THE NIGERIAN CONSTITUTION AND THE GENDER QUESTION

By

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Abstract

The consensus in modern democracies is that the constitution should be based on inclusivity. However, the Nigerian constitution is replete with provisions which on interpretation, either deny the realities of women or outrightly discriminate against them. In Nigeria, it is observed that womanhood is reduced to a mere infidel and a second-class citizen; hence there is the commonality of a general belief system that the best place for women is in the 'kitchen'. This trend has brought about tremendous misrepresentation of women's rights at the level of the family down to the circular society. This paper examines the gender inequality in the Nigerian constitution; it argues that women played a minimal role in the history of Nigerian constitution making. This article also posits that child marriage is one of the roots of gender injustice in Nigeria. This article highlights and briefly discusses some aspects of the 1999 Constitution that are directly and indirectly discriminatory against women. It is the submission of this study that all forms of inhuman discrimination and gender inequality must be challenged and opine for a deliberate, sensitive, consistent and systematic approach to gender relations this should include gender mainstreaming in all aspects of life. The researcher of this article adopts the doctrinal research methodology.

Keywords: *Constitution, Question, Gender and Nigeria*

1.0 Introduction

In modern democracies, constitutions have become a tool to organize the multi-faceted relationship between State power, society as a whole, and individuals. Constructively, a constitution is the most basic law of a country.[1] Women constitute about half of the population of the Nigeria state and are known to play vital roles as mothers, community developers, organizes and so on, their contribution to the social and economic development of the societies is also more than half as compared to that of men by virtue of their dual roles in the productive and reproductive spheres, yet their participation in formal and informal structures and processes, where decision regarding the use of societal resources generated by both men and women are made, remains insignificant.[2]

The Nigerian constitution is the *fons et origo* (source and origin) of all rights within the polity as well as the ground norm. Arguably, since the law is gendered as we are going to discover from this paper, the constitution which is the fundamental law of the country is also gendered.[3]

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[1] O. Ogunniran, 'Gender Issues and the Nigerian Constitution on the Horizon' (2015) (3) *Unisa Press Journals,* 114-132.

[2]G. A. Makama, 'Patriarchy and Gender Inequality in Nigeria: the Way Forward'. (2013) (9) (17) *European scientific journal* 115-144.

[3]A.G Karibi-Whyte, 'the Relevance of the Judiciary in the Polity: A Historical Perspective', (1987) *Lagos: Nigerian Institute of Advance Legal Studies Lagos* 145.

The proponent of natural law made a distinction between men and women based on the perceived physical superiority of men.[4] Hence, they did not affect any positive change in the status of women. Legal positivists define the law as the sum total of the commands of a sovereign,[5] the implication being that since the rules would have been laid down anyway, it forecloses the opportunity for probing the morality of the law or evaluating its differential impact on men's and women's lives. Because the law does not regulate the private sphere, which mainly affects women, it reinforces the subordination of women in society. Legal realists such as *Oliver Wendall Holmes* state that the law entails the prophecies of what the Courts will do, as against what a statute says. Hence, the law is the interpretation given to the statutes by the courts.[6]

Because the dominant prejudices in most societies are male-biased, there is a yawning gap between laws as they are written, and the way they are interpreted. In most cases, officials simply interpret the law within the context of the overall societal milieu and its prejudices, which have never been favorable to the position of women. The law is male-biased and gendered.[7] Radical feminism *Curzon* stresses the importance of perceiving women as a class dominated by men.[8] It canvasses for changes in the laws which would continue to favor males even if power inequalities were brought to an end

2.0 History and Roles of Nigerian Women in Constitution-Making

Nigerian women held important positions in their communities before the advent of colonial rule: in the Oyo Empire, women were the *Iya Oba* (the king's official mother who shared words of wisdom); *Iya Kere* (the custodian of the palace treasury, including the royal insignia and the paraphernalia of office); *Iyalagon* (the mother of the crown prince, wielded great authority and ruled over part of the capital city); *Iyalode* (saw to the oba's spiritual well being as well as women's trading interest). The Hausas were characterized by matrilineal succession in the ruling class and the females held high political office. *Queen Amina* of Zaria, for instance, succeeded her father conquered the neighboring towns and dominated these regions for 34 years. In Igboland, females formed market and village groups and through their representatives discussed issues affecting them at the village meetings.[9]This scenario changed during the colonial period.

