

Under-Age Marriage Issues in Nigeria and the Islamic Position

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Abstract

Almighty God has declared His great favour on the believers by stating in the Qur'an that: "And enter into nikah (marriage) with women that are seem good to you..."(Q4:3). Therefore, it is clear that the natural comfort for man lies in woman. Normal and intelligent men will choose women in order to establish marital ties. In this regard, Allah (SWT) had completely considered this preference and natural desire of man. Man has been given the choice to choose. The noble Prophet Muhammad (SAW) has also outlined and enumerated the several benefits and virtues of marriage in many of his sayings. One may thus understand that, marriage in Islam offers tranquility to the soul and peace of mind, so that man and woman may live together in an atmosphere of love, mercy, harmony, understanding, co-operation, mutual advice and tolerance. All these will eventually lay the foundation for raising a Muslim family in a nurturing and sound environment. This study, therefore addresses the issues of two major under-age marriages in Nigeria, as they affect a Muslim Senator and an Emir, with the perception of Islam on marriage of Muslim girls. Few recommendations are given before conclusion.

Key words: Islam, Marriage; Under-age; Choice; Tranquility; Nigeria.

Introduction

Marriage is a universal phenomenon, which is very common to all cultures, places and peoples in the world. There is no community, tribe, clan, locality or continent where marriage is not being contracted. To the best of our knowledge and from what we have witnessed among people in general, marriage contract has always been between the rich and the poor, the civilized and uncivilized, the literate and the illiterate, the old and the young, etc.¹ In fact, marriage is everywhere. However, attitude and perception of people towards the type of man or woman to marry differ, and this could be referred to as a matter of choice. In Islam, there is no regulation on who should make the offer to marry between the two sexes. References are abound in the Qur'an and Islamic history where women first shown interest in their husbands and vice versa.

The thrust of this paper, however, is to explain the position of Islam on underage marriage; an issue which has generated a lot of heated discussions among various scholars in Nigeria, especially as it affects Muslim religious and political leaders. The paper focused on marriage in Islam, marriage in some cultures; under age marriage issues in Nigeria; Islam and early marriage; recommendations and conclusions.

Marriage in Islam

Marital institution in Islam is a strong foundation. Islam unlike others faiths advocates for it study; Islam on one hand kicks against illegal sexual relationship such as fornication and adultery. It also on the other hand condemns suppressing the sexual urge through celibacy, monasticism castration and the likes.²

The Islamic terminology for marriage is '*Nikāḥ*', literally it means sexual intercourse and technically, it is a voluntary union of a man and a woman coming together to legalize sexual satisfaction as a husband and wife. It is the union of two souls for love and two bodies for procreation and legitimizing offspring as a family. It is salutary that both sexes will need the company of each other in order to find solace.³

According to the majority of the school of thoughts in Islam, marriage may either be obligatory, recommendatory or supererogatory. Imam Abu Hanifah, Hambal

and Malik bn Anas postulated that marriage is recommendatory but may be compulsory for a man and a woman who are nursing fear of committing fornication (*zinā*). While it could be recommendatory for someone who has a strong will to control his sexual urge and who has a means to raise children in a family way. It is considered as supererogatory for someone who can control his sexual desires and has no flair for procreation.⁴ The Qur'an buttresses this when Allah says:

And marry those among you who are single and those who are fit among your male slaves and your female slaves, if they are needy, Allah will make them free from want out of His grace and Allah is ample giving knowing. Q24:32.

In another *Sūrah*, Allah says:

And among His signs is this that He created for you mates from among yourselves that you may dwell in tranquility with them and He has put love and mercy between your hearts. Undoubtedly, in these are signs for those who reflect. Q30:21.

Allah again says:

And Allah has made for you, your mates of your own nature and made for you out of them sons and daughters and grand children and provided for you sustenance of the best. Q16:72.

The noble Prophet Muhammad enjoins marriage thus:

O you young men: whoever among you who can afford to support a wife then, he should marry, for it keeps the eyes from glancing and prevents immorality and whoever cannot afford to do so, then he should fast in order to control his desire. (Sahih Al-Muslim: Hadith 794 P.435).

