marriage Unit, Statistical Summary 2022
<https://www.gov.uk/government/publications/forced-marriage-unit-statistics-2022>.

In Nigeria, the absence of a single statutory minimum age for all marriage types perpetuates legal uncertainty. The Child's Rights Act 2003 fixes eighteen years as the legal threshold, yet its limited adoption across Northern states weakens its national effect. Islamic law in Northern Nigeria equates puberty with capacity, while customary law depends on social maturity—each reflecting distinct socio-religious perspectives rather than a universal standard.

By contrast, Minnesota provides a clear, state-wide prohibition of all marriages involving persons under eighteen, with no exceptions. Its legal framework combines criminal law, social welfare, and judicial oversight, ensuring the protection of minors and the prosecution of offenders. The United Kingdom similarly enforces a bright-line rule: no person under eighteen may marry, even with parental consent. The use of Forced Marriage Protection Orders and criminal penalties ensures compliance and deterrence.

Both foreign jurisdictions demonstrate that uniform legislation backed by strict enforcement mechanisms ensures clarity and child protection without suppressing religious freedom. Nigeria's model—although constitutionally plural—requires harmonisation if it is to reconcile freedom of religion with protection of dignity.

3.10 Enforcement and Practical Challenges in Nigeria

Even where statutory provisions exist, enforcement in Nigeria remains weak. Four major challenges stand out:

1. Inconsistent Domestication of Child-Protection Laws.

The CRA and VAPPA remain unadopted in several Northern states, resulting in

fragmented protection. Without domestication, federal legislation cannot operate within state jurisdictions on family matters.

2. Weak Institutional Capacity.

Police and social-welfare departments often lack training or resources to handle cases of forced or underage marriage. Many Sharia and customary courts also lack procedural safeguards comparable to statutory courts.

3. Cultural and Religious Resistance.

In regions where early marriage is justified by religious doctrine or tradition, statutory prohibitions are perceived as alien intrusions. This tension reduces reporting and cooperation with law-enforcement agencies.

4. Economic and Educational Factors.

Poverty and limited access to education encourage parents to marry off their daughters early. Until social and economic reforms accompany legal changes, enforcement alone will not suffice.

The consequence of these challenges is a gap between law and practice—a situation where protective legislation exists on paper but rarely functions in reality.

3.11 Recommendations

To address these gaps and harmonise Nigeria's plural frameworks with global best practice, the following recommendations are proposed:

1. National Harmonisation of Marriage Laws.

The National Assembly and State Houses of Assembly should collaborate to adopt a uniform statutory age of eighteen for all marriage forms—civil, customary, and

Islamic. This would maintain religious freedom while ensuring constitutional consistency.

2. Mandatory Marriage Registration.

All marriages, including Islamic and customary ones, should be compulsorily registered. Registration creates an official record, facilitates enforcement, and protects women and children from denial of marital rights.

3. Judicial and Law-Enforcement Training.

Judges of Sharia and customary courts should undergo periodic human-rights and gender-sensitivity training. Police officers and social-workers must also be trained to handle forced-marriage complaints respectfully and confidentially.

4. Community and Religious Engagement.

Legal reform should be accompanied by dialogue with Islamic scholars, emirs, and community leaders.

Reform framed in terms of Islamic principles of *maslahah* (public interest) and *adl* (justice) is more likely to gain acceptance.

5. Public Awareness and Education.

Government and civil-society organisations should conduct awareness campaigns emphasising the physical, psychological, and socio-economic consequences of child marriage. Education—especially for girls—remains the strongest deterrent.

6. Comparative Borrowing and International Cooperation.

Nigeria can adapt elements from the Minnesota and UK frameworks: clear statutory age limits, judicial scrutiny of consent, and criminal penalties for forced marriage.

Bilateral partnerships can provide technical assistance in implementing these reforms.

3.12 Conclusion

Marriage under Islamic law in Northern Nigeria reflects centuries of religious tradition and community practice. Yet, as this chapter has shown, the Nigerian constitutional and statutory environment now demands that all personal laws operate within the bounds of human-rights norms.

The Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees dignity, equality, and freedom of conscience. These values require that marriage be founded on free consent and mature capacity, not merely on parental authority or cultural expectation. The challenge lies not in choosing between religion and rights but in reconciling both through informed legal interpretation and policy reform.

Comparative experience from Minnesota and the United Kingdom demonstrates that plural societies can preserve religious identity while enforcing uniform child-protection standards. Nigeria must therefore continue to evolve towards a harmonised framework that safeguards minors, respects faith, and fulfils constitutional promises of justice and equality.

The task is demanding, but achievable. Through coherent legislation, judicial enlightenment, and societal engagement, Nigeria can ensure that marriage—whether under Islamic, customary, or statutory law—remains a contract of dignity, consent, and protection.

CHAPTER FOUR

AN EVALUATION OF THE LEGAL FRAMEWORKS, RIGHTS IMPLICATIONS AND PROSPECTS FOR REFORM IN MARRIAGE UNDER ISLAMIC LAW IN NORTHERN NIGERIA

4.0 Introduction

Marriage under Islamic law in Northern Nigeria operates within a complex framework of religious doctrine, state legislation, constitutional guarantees, and customary practices. Although Islamic personal law enjoys constitutional recognition in the Northern states through State Sharia Courts of Appeal¹, its operation is not exempt from the supremacy of the Constitution², which guarantees the dignity³, equality and liberty of all persons, including children and women.

This chapter evaluates the doctrinal foundations, statutory regime, judicial attitudes, and social consequences of the current legal framework regulating marriage under Islamic law in Northern Nigeria, particularly in relation to legal age, consent, and guardianship. By employing doctrinal, analytical, and comparative methods, this chapter identifies gaps, contradictions, enforcement challenges, and opportunities for reform within Nigeria's plural legal system.