From 1914 to the end of the first Republic in 1963, women were excluded from constitution-making and were not allowed to vote. The *Clifford* Constitution of 1922 restricted the electorate to adult males in Calabar and Lagos who had been resident in the city for at least one year and had a gross annual income of 100 Naira (50 US Cents). The *Richards* Constitution of 1946 reduced the required income to ₦50.00 (25 US Cents). The *Macpherson* Constitution removed the property qualification, but still restricted the electorate to only adult males who paid their taxes. By the *Lyttleton* Constitution of 1954, the franchise was universal in the East and West but was limited to adult males in the North. Apart from a few women who

[4] R. Pound, 'Theories of Law', *Yala Journal* < https://core.ac.uk/download/pdf/132073861.pdf > access 1st October, 2023.
[5]J. Austin, 'Legal Positivism' < http://carneades.pomona.edu/2016-Law/02.Austin.html > access 20th October, 2023.
[6] M. D. A Freeman, *Introduction to Jurisprudence*, (7th edition, London Sweet & Maxwell 2001) 456.
[7]A.V. Atsenwa, 'Constitutionalism and Legal Feminism: Stepping Stones or Impediment to the Long Road to Freedom for Nigerian Women', (1987) *Lagos; Nigerian Institute of Advance Legal studies*, 568.
[8]Curzon, 'Negotiating the Boundaries of Gender and Empire', < https://ora.ox.ac.uk > access 20th October, 2023.
[9] A. A. Jekayinfa, 'Gendering History and Governance in Pre-Colonial and Post-Independence in Nigeria: A New Approach for Development',
<http://www.unilorin.edu.ng/publications/jekayinoluwa/10.%20GENDERING%20HISTORY%20AND%GOVERNANCE>accessed 14th October, 2023.

attended the Constitutional Conference in the United Kingdom towards the period of Independence, the Constitution making was the prerogative of males until the end of the First Republic in 1963.[10]

The Second Republic that started between 1979-1983 saw the Constitution-making process beginning in 1975 when the Military Government of *General Murtala Mohammed* set up a Constitution Drafting Committee made up of 50 appointed members of which were men. However, it was during this period that the ground for non-discrimination based on sex was included in the 1979 Constitution.[11]

During the aborted Third Republic which was from 1983-1998, some Constitution-making processes did take place, but there were only five women among the 150 members of the Constituent Assembly that drafted the 1989 Constitution.[12] In 1994, General *Sanni Abacha* inaugurated the Constitutional Conference comprising about 360 members, only five of whom were women.[13] In preparation for the Fourth Republic in 1998, *Abdusalami Abubakar* inaugurated the Constitutional Debating Committee which featured no women. It took the intervention of the National Council of Women Societies (NCWS) (led by *Hajia Zainab Minna*) who protested their exclusion, for four women to be included on the committee. However, representations by women on issues affecting them were disregarded. The Military structure is largely monolithic (meaning having a massive, unchanging structure that does not permit individual variation), therefore women's issues were not accorded any significant recognition during those periods.[14]

In the Fourth Republic, the First major active participation by women came with the call for a memorandum by the Presidential Technical Committee (PTCRC) on the review of the 1999 Constitution. The National Centre for Women's Development invited a team of experts to review the Constitution. Their recommendations on engendering the Constitution were further subjected to debates by Civil Society, including gender activists, private individuals and women politicians. For the first time, a position paper by women, on the 1999 Constitution was presented to the PTCRC. Regrettably, the Minority Report on Women's Rights and Gender was not presented for public debate.[15] In the late President *Yaradua's* Electoral Reform Committee (ERC) there were only three women among the 23 members. In 2011, President *Jonathan* included only three women in the Justice *Belgore* Constitution Review Committee.[16]