Also, he said: one who marries has already fulfilled half of his religion, therefore, he should fear Allah for the other half. (Nasiru-d- Din Al-Albani: Silsilatu Ahadith As-Sahihah: Hadith 625, And Imam Al-Bayhaqi Hadith 5486)

The essential features of marriage in Islam are:

Ijāb wal Qubūl (offer and acceptance)
Waliy (Guardian)
Mahr/Sadāq (bride gift), and,
Shāhidayn (Two upright witnesses)

Prior to the four important features, a Muslim must make religion a yardstick for making marital choice.⁵ The mutual consent of the two intending couple must be plain. The pronouncement of the offer and acceptance should be pronounced in a language that is understandable by the couples. The formulae are "I marry you" and "I accept". It should not be expressed in the futuristic sense of willingness.⁶

Allah says:

"Marry women of your choice", Q4:3.

Waliy signifies the approval of the parent or guardian. It is another important characteristic of Islamic marriage. Either the biological father or a closer male member of the bride must be assigned to validate the joining of the bride to the groom.

Allah says

"Marry them with the permission of their people". Q4:25.

Bridal gift popularly referred to as *Ṣadāq* (dowry) is the amount of money, materials or any lawful wealth required by a bride as a bridal gift. It is mandated by the Qur'an as a gift alone for the bride.⁷

The Qur'an says:

And give the women (on marriage) their bridal gift as an obligation, but if they, of their own good, remit any part of it to you, take it and enjoy it with right good cheer. Q4:4.

Witness is the last important feature of Islamic marriage. There must be at least two witnesses of probity for a successful completion of marital contract. The presence

of at least two sound male adult makes the conclusion of marital contract valid and anything that comes out of the relationship after these aforementioned characteristics is considered to be legal in Islam.

The wedding feast which is commonly referred to as *walīmatun-nikāḥ* is a recommended rite of marriage by the noble Prophet Muhammad (SAW). Marriage is not a secret affair in Islam. The groom according to Islam shall bear the expenses of wedding feast. The entertainment could take place in an event centre or at the groom's house or family house. It could be an elaborate or a moderate one, but to observe moderation is more preferable according to the Prophetic tradition.⁸

It is no news that in Islam, both men and women have obligations towards each other, while the husband serves as a protector and supporter (especially financial) of the family- the wife takes care of the family by caring for all members e.g. children, providing for their health, training their bodies and souls and educating them in knowledge and morals.⁹

Marriage in Some Cultures

Marriage is the legal relationship between a husband and wife while culture is a way of thinking, behaving or working. It is the beliefs, customs, and arts of a particular society or groups.¹⁰

Marriage is an institution that has shaped the foundation of families throughout the human history. Though, the traditions that surround marriage ceremonies, choosing a marriage partner, as well as the obligations and rights of marriage vary from one culture to another.

In African culture, marriage is a life-long union of husband and wife for mutual support and progeny to continue the ancestral line and to promote the welfare of the tribe or clan. In that case, anybody who under normal circumstances fails to exchange marital vow in heterosexual manner is tantamount to be committing a grave sin in the eyes of the society, thus, people will be against him. This enhances the collaborative efforts of African people to prepare people especially the youth for marriage and to make them think in terms of marriage.¹¹

In African traditional society, the tribal group comes first; the individual cannot exist without their families and communities. Two people who get married unite themselves and their respective families and communities. Because the obligation to get married is the only means of human survival as far as the view of African people is concerned. Through marriage and child bearing, the human is preserved, propagated and perfected. Marriage and child bearing are the focus of life and they are at the very centre of human existence.¹² Thus, some valuable traditions in African marriages are:

- i) Choosing a partner for child or children including the unborn child
- ii) Arrangement of meeting with the in-laws
- iii) Organising a grand marital ceremony which is full of traditions such as knocking the door, libation ceremony, tying the knot, tasting the four elements i.e. sour, bitter, hot and sweet, jumping the broom, crossing the sticks, etc.