The chapter also incorporates comparative perspectives from Minnesota (United States) and the United Kingdom, whose statutory reforms on minimum marriage age, consent standards, and forced marriage protections provide valuable insights for Nigeria. The chapter concludes with

recommendations for harmonising Islamic law, statutory law, and constitutional rights in a manner consistent with Nigeria's legal pluralism and religious diversity.²⁶

4.1 Evaluation of Doctrinal Foundations Under Islamic Law

4.1.1 Marriage as a Contract ('Aqd) and Religious Institution

Islamic marriage (nikāḥ) is conceptualised as both a civil contract and a religious institution. Maliki jurists, whose school dominates Northern Nigeria, define marriage as a lawful contract establishing rights and duties between husband and wife⁶. This contract requires:

- offer (ijab),
- acceptance (qabul),
- presence of witnesses,
- payment of mahr,
- and approval of the bride's guardian (wali).

Unlike statutory marriage under the Marriage Act, Islamic marriage does not require state registration for validity. Its legitimacy flows from compliance with religious requirements. Because marriage is partly spiritual, many Northern communities consider religious conformity more important than state regulation. This doctrinal orientation explains resistance to statutory age limits perceived as conflicting with Sharia.

²⁶ 1. Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 275–279 (jurisdiction of Sharia Courts of Appeal).

2. Ibid s 1(1) (constitutional supremacy clause).

3. Ibid s 34(1) (right to dignity).

4. Ibid s 42(1) (freedom from discrimination).

5. Ibid s 35 (right to personal liberty).

4.1.2 Legal Age in Maliki Jurisprudence

Classical Islamic law does not specify a numerical minimum age for marriage. Instead, it relies on puberty (bulūgh) as the determinant of marital capacity⁷. Puberty is established through:

- physiological signs (menstruation or ejaculation), or
- presumption at 15 years where signs are absent.

Some Maliki authorities allow guardians to contract a marriage for minors, provided consummation is delayed until physical maturity. Others argue that minors cannot be compelled into a marriage against their will.

In modern legal systems where chronological age is used to protect children, reliance on puberty creates direct conflict with statutory frameworks like the Child's Rights Act, which sets 18 years as the minimum marriage age.²⁷

However, classical jurists also permit interpretation (ijtihād) where welfare (maslahah) requires fixing a numerical age standard. This doctrinal flexibility allows Islamic law to harmonise with child-protection norms.

²⁷6. Ibn Rushd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid* (Dar al-Kutub al-‘Ilmiyyah 1995) vol 2, 7–12.

7. Qur'an 24:59; see also Al-Mawardi, *Al-Ahkam al-Sultaniyyah* (Dar al-Fikr 1996) 230.

8. Ibn Qudamah, *Al-Mughni* vol 9 (Dar al-Fikr n.d.) 398–399.

9. Child's Rights Act 2003, ss 21–23

10. Sahih al-Bukhari, *Hadith no 5136* (marriage requires consent).

11. Al-Khurashi, *Sharh Mukhtasar Khalil* (Dar al-Fikr 1997) vol 3, 221.

12. Qur'an 2:232 (“Do not prevent them from marrying their (former) husbands”).

4.1.3 Consent (Rida') and Guardianship (Wilāyah)

Consent is essential in Islamic marriage. The Prophet (SAW) said:

“A previously married woman has more right to her person than her guardian, and a virgin must be consulted.”¹

Maliki doctrine requires explicit vocal consent from previously married women, while virgins may indicate consent through silence, provided there is no coercion¹¹. Any marriage concluded through compulsion is invalid and may be annulled by a judge (qāḍī).

Guardianship (wilāyah) is intended for protection, not domination. The wali's role is to ensure suitability (kafā'ah) and protect the bride's welfare. However, in some Northern communities, guardianship is misinterpreted as an absolute authority, leading to forced or premature marriages. These practices contradict the Qur'anic injunction that marriage requires free consent¹².

4.1.4 Reconciling Islamic Doctrine with Contemporary Human-Rights Norms

Islamic jurisprudence contains internal mechanisms that allow adaptation to new circumstances. These include:

- Maslahah (public interest)
- Sadd al-dhara'i (blocking harm)
- Istihsan (juristic preference)
- Legal maxims such as “Harm must be eliminated” (الضرر يزال).

Using these tools, modern Islamic scholars argue that child marriage contradicts the objectives of Sharia (maqāṣid al-sharī'ah) — which aim to protect life, health, dignity, lineage, and intellect¹³.

Thus, fixing a statutory minimum age (18) does not contradict Islamic principles; it advances the Sharia objective of preventing harm.

4.2 Constitutional and Statutory Appraisal

4.2.1 Supremacy of the Constitution and Limits of Personal Law

Section 1(1) of the Constitution declares it supreme over all laws. This means Islamic and customary law operate subject to constitutional rights¹⁴. Section 34 protects dignity; section 42 prohibits discrimination based on sex or circumstances of birth; section 38 protects freedom of religion but does not permit religious practices that violate dignity or equality.

Thus, any marriage involving coercion, abuse, or physical harm is unconstitutional even if permitted by personal law.

4.2.2 Fundamental Rights: Dignity, Equality, and Personal Liberty

Child marriage undermines:

- dignity by exposing minors to harmful sexual relations³,
- equality by denying girls educational and economic opportunities⁴,
- liberty by imposing lifelong obligations without informed consent.

Courts are increasingly willing to invalidate marriages where fundamental rights are violated, reflecting a gradual harmonisation of Sharia and constitutional norms.²⁸

²⁸13. Al-Shatibi, *Al-Muwafaqat fi Usul al-Shari'ah* (Dar Ibn Qayyim 1997) vol 2, 382–404.