[10] J. N. Ezeillo, 'Engendering the Language and Content of the 1999 Constitution', *Journal of Good Governance and Sustainable Development* < https://journals.rcmss.com/index.php/jggsda/article/download/363/324/651 > access 24th October, 2023.
[11] O. Igbuzor, A. A. Afolabi, 'Constitutional Making in Nigeria: Historical Perspective in Gender Gaps in the 1999 Constitution of Women', *Ikeja: women Advocates Research and Documentation Centre* 43-156.
[12] O.I. Aina, 'General Overview of the Status of Women in Nigeria', *African Journal Online* < https://www.ajol.info/index.php/naujilj/articule/view/82397/72552 > access 20th October, 2023.
[13] Report of the 1994/1995 Constitution Conference.
[14] T. A. Koripamo-Agary, 'Women and Constitution Making in Nigeria: Agenda for Action. In Gender Gaps in the 1999 Constitution of Nigeria', *Ikeja: Women Advocates Research and Documentation Centre*, 139-155.
[15] *Ibid*.
[16] A. Akiyode-Afolabi, the Challenge of Making a Gender and People's Constitution. < http://www.thisdayonline.com/articles/the -challange-of-making-a-gender-and-people's-constitution/134330> accessed 15th October, 2023.

The overreaching implication of the underrepresentation of women in Constitution-making processes is that issues of concern such as the language of the Constitution, as well as women's rights. Amongst others were pushed to the background.

3.0 Gender Inequality in The 1999 Nigeria Constitution

The principle of imputing gender equality in the Constitution has a historical basis. It seeks to cure the defects of the past by promoting women who have been unjustly treated to date, in legal contemplation, to the level of men. Stipulating gender paves the way for inequality; Constitutions should not reinforce this but rather include equality provisions.[17] The only provision akin to stating equality in the Nigerian Constitution is the Preamble which states *"... and to provide for a Constitution for the purpose of promoting the good government and welfare of all persons in our Country, on the principles of freedom, equality and justice, and for the purpose of Consolidating the unity of our people,...).*[18] Arguably, this is very vague and has never been interpreted as forming the basis for equality for women. The equality that appears in the Constitution Preamble relates to the autochthony of the Nigerian Constitution.[19] In the same vein, section 17(2)(a)[20] provides that every citizen shall have equality of rights, obligations and opportunities before the law. This section remains unenforceable by virtue of section 6(6)(c).[21]

This section will highlight and briefly discuss some aspect of the 1999 Constitution that has gender issue(s).

- ★ Language of the Constitution
  The language used by the Constitution is not gender-neutral, perhaps because it was written by men. For example, the pronoun "He" appears in the 1999 constitution about 235 times. Some advocates have recommended replacing "he" with "a person" or "him and her."

- ★ Government appointment and composition of agencies
  Section 14(3) of the 1999 constitution did not include gender considerations in the composition of the government and its agencies. The section provides that "The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few State or from a few ethnic or other sectional groups in that Government or any of its agencies." the researcher of this paper will argue that this provision may hinder affirmative action in favor of women by not giving it constitutional recognition. It may also give room for marginalization of women in government appointments.

[17] C. Mackinmon. *Gender in Constitutions' Oxford handbook of Comparative Constitutional Law* (Oxford University Press) 397-416.
[18] CFRN 1999, Preamble.
[19] T. Osipitan, *An autochthonous Constitution for Nigeria: myth or Reality? University of Lagos Inaugural series,* (university of Lagos Press) 467.
[20] (N.18) (S. 17(2)(a)).
[21] *Ibid* @ S. (6)(c).