For instance, 'Kukumbira is a marital culture among the Shona people in Zimbabwe. It is a custom that demonstrates love and devotion of men in marital setting. It builds affection, social order and love rather than creating enmity. This is being described as a process that involves a serious procedure that can last for months if not years. Thus, it necessitates the consent of both families.¹³

Kukumbira custom demands that a girl be married off with her consent and that of her parents and the man should be of her own choice. *Mukuwosha* is referred to as the suitor who will be given an invitation to meet with the family of the bride in order to formalize and clarify the intention of the suitor. After which the suitor's parents seek for the hand of inter-mediator (*munyai*) to meet with the bride's father (*tezivara*). A hoe (*badza*) is then hand over to the bride's father and this stands for (*muroro*) i.e. a permission to speak to in-laws. *Masunnungurahomwe*, is a certain amount of money paid by the suitor before the final formality of the marital culture.¹⁴

The wedding custom in Ethiopia varies among the diverse tribes. Some of the important ones are: the Mareko tribe used to arrange marriage popularly known as *Tewaja*: accidental wedding; *Ahilima'Gusno*: wedding by Abduction; *'Herima*: wedding by fooling a bride; *'Abagadima*: when a girl proclaim her love for a man in front of the man's family. *'Membetoma*: a system of replacing a deceased wife with her own blood sister, etc.

Tewaja in brief is a situation whereby the groom informs his friend to proclaim to his family his beloved girl. If the family concurs, then marriage preparation begins.

The Berna tribe of the Southern Ethiopia requires a man to jump a row of oxen before a life partner is chosen and once he completes the fourth round of the jumps, he only eats meats, honey and drink only milk for three consecutive months until he finds the right life partner. Negotiation is the major tradition among the Amhara people of Ethiopia. The two families link each other with a civil ceremony to seal the marital contract.¹⁵ Most Kenyan communities have at least two or three meetings for the sake of wedding tradition. This entails the groom's family first visitation to the bride's family. This serves as a formal introduction for each of the families.

The second meeting is meant for the discussion of bridal gift popularly called dowry. The dowry may be settled immediately or postponed till the wedding plans are over. The third is the ceremony proper. There are two ceremonies concerning marriage. There is one that can be completed at the bride's house which includes much wine and dine with piles of local foods such as *ugali*, chicken, fish, beef, meat, rice, etc. The second one is the celebration that takes place at the groom's house on the morning of the day that the bride is picked.¹⁶

The Massai people of Kenya on the other hand marry off their daughters to an unknown man. This custom of Massai people has been described as a bitter sweet experience for the intending bride. Though, children grow up with their peer group and there is always a level of familiarization among them. But opportunity to marry one's choice is lost. The marriage ceremony entails father spitting on the head and breast of the bride. She then moves to the husband home without looking at the back and with the belief that looking at the back will make her turn to stone.

Kupamba is another wedding custom that is common among the Kenyans. This is a ceremony that takes place a day after the normal wedding right. It is the display of the bride. It is in form of a get together strictly for women.¹⁸

In the case of the Namibians, which comprise of many tribes such as: Nama, Damara, Orambo, San and Herero, wedding traditions differ from one tribe to the other. But one common marital culture among the Namibian is the kidnapping of their brides. Although a couple's parents must have a prior agreement to a proposal for marriage. The bride is kidnapped before the ceremony and dressed up in a leather dress, some weeks before the wedding ceremony. Until the ceremonial day, she remains concealed. Some of the marital rite items are; butter fat from cows for anointing the bride, goat meat for feeding people during the celebration, etc.¹⁹

The Swahili first phase of marital custom is the offer and acceptance and this is in a symbolic way. The intending groom presents a ring to the lady and if she accept it, then the motion is set already and the process of getting married can start. Some of the pre-marital customs are Henna party which is exclusively for women. *'Kirumbizi* custom is a dance done by men alone. It is a stick dance that stimulates ancient fighting. *Nikāh* is the actual wedding ceremony where the marital vows are completed.²⁰

The Nupe people in the North central of Nigeria always conduct their marital custom according to Islamic teachings. Though, there is a slight modification with some local tradition, such as a new bride visiting most of or even all the houses in her parents' neighborhood to greet and receive advice and blessings from elders in the community.