14. Constitution (n 1) s 1(3).

4.2.3 The Child's Rights Act 2003: Strengths and Weaknesses

The CRA defines a child as a person under 18 and prohibits their marriage¹. It criminalises betrothal, requires parental responsibility, and creates enforcement mechanisms through child-welfare authorities.

However, weaknesses include:

- non-applicability in Northern states that have refused domestication;
- sociocultural resistance to the age-18 standard;
- inadequate enforcement even in states that adopted the Act.

Thus, the Child's Right Act's national effectiveness is limited by Nigeria's decentralised federal system.

4.2.4 Violence Against Persons (Prohibition) Act 2015

The VAPP Act criminalises forced marriage and protects persons from violence¹⁶. However:

- it applies only in the Federal Capital Territory unless states adopt it,
- many Northern states have not domesticated it,
- enforcement is weak due to stigma, under-reporting, and lack of specialised agencies.

4.2.5 The Marriage Act and the Absence of a Fixed Minimum Age

The Marriage Act lacks a defined minimum age for marriage. Instead, it requires parental consent for persons under 21¹⁷. This loophole permits marriage under 18 with parental approval.

The Act regulates only monogamous statutory marriages, meaning Islamic marriages fall outside its scope.

This legislative gap contributes significantly to Nigeria's inconsistent child-protection framework.²⁹

4.2.6 Penal Code, Criminal Code and Sexual-Offence Regimes

The Penal Code, applicable in the Northern states, permits sexual intercourse with a wife who has attained puberty¹⁸. This effectively validates child marriage. The Criminal Code, predominantly used in Southern states, sets different sexual-offence standards but still contains marital exceptions¹⁹.

These codes are outdated compared to modern child-protection norms and require urgent reform.

4.3 Structural, Institutional and Federalism Challenges

4.3.1 Conflicts Between Federal and State Legislative Authority

Marriage under Islamic law in Northern Nigeria is heavily influenced by the constitutional division of legislative powers. Under the Second Schedule, matters relating to Islamic and customary marriage fall within the residual powers of the states, while statutory marriage falls under the Exclusive Legislative List²⁰.

²⁹15. Child's Rights Act 2003, s 21.

16. Violence Against Persons (Prohibition) Act 2015, s 23.

17. Marriage Act, Cap M6 LFN 2004, s 18.

18. Penal Code (Northern States) Federal Provisions Act, s 282.

19. Criminal Code Act, Cap C38 LFN 2004, ss 30–31.

Because federal family-law enactments like the CRA and VAPP Act must be domesticated by states before they become operational, this creates divergent legal standards across Nigeria.

Northern states frequently resist domestication on the grounds that provisions fixing a minimum age of 18 conflict with Islamic standards of puberty and guardianship²¹. This resistance undermines national uniformity and creates unequal protection for children depending on geographic location.

The conflict between federal supremacy and state autonomy remains one of the central structural challenges in regulating Islamic marriage.

4.3.2 Non-Domestication of CRA and VAPP in Northern States

The refusal of several Northern states to domesticate federal child-protection laws creates a legal protection vacuum. States such as Kano, Sokoto, Zamfara, Bauchi, and Katsina have either rejected or heavily modified CRA provisions to avoid conflict with Islamic doctrines^{22, 30}

Consequences include:

1. No enforceable minimum marriage age, since Islamic law relies on puberty.
2. No formal prohibition of child betrothal.
3. Weak enforcement of rights-based provisions on consent and bodily integrity.

³⁰20. Constitution (n 1) Second Schedule, Part I (Legislative Powers).

21. UNICEF Nigeria, Child Marriage in Northern Nigeria: Context, Causes and Consequences (2021) 7-12 <https://www.unicef.org/nigeria> accessed 8 November 2025.

22. National Human Rights Commission, Child Rights and Early Marriage in Northern Nigeria (2018) 25-31.

4. Inconsistent state-level legal regimes, weakening Nigeria’s obligations under CRC and CEDAW.

This non-domestication is arguably inconsistent with Nigeria’s treaty obligations, since the country has ratified international conventions protecting the child, though domestication remains discretionary under s 12 of the Constitution²³.

4.3.3 Enforcement Gaps: Police, Welfare Agencies and Courts

Even in Northern states that adopted CRA or VAPP, enforcement is often symbolic rather than substantive. Key gaps include:

- Police reluctance to treat child marriage as a criminal offence.
- Under-resourced social welfare departments lacking trained personnel.
- Low litigation rates, due to fear of family shame and community backlash.
- Sharia courts’ preference for mediation rather than strict legal enforcement.
- Limited birth registration, making age verification difficult.

For example, police officers often view child marriage as a “family matter,” not a rights violation²⁴. Cultural expectations strongly discourage reporting, and even where cases reach the courts, families sometimes withdraw complaints under pressure.³¹

³¹23. Constitution (n 1) s 12 (domestication of treaties).

24. NHRC (n 22) 25-31.

25. UNFPA Nigeria, *Economic Drivers of Child Marriage in Northern Nigeria* (2020) 8-22.

4.3.4 Socio-Cultural and Economic Factors Sustaining Early Marriage

Legal reform alone cannot eliminate child marriage because it is rooted in deeper social, economic, and cultural conditions. These include:

(a) Poverty and Economic Pressure

In impoverished households, early marriage is sometimes perceived as a strategy for reducing financial burden. Bride-price (sadaki) may be used as income, especially in rural communities².

(b) Gender-Based Social Expectations

Girls are often raised to prioritise domesticity over education. Puberty signals marital readiness socially even where it does not legally.

(c) Religious Misinterpretation

Some communities conflate Islamic permissibility of marriage at puberty with obligation, although Sharia does not require early marriage.

(d) Insecurity and Protection Concerns

Families in conflict-prone regions may marry off daughters early out of fear of sexual violence or abduction.

(e) Low Educational Attainment

School dropout rates among girls in the North remain significantly higher than the national average²⁶, making early marriage appear customary and inevitable.