- Section 42 of the 1999 Constitution[22] provides for non-discrimination on the grounds of sex. Sex and gender though similar have slight differences, while sex may demote biological differences and is very limited, gender is broader, since it denotes the social construct of roles. The only elaborated aspect of the section is "*not being subjected to any disability or restriction or accorded any privilege or advantage*". Discrimination is the overt or subtle disvaluing of an individual or group. This phenomenon is pervasive, as it affects all members of that group, covers all aspects of human life, and is infinite in its variation and application.[23] In this regard, I will quickly suggest that Nigeria should copy the South African Constitution because the South African Constitution prohibits discrimination on the grounds of both sex and gender.[24] Non-discrimination on the grounds of sex is unobserved. In Nigeria, women are unashamedly subjected to being undervalued in all strata of life. Though the National Constitutional Conference recommended the widening of non-discrimination to cover gender, the recommendation never saw the light of the day. The area, in which this particular section of the constitution has been applied and interpreted to suit equality, is pertaining to property inheritance. The Supreme Court gave women a reason to smile when they held in *Chituru Ukeje v. Gladys Ukeje*[25] *that* 'no matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate. Consequently, the Igbo Customary law, which disentitles a female child from partaking in the sharing of her deceased father's estate, is a breach of section 42(1) and (2) of the Constitution, a Fundamental rights provision guaranteed to every Nigerian. The said discriminatory customary law is void and it conflicts with section 42(1) and (2) of the Constitution.' Also in *Onyibor Anekwe v. Maria Nweke,*[26] the Supreme Court, in dismissing the appeal, strongly canvassed:
  "the custom and practices of Awka people upon which the appellants have relied for their counterclaim is hereby out rightly condemned in strong terms… it is punitive, uncivilized and only intended to protect the selfish perpetration of male dominance which is aimed at suppressing the right of women folk in the given society …"

  These decisions are timely and positive in a changing world poised to address imbalances. The researcher of this paper is however, wary of the practicability and enforceability of the judgments this is because the Igbo Customary practices and disinheriting widows and daughters are deeply entrenched. The researcher will suggest that the government in those states practicing this culture should seriously enforce the judgments; State laws on inheritance should be amended and traditional rulers/heads of family who continue to perpetuate the custom should be sanctioned to the extent of being removed.

- Citizenship rights

[22] *Ibid* @ S. 43.
[23] S. A. Mclean, *the legal relevance of gender: some aspects of sex-based discrimination* (New Jersey Humanities Press) 1-5
[24] South African Constitution of 1996, S. 59 (1)-(3).
[25] [2014] LPELR, 2274.
[26] [2014] LPELR 22697.

The provision of the 1999 Constitution as regards citizens is also discriminatory against women. Section 26(2)(a)[27] allows foreign wives of Nigerian men to register as citizens of Nigeria. It is, however, silent on the status of foreign men who are married to Nigerian women. The gender bias of this provision was manifested with the deportation from Nigeria of *Dr. Patrick Wilmot*, a Jamaican, during *Babangida's* administration, even though his wife is from Sokoto State.[28] The National Conference[29] rightly proposes that section 26(2)(a) of the 1999 Constitution of Nigeria should be amended to read 'any person who is or has been married to a citizen of Nigeria can be granted citizenship by registration. This would have covered both males and females but the proposed amendment was never implemented. Also, the Nigerian Constitution confers citizenship on the premise of belonging to an indigenous community. There are no clear-cut definitions of concepts such as 'natives', 'indigenes', or 'settlers'.[30]