The Wodabe popularly known as Fulani have two different forms of marriage: The *Koobgal* and *Teegal*. *Koobgal* is a betrothed arrangement made by parents when

children are around 2-4 years. *Teegal* is a marital custom that involves marriage across clans and choosing of a partner on one's free will.²¹

The Sudanese have three important aspects of wedding custom viz: betrothal, *Nikah* and consummation. It is noteworthy that most Sudanese are predominantly Muslim, though, arranged marriages are popular among the Sudanese and sometimes the marriage seems perfect. The marital traditions commence with *Aqdu-n-Nikah*, followed by a small party and lastly consummation follows.²²

The marital custom of the Becheve tribe in Obanliku local government in Cross River State is known as money marriage. This tradition is described as a thing of pride and show off among the Becheve people. A young girl is being sold out without her consent in order to clear debt owed by a family relation even before she was born. And once the girl is being sold for marriage, she is deemed dead by her own immediate family and warned never to return back irrespective of any ordeal or calamity that might befall her in the matrimony.²³

Under Age Marriage Issues in Nigeria

Child's or minor marriage is one of the turbulent issues in the world especially in Africa and predominantly in many parts of Nigeria. Child's marriage is described as a formal or informal union seal by individual before attainment of certain minimum age specified by several global organisations such as UNICEF as minors under the age of 18. It also includes a court approval of early marriage for a teenage pregnancy, which is contrary to the teachings of Islam.²⁴

Historically, child marriage was common around the world when the average life expectancy did not exceed 50 years old. The tradition of child's betrothal was considered an effective practice to increase population. Ancient Israel betrothed girls before the age of fifteen often at the start of their puberties. Ancient Greek also encouraged teenage motherhood and China is not left out.²⁵

Religiously Hindu relic scriptures sanctioned the age of a girl's marriage as three years, after the onset of puberty. While Judaism, considered twelve years and a day as minimal girl age for marriage. In Christianity, it is claimed that at the time of Mary, the mother of Jesus was twelve to fourteen years old. Within Catholic Church before 1917 code of Canon law, the minimum ages of marriage were fourteen for males and 12 for females.²⁶ In Islam the Qur'an does not state a specific legal age of marriage but small or very young or unmatured children cannot be married. Islam encourages the age maturity. Thus, it is not enough to reach the age of puberty but the age of maturity especially mental development. And the level of maturity may vary from individuals. And the issue of marriage is always addressed to women (*Nisā'*) in the Qur'an and not children.²⁷

Allah (SWT) says:

"And make the trial of the orphan until they attain the age of marriage, then, if you find in them sound judgment, release to them their property". (Q.4v.6)

In the earlier verse of same chapter, Allah says:

"And if you fear you will not be fair in dealing with the orphans, then marry women of your choice". (Q.4v.3)

He also says:

"And give the women their dowries willingly". (Q.4v.4)

Some causes of child's marriage include poverty, bride price, dowry, archaic cultural traditions, laws that allow child's marriage, religious and social pressures, regional tradition, fear of remaining unmarried, illiteracy etc. Child's marriage violates the right of children in all ramifications. Statistics by the United Nations International Children Education Fund (UNICEF) revealed that Africa has the highest incidence of child's marriage. The issue is more pronounced in Nigeria especially in the Northern part of the country and mostly in the rural areas. And in spite of the laws that have been put in place to combat the menace, the perpetrators normally go scot free because of the ineffectiveness of the law.²⁸