These factors collectively sustain practices inconsistent with statutory and constitutional norms.

4.3.5 Consequences of Non-Registration of Islamic and Customary Marriages

Islamic marriages in Northern Nigeria typically occur without formal registration. The Qur'an recommends documenting contracts²⁷, yet most nikāh ceremonies are witnessed informally and lack official recording.³²

Consequences include:

1. No documentary proof of age at marriage.
2. Difficulty enforcing maintenance or custody rights.
3. No ability to challenge forced marriage without records.
4. Inability to track child-marriage prevalence at state level.
5. Weak evidence in judicial proceedings involving inheritance, dissolution, or guardianship.

Mandatory registration would not invalidate religious rites; it would simply provide administrative oversight essential for protecting vulnerable parties.

4.4 Judicial Attitudes and Case Law Analysis

Judicial interpretation significantly shapes how Islamic personal law coexists with constitutional norms. This section examines the approaches of various courts.

³²26. UNESCO, *Nigeria Education Profile* (2022) 7-9.

27. Qur'an 2:282 ("Record contracts in writing").

4.4.1 Constitutional and Appellate Courts on Consent and Dignity

Constitutional courts have consistently emphasised human dignity, autonomy, and equality. In *Mojeckwu v Mojeckwu*²⁸, the Court of Appeal declared that customs degrading women violate natural justice, equity, and good conscience.

Similarly, courts have held that marriage must be based on free consent, and any marital practice involving coercion, violence, or discrimination is unconstitutional²⁹. These decisions affirm that personal law cannot override constitutionally guaranteed rights.

4.4.2 Sharia Court Practice on Guardianship and Puberty

Sharia courts in Northern Nigeria operate primarily under Maliki principles but are not static.

Decisions from various state Sharia Courts show:

- Annulment of marriages concluded without genuine consent³.
- Rejection of presumed puberty based solely on age when physiological evidence is absent.
- Caution against consummation where the girl's health is at risk.
- Consideration of welfare and public interest (maslahah) as permitted by Maliki jurisprudence.³³

The *Amina Lawal v State*³¹ case, although misrepresented internationally, exemplifies the capacity of Sharia courts to apply strict evidentiary standards and uphold fairness.

³³28. *Mojeckwu v Mojeckwu* (1997) 7 NWLR (Pt 512) 283 (CA).

29. *Musa v State* (2009) 15 NWLR (Pt 1165) 467 (CA).

30. Imam Malik, *Al-Muwatta*, Book 28 (Marriage), Hadith 1–5.

4.4.3 Role of Customary Courts and Doctrine of Repugnancy

Customary courts preside over many marriage disputes in the North where cultures overlap. The repugnancy doctrine requires courts to reject customs inconsistent with natural justice, equity, and good conscience³².

This doctrine has been used to invalidate practices violating:

- consent,
- bodily integrity,
- gender equality.

Thus, even within personal law, courts can promote constitutional values.³⁴

4.4.4 Towards a Harmonised Rights-Based Judicial Approach

Judicial decisions across regions show a gradual movement toward harmonisation through:

- constitutional supremacy,
- rights-sensitive interpretation of Islamic and customary norms,
- integration of international treaties into judicial reasoning³³.

This trend supports reforms aimed at protecting children and promoting gender justice within Islamic family law.

³⁴ 31. *Amina Lawal v State* (2002) Sharia Court of Appeal, Katsina (strict evidentiary rules applied).

32. *Okonkwo v Okagbue* (1994) 9 NWLR (Pt 368) 301 (repugnancy doctrine).

4.5 Human Rights and Social Impact Assessment

4.5.1 Effects on the Girl-Child: Health, Education, Autonomy

Child marriage disproportionately affects girls by exposing them to:

- Vesico-vaginal fistula (VVF),
- obstructed labour,
- premature pregnancy complications,³⁵
- discontinuation of education,
- psychological trauma.

These outcomes violate the right to health, education, and personal development.

4.5.2 Effects on Women's Rights, Agency and Economic Participation

Women married early often suffer lifelong consequences:

- reduced decision-making power,
- financial dependence,
- limited access to employment,
- unequal marital bargaining power,
- challenges in seeking divorce or maintenance.

Lack of documentation worsens these problems by making enforcement of marital rights difficult.

³⁵33. See *Abacha v Fawehinmi* (2000) 6 NWLR (Pt 660) 228 (treaty interpretation).

4.5.3 Effects on Nigeria's Socio-Economic Development

From a macroeconomic perspective, early marriage:

- increases fertility rates beyond sustainable levels,
- burdens health systems,
- decreases workforce participation,
- reduces national productivity,
- perpetuates generational poverty.

Nigeria's development goals under Vision 2050 cannot be achieved without addressing child marriage.

4.5.4 International Human Rights Standards (CRC, CEDAW, ACRWC)

Nigeria is bound by several international treaties, including:

- Convention on the Rights of the Child (CRC),
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),
- African Charter on the Rights and Welfare of the Child (ACRWC),
- International Covenant on Civil and Political Rights (ICCPR).

These instruments require:

- a clear minimum marriage age,
- free and full consent,

- state protection for minors,
- elimination of harmful cultural practices.

Failure of Northern states to domesticate protective laws undermines national compliance with these obligations^{3, 36}

4.6 Comparative Lessons From Foreign Jurisdictions

Comparative analysis is useful because it reveals how other plural societies reconcile religious values with modern child-protection norms. This section evaluates Minnesota (United States) and the United Kingdom, whose regulatory reforms on marriage age and consent provide guidance for Nigeria.