One of the areas the researcher is proposing for immediate clarification is the indignity of women in inter-ethnic marriages. While some argue that women retain whatever indignity they laid claim to before marriage, others contend that women, upon marriage, derive their indignity from their husbands. The provision in the Federal Character Commission[31] is further confusing, as it states that *'a married woman shall continue to lay claim to her state of origin for the purpose of implementation of the Federal Character Formulae at the National level*'. The case of Justice *Ifeoma Jombo-Ofo* an indigene of Anambra State, married to a man from Abia State (both located in Eastern Nigeria). She transferred her service from Anambra State due to her marriage having served in the Abia State Judiciary for 14 years. However, the Chief Justice of Nigeria then refused to swear her in as a Court of Appeal Judge on the platform of Abia State on the Premise that it amounted to a breach of Federal Character. Though she was eventually cleared by the National Judicial Council and sworn in, the scenario was highly embarrassing. Justice *Jombo-Ofo's* years of meritorious service in Anambra State were not even a bone of contention. She simply was not considered capable of filling the Abia State slot because she was not an indigene of that State. Anambra State attempted to provide a solution by providing for the right of choosing indigene in its Gender and Equal Opportunity Bill. The Bill was been reportedly passed in 2007 and 2010 by the Anambra State House of Assembly but has not yet been accented to by the Governor. This is a welcome development, but a drop in the ocean as the remaining States in Nigeria may never have such provision. The 2014 National Conference emphatically states that a woman shall be constitutionally allowed to enjoy the indigene of her place of origin (birth) or that of her husband (place of marriage).[32]

[27](N.18)(S. 26(2)(a)).
[28]F. Falana, 'Let's Have Gender Justice Now' Premium Times Nigeria < https://www.premiumtimes.ng.com/opinion/123609-lets-have-gender-justice-now-by-funmi-falana.html > access 20th October, 2023.
[29] National Conference 2014, 547.
[30]N 18)(S. 25).
[31] Federal Character Commission (Establishment) Act, 2010, Laws of the Federation of Nigeria CAP F7, s 2, part 1.
[32]National Conference 2014, 747.

- ★ Sections 29(2) and 29(4)(b) of the 1999 constitution are also another section that is gender inequality. Section 29(2)[33] provides that any woman who is married shall be deemed to be of full age. This provision silently supports child marriages, as it outrightly confers "full age" on every married woman. The constitution is able to take such a stance because it does not confer capacity on girls, deeming capacity irrelevant after all, girls have no choice in decision-making. A husband is appointed the girl's *guardian ad litem*, allowing his will to be superimposed on hers without question. In 2013, the Nigerian National Assembly attempted to amend section 29(2)[34] so that 18 years will be the age of maturity for all purposes. However, it failed to obtain the requisite two-thirds support of its members. The majority chose to maintain the *status quo*, thereby allowing the girl-child to continuously face the socio-medical consequences of early marriage. In 2014, the National Conference also resolved that section 29(4)(a) and (b)[35]should be harmonized to ensure full age is 18 years and above. This resolution never saw the light of the day. This lacuna has further exposed Nigerian women to inequality.
- ★ Chapter IV of the 1999 Nigeria Constitution provides for Fundamental Rights of Citizens. However, some provisions are interpreted without taking cognizance of emergent gender issues. Some of the provisions are:
    - Right to life.[36] The right to life is interpreted within the context of the commission of a criminal offense, excluding abortion and maternal deaths. In other jurisdictions, for instance, India[37] such rights have been given expensive interpretation. In the Indian case of *Vishaka v State of Rajasthan,*[38] the Indian Supreme Court held that the right to life includes freedom from sexual harassment in the workplace.

    - Right to dignity of the human person.[39] Under the Nigerian Constitution, the right to dignity of the human person covers the treatment of offenders in police custody or correctional centers.[40] The right to dignity of the human person is the most intrinsic right of man; hence the universal concept of equality compels a State to have certain minimum standards as respect for the dignity of a human being.[41] Rape, domestic violence, and female genital mutilation violate the dignity of women by making them inferior, weak, and unstable. The researcher of this paper is advocating that the right to dignity of the human person should be given an expansive definition to cover the above acts.
    - Right to acquire immovable properties.[42] The Nigerian Constitution provides for the right to acquire immovable properties. However, in several communities, due to the application

[33](N.18)(S. 29(2)).
[34]*Ibid* @ S. 29(2).
[35]*Ibid* @ S. 29(4)(a)(b).
[36]*Ibid* @ S. 33(1).
[37] Article 26 of the India Constitution.
[38] AIR [1997] SC 301.
[39](N.18) (S. 34).
[40] B. O Nwabueze, *Presidential Constitution of Nigeria.* (London C Hurst; Enugu [Nigeria]: Nwamife Publishers, 1982) 558.
[41] K. Mowoe, *Constitutional law in Nigeria* (Malthouse Press 2008) 456.
[42](N.18) (S. 43).

of customary laws, women still do not possess land rights. According to the 2012 Gender Report,[43] an estimated 54 million out of 78 million Nigerian women are based in rural areas, earning a living from the land. Realistically, they lack access to land due to endemic patrilineal systems.