For instance, Senator Ahmad Yerima was elected governor of Zamfara State twice i.e 1999 and 2003. He was also elected a Senator who represented Zamfara West Constituency for ANPP in 2007 and 2011 respectively. He was accused of marrying a 13-year-old Egyptian girl in 2010, with the payment of \$100,000 (E 66,000) to the child's parents. The Nigeria human right organizations claimed that he had violated the child's right law and that the marriage violated, section 23 of the Child Rights Act of 2003 the accusation was dropped on the claim that, the Nigeria Government has no power to legislate on marriage under Islamic law and customary law including matrimonial cases. Also, the Senator maintained that he had not violated *Shari'ah* law due to the fact that a similar issue occurred with the noble Prophet Muhammad.²⁹

The case of Ese Oruru a thirteen-year-old girl from Opolo Yenogoa Local Government Area of Bayelsa State is a similar. Ese Oruru was claimed to be abducted on August 12, 2015 by Yinusa and was taken away to Kano where she was allegedly converted to Islam and forced to marriage. The story of Ese Oruru abduction sparked national outrage, and authorities across the country were forced to intervene. She was later released but already pregnant for her acclaimed abductor.³⁰

A related case is the criticisms that followed the marriage of eighteen year- old Saadetu Barkindo-Musdafa by the former Emir of Kano, Sanusi Lamido Sanusi II. People were in grouse towards the action of the Emir. While he clarified to the public that, the lady has already under the law attained a marriageable age. She was already eighteen and out of secondary school and was as at then proceeding for undergraduate programme. She as well gave her consent to the marriage. And importantly, the consummation was to be delayed until she would be 21 years old.³¹

Islam and Early Marriage

One of the biggest misconceptions about Islam is that it permits child's marriage and thus considered to be an archaic, oppressive and irrational action by some non-Muslims. Many people hold the belief that Prophet Muhammad was the originator of child's marriage because of his marriage to Aisha (*RTA*). While some Muslims use this marriage as an excuse to marry young girls and claim that they do it to emulate Prophet Muhammad. For instance, Senator Ahmad Yerima of Zamfara while he was charged to court for the offence of minor marriage claimed that he followed the footsteps of the noble Prophet Muhammad (*SAW*).³² Some people had termed it as rape, since such children have not developed and matured in sexual awareness to comprehend sex.

Aisha's age at the time she was married to Prophet Muhammad has been subjected to a debate for a very long time. According to *Sunni* scriptural source, Aisha was six or seven years old when she was betrothal to Prophet Muhammad and consummated when she was at the age nine or ten years old.³³ While Muhammad 'Ali and some contemporary scholars disregard the account that Aisha was six or seven at the time of betrothal and nine during consummation. He argued that Aisha was ten at the time of betrothal and fifteen during consummation.³⁴ It was noted that marriage of Aisha with Jubair Ibn Mut'im was put aside by common consent. As that Abu-Bakr was not certain at first, as to the propriety of legality of marrying his daughter to his brother. And that Prophet Muhammad hoped to strengthen his ties with Abu-Bakr because the strengthening of ties was commonly served as a basis for marriage in Arabian culture.³⁵

Similarly, in order to facilitate the understanding of her age, it was clarified that the Prophet first wife Khadijat passed on in the tenth year of *Hijrah*. And the approach was made to Abu-Bakr for the hand of Aisha. While the emigration took place three years later and Aisha joined the Holy Prophet in the second year of emigration. So, if Aisha was born in the year of the call, she would be ten years old at the time of betrothal and fifteen at the time of consummation.³⁶

From the opinions of some early and contemporary scholars, child's marriage cannot be considered to be legal and sound due to the fact that Islamic marriage requires some important principles as vividly laid down by the Qur'an and *Hadith* of

Prophet Muhammad. Firstly, marriageable age in Islam is equated with sound judgment. And this is an age in which a person can responsibly handle his or her possession. Marriage according to Qur'an is termed as a solemn affair i.e. *Mithāqun Galīzun* thus; it demands a huge amount of responsibilities which are not a child's play.³⁷