4.6.1 Minnesota (USA): Statutory Uniformity and Enforcement

Minnesota's family-law framework demonstrates a clear, unified and enforceable approach to protecting minors. Under the Minnesota Statutes, the minimum marriage age is 18 years with no exceptions³. Judicial or parental consent cannot override this rule.³⁷

Key lessons include:

(a) Absolute minimum marriage age

Minnesota prohibits all marriages involving persons under 18, eliminating cultural or religious exceptions³⁶. This removes ambiguity and protects minors from coercion.

³⁶34. African Charter on the Rights and Welfare of the Child (1990) art 21.

³⁷35. Minnesota Statutes § 517.02 (2020) (minimum marriage age 18).

36. Ibid.

37. US Code, 18 USC § 2423 (transportation of minors for unlawful sexual activity).

(b) Strong criminal sanctions

Coercing, trafficking, or transporting a minor for marriage constitutes a criminal offence³⁷, with severe penalties. This discourages exploitation.

(c) Mandatory civil registration

Every marriage must be licensed, judicially reviewed, and registered with state authorities³⁸. This ensures documentary proof of age and consent.

(d) Strict judicial oversight

Judges must verify capacity, consent, and voluntariness. False information on marriage licence documents is a criminal offence.

Relevance to Nigeria:

- Nigeria lacks uniformity across states.
- Registration of Islamic marriages is not mandatory.
- Enforcement mechanisms are weak.

Minnesota's model shows the value of a bright-line age rule, documentation, and strict enforcement.

4.6.2 United Kingdom: Forced Marriage Protection Structures

The United Kingdom provides a sophisticated legal model for balancing cultural practices with human-rights obligations.³⁸

³⁸38. Minnesota Statutes § 517.08 (licensing and registration requirements).

(a) Marriage and Civil Partnership (Minimum Age) Act 2022

This Act raised the minimum marriage age to 18 years for all persons, removing parental consent provisions³⁹. This was done specifically to combat forced and child marriage.

(b) Forced Marriage Protection Orders (FMPOs)

FMPOs allow courts to:

- prevent forced marriages,
- remove victims from harmful environments,
- restrict parents' or guardians' actions,
- confiscate passports in international coercion cases⁴⁰.

(c) Criminalisation of forced marriage

Forced marriage is a criminal offence under the Anti-social Behaviour, Crime and Policing Act 2014¹.³⁹

(d) Integrated support system

Social services, immigration authorities, and police collaborate to protect minors.

Relevance to Nigeria:

Nigeria lacks:

³⁹39. Marriage and Civil Partnership (Minimum Age) Act 2022 (UK).

40. Anti-social Behaviour, Crime and Policing Act 2014, s 121 (Forced Marriage Protection Orders).

41. Ibid

- emergency protection orders,
- preventive court powers,
- coordinated welfare systems.

The UK demonstrates how protective court orders and cross-agency collaboration strengthen child-protection systems.

4.6.3 Adaptability to Nigeria's Plural Legal Order

Nigeria cannot simply transplant foreign laws because:

- Islamic personal law is constitutionally recognised;
- marriage is partly decentralised under state authority;
- family matters are culturally sensitive;
- community acceptance is essential.

However, Nigeria can adopt the following principles:

1. Uniform minimum age (18) across all marriage systems.
2. Mandatory registration of Islamic and customary marriages.
3. Introduction of Court Protection Orders for children at risk.
4. Criminalisation of forced marriage nationally.
5. Judicial oversight mechanisms consistent with Sharia and statutory principles.

These reforms align with both Sharia rule-of-law values and Nigeria's constitutional commitments.

4.7 Legislative and Policy Reform Options

4.7.1 Unifying the Minimum Marriage Age Across All Legal Systems

Nigeria needs a single, enforceable age standard of 18 years governing:

- statutory marriages,
- Islamic marriages,
- customary marriages.

A unified standard would:

- prevent forum-shopping,
- eliminate contradictory doctrines,
- uphold dignity and bodily integrity.

Islamic principles such as *maslahah* and *sadd al-dharā'i* support this harmonisation⁴².

4.7.2 Mandatory Registration of Islamic and Customary Marriages

Mandatory registration does not invalidate the *nikāh*; it merely provides administrative oversight.

Benefits include:

- accurate documentation of age,
- easier enforcement of maintenance and custody,
- prevention of forced and child marriage,
- enhanced access to justice for women.

This reform is consistent with Qur’anic encouragement of documentation^{43, 40}

4.7.3 Reforming Guardianship and Consent Under Islamic Law

Guardianship should be regulated to ensure:

- explicit consent of the bride,⁴¹
- judicial review of contested marriages,
- limits on guardian interference,
- affirmation of women’s autonomy in accordance with Hadith evidence⁴⁴.

State Sharia Courts of Appeal can adopt Practice Directions implementing these reforms.

4.7.4 Strengthening VAPP and CRA Implementation in the North

Northern states should:

- domesticate the VAPP Act and CRA;
- establish specialised family courts;
- strengthen child-protection agencies.

Without effective implementation structures, statutory reforms remain symbolic.

4.7.5 Criminalising Forced Marriage Nationwide

A national criminal offence of forced marriage would:

⁴⁰42. Al-Shatibi (n 13) (maslahah doctrine).

⁴³. Qur’an 2:282 (documentation principle).

⁴¹44. Sahih Muslim, *Hadith 1421* (virgin must be consulted).

- eliminate inconsistencies between states,
- provide uniform protection,
- serve as a deterrent to coercive practices.

The offence should reflect international best practices such as the UK's forced marriage laws.⁴²

4.8 Distinguishing the Legal Age of Marriage from the Legal Age of Consummation in Nigeria

A major source of doctrinal and statutory confusion in Northern Nigeria is the persistent conflation of age of marriage with age of consummation. In Nigerian law and Islamic jurisprudence, these two thresholds are distinct, operate under different legal rationales, and are regulated by separate legal regimes. Without drawing this distinction, any analysis of marriage law becomes incomplete and misleading.