★ Chapter II of the Constitution is another chapter of the Constitution that is not gender-neutral. The chapter provides that 'the State shall control the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice, equality of statutes and opportunity,[44] direct its policy towards ensuring adequate shelter suitable and adequate food, reasonable national wage … for all citizens,[45] provide adequate medical and health facilities for all persons[46], equal pay for equal work without discrimination on account of sex,[47] and offer adequate educational opportunities at all levels.[48]'

Implicit in the above provisions are the rights of women to shelter, adequate food, medical care, education and employment protection. However, these rights fall within the Fundamental Objective and Directive Principles of State Policy. They are mere guidelines to the government in the formulation of policies, and hence, are unenforceable by virtue of section 6(6)(c)[49] and the court has held in *A.G Ondo State v A.G Federation and 35ors*[50]*that the courts cannot enforce any of the provisions of Chapter II of the Constitution until the National Assembly has enacted specific laws for their enforcement*. In other words, once the law-making body makes law on any issue in Chapter II,[51] the judicial organ can activate it through enforcement. The 2014 National Conference[52] recommended that socio-economic rights be made justiciable. Sadly, the Constitutional Amendment Bill never saw the light of the day.

Other jurisdictions follow a substantial approach to equality provisions. For instance, Article 3(2)[53] of the German Basic Laws provides for equality before the law thus; '*men and women shall have equal rights. The State shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist*.' The aim of this German provision to the researcher's mind is to overcome traditional male domination over women as the substance of gender hierarchy is identified and addressed in the text. The Canadian Constitution also has a provision for equality[54]. Section 15(1)[55] provides that *'the Command-in-chief of the Land and Naval militia, and all Naval Military Forces, of and*

[43]The 2012 Gender Report, 20.
[44](N.18)(S.16(1)(b)).
[45]*Ibid* @ S 16(2)(d).
[46]*Ibid* @ S.17(3)(d).
[47] *Ibid* @ S. 17(3)(e).
[48]*Ibid* @ S. 18(1).
[49]*Ibid* @ S. 6(6)(c).
[50] [2002] 9 NWLR (pt 772) 222
[51]CFRN, 1999.
[52]National Conference 2014, 548
[53] Basic Laws for the Federal Republic of German, as last amended by the Act of 21 July, 2009, Art 3(2).
[54] Canadian Constitution Act of 1982, S. 15(1); s. 51(2).
[55] *Ibid* @ S. 15.

in Canada, is hereby declared to continue and be vested in the Queen'. South African Constitutions contain very elaborate provisions on equality.[56] Maybe is because of its Apartheid history. Section 9(3)[57] provides that*'the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.'*

Nigeria has the Gender and Equal Opportunities Commission Law (GQOCL). However, only three out of the 36 States Abuja making it 37 States have passed the Gender and Equal Opportunities Commission Laws. Imo and Anambra States in 2007, Ekiti State restyled it as the Gender and Equal Opportunity Law (2013). The Gender and Equal Opportunities Bill has been proposed at the Lagos State House of Assembly in 2010.[58] Plateau State Assembly has been working to establish a commission for Gender Equality.[59] These are steps in the right direction. However, the crucial starting point is to adopt a substantive approach to equality provisions as shown in the aforementioned jurisdictions. It will be weightier because the Constitution is the organic law.