According to *Shari'ah*, marriage requires some important prerequisites for its validity viz: Offer and acceptance, guardianship, bride gift and witnesses. While the prophetic saying clearly confirmed that, marriage is not a thing of a child. He says "A woman is sought in marriage on account of four things: her property, her family, her beauty and her piety, you should seek to win the one who possesses piety, thus shall you prosper."³⁸ (Muslim 3457, Abu Dawud 2042)

In Islam, being a house wife or mother is regarded as the most valuable of all occupations of a woman, due to the fact that, it safeguards the next generation and gives comfort and support to the existing ones. Allah says: "The righteous women are devoutly obedient and guard in (the husband) absence what Allah would have them guard". (Q.3v.34). Thus, to be a good mother in Islam is so important that a woman is considered to be the most precious treasure in the world and her role is the decisive factor in the family. The Prophet says: "A woman is a shepherdess in charge of her husband's house and children and she is responsible for them."³⁹ (Bukhari and Abu-Dawud).

Noteworthy, is the fact that child's or minor marriage is a thing of tradition or custom rather than religion. Also, it is the fact that the rampant and over sexualized environment and social stimuli that most children of nowadays are exposed to during early childhood all over the world can lead a nine year- old girl to be crushing on young and adult male. And sometimes, young girls of age nine can go into sexual relationship, be betrothed or get into marriage based on many interrelated factors. Puberty or rapid growth is another important factor but it is sometimes found out to be a thing of culture more than religion. For instance, the custom of money marriage in Obanliku area of Cross River State, which is still intact in the twenty-first century.⁴⁰

So, from the opinions of some Islamic scholars, it is evident that Islam has not set a clear age for marriage and Prophet Muhammad did not rule that, every Muslim must betroth a minor or a child. The marriage of 'Aishah was a divine and an exceptional one for the Prophet. While Ahmad As-Sawy was quoted to have stated that: "there was an account which put Maryam's (the mother of Prophet Isa) age of motherhood at 10 years. And that it will be wrong to compare these special servants of Allah with today's beings. And it is a great sin to also vilify them".⁴¹

However, it should be noted very strongly that Islam encourages early marriage but not a child or minor. It is of the popular sayings of some Muslim scholars that: virgin girls are like fruits on trees. If not plucked in time, the sun will rot them and the wind will disperse them...".

Recommendations

Having presented in this study to an extent the views of various peoples and nations in Africa and Nigeria specifically on marriage, as well as the real position of Islam on same, with a major concern on under age (child) marriage issues which had become a serious concern among Nigerian Muslims; the following recommendations become apt:

1. *Shari'ah* courts should be developed and operated across Nigeria in order to propagate pristine Islam and punish abusers, especially on child or minor marriage.
2. Muslim Scholars should intensify efforts on the sensitization of Muslim families and communities against child marriage as it doesn't conform to Islamic tenets.
3. Government of various places should make laws to bring offenders to book and make examples of them to serve as deterrent to likely others.
4. Basic education should be made compulsory, affordable and accessible, especially girl child education be given special attention.

5. Islamic religious regulations should be given more priority for consideration of marriage at all times and in all climes.
6. Orientation agencies of government should increase efforts on information and sensitization of the populace on the dangers child marriage portends to individuals and society.
7. Victims of child marriage should be assisted by individuals, groups, societies and government to regain social relevance as they could play vital role in curbing the menace.
8. The NGOs, national and international bodies should collaborate further to work against the practice of minor marriage.

Conclusion

It is quite evident from our discussion that child marriage is more of a thing of custom and tradition rather than of religion. This practice enjoys no canonical textual support or scholastic validation in mainstream of Islam. The marriage of Aisha (R.A) to Prophet Muhammad is usually been misconstrued or deliberately referred with ignorance. More so, despite its predominance in Africa and northern Nigeria, this practice is not limited to Nigeria or common to Muslims only, therefore, efforts should be coordinated towards a frontline in finding enduring solution to this social canker. It is thus the position of this study that minor, child or under marriage has no basis in Islam and therefore should henceforth be discouraged.

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