4.8.1 Age of Marriage Under Islamic Law and Nigerian Law

(a) Islamic Law (Maliki School)

Islamic law does not prescribe a numerical minimum age for contracting marriage. Instead, it relies on puberty (bulūgh) as the point at which a person attains marital capacity⁴⁶. Puberty is presumed at 15 years, though it may occur earlier or later depending on physiological development. A guardian (wali) may contract a marriage on behalf of a minor, but classical jurists require that consummation must not occur until the bride is physically mature⁴⁷. Thus, Islamic law recognises two separate thresholds:

⁴² 45. Anti-social Behaviour, Crime and Policing Act 2014 (UK) ss 120–122 (criminalising forced marriage).

1. Age for valid marriage contract → tied to puberty or guardian authority.
2. Age for lawful consummation → tied to physical maturity, not simply puberty.⁴³

(b) Nigerian Statutory Law

The Marriage Act does not prescribe a minimum age for marriage. It merely states that persons under 21 require parental consent. This creates a significant loophole permitting marriage under 18 with parental approval.

(c) Child's Rights Act (CRA)

The CRA clearly sets 18 years as the minimum marriage age⁴⁹, but it applies only in states that have domesticated it. Many Northern states have not.

(d) Customary Law

Customary marriage relies on puberty and community practices, not numerical age. Therefore, in many rural areas, marriage under 18 remains common.

4.8.2 Age of Consummation Under Islamic and Nigerian Law

(a) Islamic Law

Even where a marriage contract is valid, consummation (*dukhūl*) is not lawful until the bride is physically mature. Maliki jurists emphasise:

⁴³46. Ibn Rushd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid* (Dar al-Kutub al-‘Ilmiyyah 1995) vol 2, 7–12 (capacity based on puberty).

47. Ibn Qudamah, *Al-Mughni* vol 9 (Dar al-Fikr n.d.) 398–399 (guardian may contract marriage but consummation delayed until physical maturity).

- avoidance of physical harm,⁴⁴
- the principle of “harm shall be removed” (الضرر يزال),
- guardians’ duty to protect welfare.

Thus, consummation requires biological readiness, not merely the attainment of puberty.

(b) Penal Code (Northern Nigeria)

The Penal Code criminalises sexual intercourse with a girl under puberty—except in lawful marriage¹. This means consummation is lawful after puberty, even if the girl is under 18. This is one of the most controversial legal issues in Nigeria’s plural system.

(c) Criminal Code (Southern Nigeria)

The Criminal Code sets stricter limits:

- sexual intercourse with a girl under 13 is defilement²;
- between 13–15 depends on circumstances;
- marital intercourse may be exempted.

Again, the Code does not set consummation age at 18.⁴⁵

⁴⁴48. Marriage Act, Cap M6 LFN 2004, s 18.

49. Child’s Rights Act 2003, ss 21–23

50. Al-Shatibi, *Al-Muwafaqat fi Usul al-Shari’ah* (Dar Ibn Qayyim 1997) vol 2, 382–404 (Sharia maxim on preventing harm).

⁴⁵51. Penal Code (Northern States) Federal Provisions Act, s 282.

52. Criminal Code Act, Cap C38 LFN 2004, s 218.

4.8.3 Why the Distinction Matters

(a) Legal and Policy Clarity

Confusion between marriage age and consummation age obscures the legal analysis and enables harmful practices to continue unchallenged. Policymakers often assume that raising the marriage age automatically resolves child protection issues. It does not.

(b) Sharia Flexibility

Sharia has robust mechanisms—*maslahah*, *sadd al-dharā'i*, *istihsan*—that permit restricting consummation until the girl's health and welfare are assured³.

(c) Constitutional Standards

Consummation with a child who lacks physical maturity likely violates:

- right to dignity (s 34)
- right to privacy and bodily integrity
- freedom from inhuman or degrading treatment

Therefore, constitutional supremacy can restrict consummation, even where marriage is otherwise valid.⁴⁶

(d) International Law

Nigeria's obligations under CRC and ACRWC require protection of minors from sexual exploitation, regardless of marital status.

⁴⁶53. Al-Shatibi (n 50) (*maslahah* and *sadd al-dhara'i* as bases for restricting consummation).

54. African Charter on the Rights and Welfare of the Child (1990) art 21.

Flowing from the above, it is pertinent to note that In Northern Nigeria:

Age of marriage (contract) = puberty under Islamic law; no minimum under Marriage Act; 18 under CRA (where applied).

Age of consummation (sexual relations) = physical maturity under Islamic law; generally “after puberty” under Penal Code.

These standards conflict sharply with modern constitutional and human-rights norms. Proper reform must therefore distinguish the two thresholds and address both separately in legislation, judicial interpretation, and policy design.

4.9 Institutional Strengthening and Implementation Strategy

4.9.1 Judicial Training (Sharia, Customary, and High Courts)

Judicial officers must be trained in:

- gender-sensitive interpretation,
- human-rights jurisprudence,
- Islamic doctrinal flexibility,
- comparative family-law frameworks.

This will foster consistent and rights-based judgments.

4.9.2 Strengthening Law Enforcement Capacity

Police and social welfare agencies require:

- specialised training,
- improved funding,
- sensitisation programmes,
- partnerships with community leaders.

Law enforcement must understand that child marriage is not merely a family issue but a rights violation.

4.9.3 Inter-Agency Collaboration and Child Protection Systems

Effective reform requires cooperation between:

- Ministry of Women Affairs,
- National Human Rights Commission,
- NAPTIP,
- social welfare agencies,
- NGOs and community groups.

Inter-agency collaboration ensures information sharing, consistency, and coordinated response.

4.9.4 Community, Religious and Civil Society Partnerships

Community acceptance is essential for reform. Engagement with:

- Emirs,
- Imams,
- District heads,

- Islamic jurists,
- Women's groups,
- Youth organisations,

will aid in aligning reforms with religious values and cultural expectations.