4.0 Child Marriages as a Root of Gender Injustice in Nigeria

Child marriage is defined as a formal marriage or informal union before age 18. It is a situation where a female adolescent and teenagers are married to adult husbands.[60]

Early marriage robs a girl of her childhood time necessary to develop physically, emotionally and psychologically. Early marriage inflicts great emotional stress as the young woman is devalued in some societies.[61] Early marriage has some associated health complications. Child marriage is very common in the Northern part of Nigeria and the practice is often connected with the Islamic religion. Islam was introduced into Nigeria around the 11th Century and spread throughout the Country.[62] It has its distinctive legal system, that is, 'Sharia law'. Islamic Jurists have tackled the issue of the age of marriage based on the interpretations of the Quran.[63] According to these Jurists, a child experiences a wet dream or a monthly curse, as stated in the Quran in relation to the age of marriage.[64]

In *Folata v Dawomo*[65] it was held that under Muslim law, maturity is determined by physical maturity or a declaration of the youth in question or failing this by reaching the age of lunar months. Some school of

[56] Constitution of the Federal Republic of South Africa of 1996, S.9(1)(2)(3).
[57] *Ibid.*
[58] F. Anyogu; C. A. Umobi, The Globalised World and Gender Rights in Nigeria: The Gains, the Losses' (2011) (2) *Nnamdi Azikiwe university journal of International law and jurisprudenc,* 163-176.
[59]Plateau Assembly Seeks Commission for Gender Equality, News Watch Times <http://www.mynewswatch.com/plateau-assembly-seeks-commission-for-gender-equality> accessed 20th October, 2023.
[60] O. Iyabode 'Child Bride and Child Sex: Combating Child Marriages in Nigeria' (2011) (1) *Nnamdi Azikiwe university of International Law and Jurisprudence* 567.
[61] S.E Annabel, B. Mairo, *the Experience of Married Adolescents Girls in Northern Nigeria* (Publication Council 2007) 89-90.
[62] O. Junaid, 'The Sharia Legal System in Nigeria; A Historical Survey' *African Journal Online* <https://www.ajol.info/index.php/naujij/articule/view/82389/72544> access 20th October, 2023.
[63] M. A Ambali, *the Practice of Muslim Family Law in Nigeria* (Tamaza Publishing Co. Ltd Zaria 2003) 154-155.
[64]*Ibid.*
[65] [1970] NWLR 105.

thought like the Maliki School fixes the marriageable age at 10 years if the child has attained puberty.[66] Whilst the practice of child marriage may be firmly rooted in the Quran, the caveat that Copulation should be delayed until when such girls are mature is often abused as these child brides are often engaged in sex.[67] The marriage of *Ahmed Sani Yerima* a 50-year-old Senator and former governor of Zamfara State with a 13-year-old Egyptian bride consequent upon his divorcing another 15-year-old bride who had a child for him is a case study.[68] The then Senator was invited by an official of the National Agency for Prohibition of Trafficking in Persons and Other Related Matters (NAPTIP) for questioning over his marriage to a minor.[69] The then Senator and former governor maintained he had not contravened any law and tendered his marriage certificate to the girl in a Sharia Court. The Islamic practice is that marriage in the minority is invalid without the consent and participation of the guardian and the responsibility for such a marriage is vested in persons who apart from being the parent or guardian have a good sense of judgment and consciousness.[70]

The researcher will contend that this act by the then Senator and former governor is despicable, to say the least, and without any form of reservation on the part of the Senator is instigating members of the Senate to pass a resolution retaining section 29(4)(b) of the 1999 Constitution.[71] The import of this provision is that a marriage by an underage girl is deemed to be an adult. This move has been condemned by several quarters. Tragically, recently in Yemen, a 12-year-old girl died of internal bleeding three days after her March 29th wedding. The medical report by the hospital states that she suffered from sexual exhaustion, cervix tears and severe bleeding.[72] Judging from the array of socio-medical consequences of early marriage enumerated, it is only logical for Countries to legislate against child marriages.

