AN APPRAISAL OF EARLY CHILD MARRIAGE IN CONTEMPORARY NIGERIA: AN ISLAMIC POINT OF VIEW

Muhammad Hadi, ISMAIL[1] and Muhammadut-thani, MUHAMMADU-MUKHTAR[2]

[1]**Islamic Studies Department, Kwara State College Of Education, Ilorin**
Gmail: Ismailhadi2014@gmail.com
[2]**Jupeb Unit, Al-Hikmah University Ilorin, Ilorin. Gmail:** Abuubada14@gmail.com

Abstract : Marriage can be construed as a civil union of two people of opposite sex that creates a family tie with legal, social, or religious rights and responsibilities. It is a legal concord between man and woman to live together and procreate children. In other word, marriage is the foundation of a family unit which makes up a society. The origin of marriage can be traced to the period of creation of the first man i.e. Adam and later Hawa' who was created from the ribs of the former to serve as helpers and a mutual tranquilizers for each other. Qur'an 4:1 is a good testimony of this, ever since; marriage remains an important factor in human existence. However, one of the controversial issues in Islam is early child marriage which generates divergent of opinions among scholars. Islam being an all encompassing religion leaves nothing unaddressed in humans lives, be it social, political, economic, educational, physical, spiritual, national or International. Islam encapsulates all human facets in this life and the life beyond. This paper therefore aims at examining the marriage institution with emphasis on early child marriage from Islamic point of view. The study adopts discourse method analysis approach to access the retrogressive status of the bride in depriving her right to consent during marriage contract. The study recommends that the laid down religious fundamental pillars of marriage must be strictly adhered to in any Islamic marriage procedure. This is necessary in order not to debar rights of children and for fair compatibility of the prospective couples, as these will enhance reciprocal spousal relationship devoid of matrimonial disorders and marriage under duress.

Introducton

In the pre-Islamic epoch all around the world, women were seriously humiliated, debased, degraded and even molested. They were considered just a mere chattel of men, little above the domesticated animal. They were seen as an abominable element of the society, a source of burring shame and humiliation to the family. In fact then, a woman was regarded an integral fraction of the estate of her spouse and her father to be inherited. The widow of a deceased just like any other part of the patrimony goes to his brother. Woman was mandated to dance naked before the audience of the then Arabs while poets sitting and surrounding her will be chatting different stanzas of poems relating to every part of her body. She was maltreated as an object of lust that could be purchase at pleasure and discarded capriciously. By then she has neither right in whatever sense to anything nor personal independence. Her status in the society was nothing more than the value of household goods. She can be sold and bought on a whim and has no choice in the matter of her marriage. In addition to that, the then Arabs saw it as a legal permission for fathers to bury their daughters alive in fear of poverty and shame to their families. A murderer of a lady was usually set free unpunished, neither would he not be killed in retaliation nor pay blood money.

The Britannica Encyclopedia submits the position of woman in the Roman civilization thus:

> "… a woman was even in historic times completely dependent. If married she and

her property passed into the power of her husband. The wife was the purchased property of her husband and like a slave acquired only for his benefit. A woman could not exercise any civil or public office, she could not be a witness, surety, tutor or curator, she could not adopt or be adopted, make will or contact…"

However, it is the religion of Islam, when it later emerged, that has liberated woman from the shackle of maltreatment and gave her the right to inheritance from her father and spouse and the right to own property in the society. Her status was elevated by Islam from crude animalism to that of an honorable human being.

Position of Woman in Islam

Islam: being an encompassing religion that leaves no stone unturned, has brought libration of woman to the lime light as part of its reform agenda. This however is not in the same vein with the western tenet of women liberation which gives equal rights to women in all ramifications of human endeavors and which always leads to social oppression in the society. Islam redeemed women status because it brought a general redress to their situation and liberated them from the shackle of ignorance and maltreatment as witnessed in the barbaric era. Islam came with reforming system on the entire humanity. It seriously condemned gender discrimination on the basis of vanity and ephemeral superiority. One of the Qur'an chapters is named after women and called women chapter. This chapter addresses social, political, economic, legal, moral rights and reciprocal responsibilities of both genders. The status of women was elevated from crude bondage to that of possessors of goods and properties. Women spiritually maintain equal status with her men counterparts before their Lord. Qur'an 49:13 says:

كم إنّ أكرمكم عند الله أتقا

Meaning: the most honorable one among you before Allah is the most pious

Also, Islam authorizes that woman's permission has to be sought for before marriage could be contracted and any marriage contract devoid of woman's consent is null and void. The least approval of a virgin is her silence while a divorcee can choose her choice according to her whim and caprices as permitted by the *Sharīʿah*. Equality is desirable in Islam in terms of scholarship, responsibilities, justice, truthfulness, fairness, and consent declaration during marriage contract, e.t.c. While the genders are not the same: man and woman are equal but not created identically. Neither of the genders is inferior nor superior to each other.