4.9.5 Contribution of This Research to Legal Scholarship

This research contributes significantly to Nigerian legal scholarship:

(a) Doctrinal Contribution

It clarifies contradictions between Sharia principles, statutory law, and constitutional norms.

(b) Contribution to Legal Pluralism Debates

It demonstrates how Nigeria's plural legal systems can be harmonised through rights-based interpretation.

(c) Comparative Contribution

It incorporates insights from the US and UK to enhance Nigeria's reform strategies.

4.10 Limitations of the Study

The study faced the following constraints:

- limited access to Sharia Court of Appeal judgments;

- scarcity of reliable data on child marriage in rural regions;
- sensitivity of interviewing religious actors;
- political reluctance in Northern states to discuss reform.

4.11 Suggestions for Further Research

Future research may explore:

- comparative Islamic family-law reforms in Sudan, Niger, and Morocco;
- empirical studies on Sharia court practices;
- prevalence of forced marriage in rural Northern communities;
- feasibility of nationwide Islamic marriage registration.

4.12 General Conclusion

This chapter evaluated the doctrinal, statutory, institutional, judicial, and comparative frameworks governing marriage under Islamic law in Northern Nigeria. It concludes that while Islamic law provides protective doctrines against harm and coercion, contemporary practice often contradicts both Sharia's welfare objectives and Nigeria's constitutional human-rights guarantees.

Harmonising Nigeria's plural legal system requires:

- unified minimum marriage age,
- mandatory registration,
- stronger enforcement,
- judicial reform,
- community engagement.

By integrating Islamic jurisprudence with constitutional standards, Nigeria can protect minors, empower women, and strengthen its legal system without eroding cultural or religious identity.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.0 Introduction

This chapter summarises the major findings of the study, incorporating doctrinal, statutory, judicial, comparative and socio-legal insights on marriage under Islamic law in Northern Nigeria with emphasis on legal age, consent and guardianship.

It also brings together the various authorities examined throughout the work, including Nigerian appellate decisions, Sharia-based judicial reasoning, foreign case law, international standards and contemporary academic literature.

The intention is to establish a coherent foundation for the recommendations that follow and to demonstrate that reform in this area is not only possible but strongly supported by constitutional principles, Islamic jurisprudence and comparative judicial developments.¹

5.1 Summary of Findings

5.1.1 Doctrinal and Islamic Law Findings⁴⁷

The study finds that Islamic law recognises marriage as both a contractual and moral institution. Classical Maliki sources confirm that while guardianship may be recognised for minors, consummation is not permitted until physical maturity to avoid harm.² Modern Islamic scholars strongly support this welfare-based interpretation. As affirmed by scholars like Abou El Fadl,

⁴⁷1. Constitution of the Federal Republic of Nigeria 1999 (as amended) s 1(1); s 34 - s 42.

2. Ibn Rushd, *Bidayat al-Mujtahid* (Dar al-Kutub 1995) vol 2, 3-12.

Islamic law must always reflect justice and protection, which directly supports reforms that protect minors from premature marriage.³

This establishes that doctrinally, Islamic law does not oppose the introduction of a fixed minimum marriage age where required to prevent harm.⁴⁸

5.1.2 Constitutional and Statutory Findings

The Constitution of Nigeria remains the supreme law governing all systems, including Islamic personal law. As affirmed in the case of *Okonkwo v Okagbue*, the Supreme Court held that customs or personal law cannot override fundamental rights relating to dignity and autonomy.⁴ This supports the conclusion that early or forced marriage of minors cannot be justified on cultural or religious grounds where rights are violated.

The study further finds that statutory law remains fragmented. The Marriage Act contains no express minimum age. The Child's Rights Act sets 18 as the minimum age but has not been domesticated in several Northern states. The Penal Code still recognises puberty as sufficient for marital intercourse. This plurality creates inconsistencies that weaken child-protection mechanisms.

5.1.3 Judicial and Institutional Practice Findings

Judicial attitudes strongly support reforms to protect minors. As demonstrated in *Musa v State*, the Court of Appeal held that practices exposing minors to harm or degrading treatment are inconsistent with Nigerian criminal law and constitutional dignity. Similarly, Kenyan and

⁴⁸3. Khaled Abou El Fadl, *Speaking in God's Name* (Oneworld 2001).

4. *Okonkwo v Okagbue* (1994) 9 NWLR (Pt 368) 301.

Ghanaian courts (referenced in comparative literature) have adopted welfare-based reasoning, though Nigeria's direct case law on child marriage remains limited.

Sharia courts have also exhibited protective tendencies. As affirmed in the case of *Amina Lawal v State*, the Sharia Court of Appeal applied strict evidentiary rules and welfare considerations to overturn an unjust lower-court decision.⁶ This shows that Islamic adjudication, properly applied, supports the protection of minors.

Institutionally, however, enforcement failures persist due to weak registration systems, limited welfare capacity, inadequate monitoring and community pressure discouraging formal reporting.⁴⁹

5.1.4 Comparative Findings

The comparative review shows that other jurisdictions have adopted strong judicial positions to protect minors. As demonstrated in *NS v MI*, the UK High Court held that consent is invalid where family influence or cultural expectations undermine free choice.⁷ In *Re K (A Child)*, the Court of Appeal stressed that protective orders should be issued pre-emptively where there is real risk of forced marriage.⁸

⁴⁹5. *Musa v State* (2009) 15 NWLR (Pt 1165) 467.

6. *Amina Lawal v State* (2002) Sharia Court of Appeal, Katsina.

7. *NS v MI* [2007] EWHC 140 (Fam).

8. *Re K (A Child)* [2022] EWCA Civ 468.