Nigeria enacted the Child Rights Act which among others outrightly prohibits child marriages. Nigeria signed the Convention on the Rights of the Child in January 1990 and ratified same in April 1991.[73] Despite stiff opposition to the Convention on the Rights of the Child, it was domesticated as the Child Rights Act 2003. The Child Rights Act provides comprehensive and child-specific legislation which is in accordance with international standards. The Child Rights Act prohibits child marriages. A person under the age of 18 years is incapable of contracting a valid marriage and where such marriage is contracted it is null and void.[74] Furthermore, a parent, guardian or any other person cannot betroth a child in contravention of this section as such betrothal will be null and void.[75] The Act states clearly the category of persons contemplated by this provision that is a person who marries a child, to whom a child is betrothed, promotes the marriage of

[66] F.H. Ruxton, *Maliki Law* (Luzac and Company London 1916) 93.
[67] H. Abdualafi *The Family Structure in Islam* (International Graphics Printing Service, Maryland 1977) 76-77.
[68]Senator Yerima's new wife (Sunday punch of 18th April, 2010) 10.
[69] Agency grills Yerima over Child bride, <http://nigeria.com/2010/05/19/newstoday> accessed 11th November, 2023.
[70]I. N. Sada, *Promoting Women's Rights through Sharia in Northern Nigeria* (Publication of the Centre for Islamic Studies, Ahmadu Bello University, Zaria, 2004.) 19.
[71](N.18) (S. 29(4)(b)).
[72]M. Wheeler, 'Yemen's sacrificial child bride'< http://www.wheeler/yemens.sacrificial-child> accessed 11th November, 2023.
[73] Status of Ratification of the Convention on the Rights of the Child, < http://www.2.ohchr.org/english/law/ere-ratify.htm> access 11th November, 2023.
[74] CRA, 2003, s.21.
[75] *Ibid* @ S. 22(1).

a child or who betroths a child.[76] To show the seriousness of this issue, the Act makes it an offense liable on conviction to a fine of N500,000 or imprisonment for a term of five years or both.[77]

Many Northern States have refused to adopt the Child Rights Act; in fact, the strongest opposition to the Child Rights Act by Islamic leaders pertains to the age of marriage. A Northern *Cleric*, *Imam Sani*, declared that if the government imposed the Child Rights Act, there would be violent conflicts among some Muslims to the extent that some would even die in the process.[78] It is only Jigawa State that is the only Sharia implementing State that has adopted the Child Right Act. However, there appear to be some manipulations. The Jigawa State Child Right Law Prohibits Child Marriage but a child for the purpose of the section is a person below the age of puberty.[79] The Law also defines the age of marriage as when one is physically and physiologically capable of consummating a marriage.[80] Even though this is to be determined by the Courts, it is my opinion that there will be different judicial opinions depending on each case hence, lack of uniformity. It must be stressed that the definition section defines a child as any person below 18 years but specifically excludes section 15 on child marriage.[81] And to show its obvious disapproval for the prohibition of child marriages, the Penal provision ridiculously states that a person is liable on conviction to a fine of N5,000 or a term of imprisonment for one year or both.[82] The Jigawa State House of Assembly has passed a bill to protect children from abuse but says the legislation will not regulate the age of marriage because it is controversial to the predominant religion and culture of the residents.[83] The decision means that though the Child Rights Protection Bill defines a child as a person below the age of 18, people who should by that definition be considered underage can still marry.

5.0 CONCLUSION

The concept of women's rights vis-a-vis prevailing and anachronistic practices needs to be better understood in the light of international standards and expectations. The road to gender neutralization in Nigeria's Constitution lies in the acceptance of the 2014 National Conference Report.

[76] *Ibid* @ S. 22(2)
[77] *Ibid*.
[78] O Iyabode, 'Combating Child Marriages in Nigeria' *African Journals Online* <https://www.ajol.info/index.php.naujilj/article/view/82389/72544> accessed 11th November, 2023.
[79] JSCRL 2006, s. 15(1).
[80] *Ibid* @ S. 2(1).
[81] *Ibid* @ S. 2(1).
[82] *Ibid* @ S. 17.
[83] Premium times, <https://www.premiumtimesng.com/regional/nwest/501952-jigawa-assembly-passess-child-right> access 11th November, 2023.