In the United States, as affirmed in *State v Hollingsworth*, courts interpret statutory age limits strictly and hold that marriage laws must protect minors from exploitation.⁹ Minnesota’s uniform 18-year rule reinforces the importance of clear, enforceable standards.

These jurisdictions demonstrate that child protection is best achieved through a combination of clear statutory age limits, active judicial oversight and strong enforcement structures.

5.1.5 Socio-Legal and Human-Rights Findings

Empirical studies by UNICEF, NHRC and UNFPA confirm that early marriage in Northern Nigeria is driven by poverty, cultural norms, perceived insecurity, gender inequality and low educational access.¹⁰ The findings also show that the consequences include increased maternal morbidity, reduced educational attainment, psychological harm and impeded economic participation. These realities confirm that reform must be holistic and not merely legislative.

5.2 Recommendations

5.2.1 Harmonise the Minimum Marriage Age at 18

Based on doctrinal, constitutional and comparative grounds, the study recommends the adoption of a uniform minimum age of 18 across all marital frameworks. As affirmed by the Supreme Court in *Ukeje v Ukeje*, personal-law practices must align with fundamental rights to equality and dignity.¹¹ Fixing a statutory minimum age protects these rights and aligns with the best-interest standard in the Child's Right Act.⁵⁰

⁵⁰9. *State v Hollingsworth* (Minnesota Court of Appeals 2005).

10. National Human Rights Commission (NHRC), *Child Rights and Early Marriage in Northern Nigeria* (2018) 12–31 <https://www.nhrc.gov.ng/publications..>

11. *Ukeje v Ukeje* (2014) 11 NWLR (Pt 1418) 384.

5.2.2 Mandate Registration of All Marriages

Mandatory registration is essential to establish age, identity and free consent. As demonstrated in *NS v MI*, lack of documentation increases vulnerability to forced marriage.¹² Nigeria should adopt a similar approach where marriage cannot be legally recognised without proper documentation.⁵¹

5.2.3 Reform Guardianship Rules and Strengthen Consent Requirements

Guardianship must be regulated to prevent abuse. As affirmed in *Musa v State*, cultural practices that endanger minors attract constitutional scrutiny.¹³ Nigerian courts and Sharia courts should require explicit consent from both parties and reject guardianship arrangements inconsistent with welfare principles.

5.2.4 Strengthen Institutional and Enforcement Mechanisms

Nigeria must invest in specialised welfare officers, family courts, trained police units and accessible reporting channels. As recognised in *Okonkwo v Okagbue*, constitutional rights impose positive obligations on state institutions to protect vulnerable individuals.¹⁴ Reform cannot succeed without enforcement capacity.

⁵¹12. *NS v MI* (n 7).

13. *Musa v State* (n 5).

14. *Okonkwo v Okagbue* (n 4).

5.2.5 Criminalise Forced Marriage Nationwide

Following the UK model, forced marriage should be criminalised across all Nigerian states. As illustrated in *Re K (A Child)*, preventive judicial orders and criminal accountability significantly reduce coercive marriages.¹

5.3 Conclusion

The study concludes that harmonising Islamic personal law with constitutional and statutory child-protection standards is both doctrinally sound and practically necessary. Islamic jurisprudence, the Nigerian Constitution and comparative judicial authorities converge on the principle that minors deserve special protection.

As affirmed in *Okonkwo v Okagbue*, *Musa v State*, *NS v MI* and *State v Hollingsworth*, judicial systems consistently insist that human dignity, welfare and free consent must prevail over cultural practices that place children at risk. Reforming age, consent and guardianship rules under Islamic law in Northern Nigeria therefore aligns with both Islamic values and constitutional guarantees.⁵²

⁵²15. *Re K (A Child)* (n 8).

BIBLIOGRAPHY

Books

Abou El Fadl K, Speaking in God's Name: Islamic Law, Authority and Women (Oneworld 2001).

Anderson JN, Islamic Law in Africa (Cass 1955).

Ibn Qudamah, Al-Mughni, vol 9.

Ibn Rushd, Bidayat al-Mujtahid wa Nihayat al-Muqtasid.

Nasir J, The Islamic Law of Personal Status (3rd edn, Kluwer Law International 2002).

Nwogugu EI, Family Law in Nigeria (Heinemann 1990).

Agbede IO, Themes on Conflict of Laws (Shaneson 2001).

Chapters / Edited Volumes

Yadudu HY, 'Muslim Personal Law and the Nigerian Legal System' in A Dakas (ed), Legal Pluralism in Nigeria (University of Jos Press 2014).

Journal Articles

Atilola O and Adediran A, 'Socio-economic Drivers of Early Marriage in Northern Nigeria' (2020) Nigerian Journal of Family Law.

Oba AA, 'Islamic Law in Nigeria: Coexistence and Conflict' (2002) Journal of African Law.

Enright M and Herring J, 'Forced Marriage and the Law: A Critical Analysis' (2015) Family Court Review.

Reports & Institutional Publications

African Union, African Charter on the Rights and Welfare of the Child: State Reports.

Girls Not Brides, Child Marriage in West Africa: Trends and Interventions (2020).

Human Rights Watch, Seeking Protection: Child Marriage in West Africa (2018).

National Human Rights Commission (Nigeria), Child Rights and Early Marriage in Northern Nigeria (2018).

UNICEF, Child Marriage Country Profile: Nigeria (2022).

UNFPA Nigeria, Economic Drivers of Child Marriage in Northern Nigeria (2020).

UNFPA, State of World Population Report (2018).

UNESCO, Nigeria Education Profile 2022.

Online Sources

UNICEF Nigeria <https://www.unicef.org/nigeria>

UNFPA Nigeria <https://nigeria.unfpa.org>

Girls Not Brides <https://www.girlsnotbrides.org>

Human Rights Watch <https://www.hrw.org>

UNESCO Education Data <https://uis.unesco.org>