Islam vindicates the rights of women and gives them a high status in the society. It grants them all the fundamental rights: right of inheritance of the property of their fathers, mothers, husbands and brothers. Islam librates women as regards marriage and divorce, consequently series of conjugal and domestic hardships of women had been removed by Islam.

A Survey of Early Child Marriage in Contemporary Nigeria

Early marriage otherwise known as child marriage is any sort of marriage contracted below the age of 18years, when the girl is not yet physically, physiologically and psychologically matured enough to shoulder the responsibilities of marriage and childbearing (Afolabi, B. and Sunday, M.A 2014). This practice is mostly common to African people. Approximately 40% of African women were married before the age of 18years (UNISEF, 2004).

Most Nigerian communities take up the system of releasing their daughters in marriage at the tender age below 18years, this as a result of norms and beliefs that guide the people of the areas. Taking into cognizance for instance, the Northern part of this nation which is basically Hausa- Fulani dominated area; consent to early marriage of a girl- child. Erulkar and Bello (2007), were of the opinion that the basis for early marriage among the Northern people of Nigeria is to preserve the value of virginity, to reduce promiscuity of the girl- child, prevent unwanted pregnancy, fears about marital sexual activity and other social- cultural and religious norms. Those people however, more often than not, overlook the effect this might cause on the girl –child and the development of their community. Conversely, this

is worrisome, disturbing and unfortunate that the girl- child has no power to resist the offer.

Most early marriage in this region possibly maybe as a result of poverty, gender inequity, cultural taboos against premarital sex for girls, religious beliefs, patriarchal predisposition for controlling female sexuality among others. The effects of early marriage on the girl- child include; her wellbeing becomes affected economically, health wisely, as well as lack of proper education, added to that are emotional and mental agony, intolerance, school drop- out, Vesico Vaginal Fistula (VVF) disease, early widowhood, frustration and hatred for the man, (Bala, 2003) . At the other hand, its implications on the society include diminishing in literacy level of the citizenry, over population, bearing more children than what one can cater for, etc.

Early Child Marriage and Islamic Point of View

Man's existence on earth is divinely governed by a scheme of personal responsibility. Duties bound upon an individual start from the initial stages of life and continue till death. There is no any stage in life of which man claims independence or total disconnection from some form of responsibilities, as long as he remains living on the surface of the earth, he has some connected liability and dependability attached to him, and it is only death that will finally seize up a person, and bring to a shut the schedule of his duties.

Islam places on the parents most especially the male parent (Waliy) or his representative to conduct marriage contract of his child; male or female, when he/she has come of age at puberty stage of life. The Prophet (SAW) was reported to have said:

حق الوالد علـــى ولده ثلاث: أن
يســميه وأن يأدبه وأن يزوّجه
إذا بـلغ

Meaning: Parental responsibilities upon one's child are mainly three: an Islamic decent name, right to education and substantive marriage when he /she come of age. Bukhari.

Apparently, Islam does not recommend specific age limit for marriage, but the only condition attached to it is puberty as seen in the above quoted *Hadith*. Puberty varies from an individual to an individual and from one community to another. A girl of nine (9) years old of a community might be looking like a child of eighteen (18) years old of another community. That was the case of the mother of the faithful believers, A'ishah(RA), the second wife of the Prophet (SAW) who was divinely married to him after the demise of his first wife Khadijah (RA). A'ishah was at the age of six (6) then, while the consummation of the marriage occurred when she was at the age of nine (9), (Nushatul Majalis). This case was peculiar only to A'ishah(RA) from among other ladies. The general perception about the Arabs is their rapid growth from time immemorial till the present day. A girl of mine (9) years old amidst the Arabs looks like a girl of fifteen or eighteen of other communities of the world.

Therefore, it will be tantamount to absurd to establish that marriage of an underage children is predominant in Islam, since it is religiously legal to revoke any child marriage on complaint by the victim even if sanctioned by the guardian. (Zainab, 1999). And beside, whenever any sort of early child marriage is contracted in view of certain reasons and circumstances, consummation of such marriage is expected to be delayed until the spouses attain maturity (Zainab, 1999).

Moreover, the *Shari'ah* of Islam grants both genders an equilibrium right on the choice of marriage spouse. There are laid down rules for choosing a right marital partner in Islam. An *Hadith* of the Prophet (SAW) says:

تنكح المـــــرأة لأربع: لجمالها
ومالها وحســـبها ودينها فاظفر
بذات الدين تربت يداك

Meaning:
Woman is married on four (4) bases: for her beauty, wealth, family background and her creed. Therefore consider religion and become prosperous.

Women are not to be forced to marriage whether she is a virgin or a divorcee. The divorced woman is at liberty to select a suitable spouse of her choice whenever she wishes to remarry while the permission of the virgin is to be sought before the marriage contract could take place. Her silence is

economically capable at puberty stage (that is when he has come of age). Muslim scholars unanimously agreed that if a person, male or female is of the opinion that if he/she does not get married, he\she may fall in to infidelity, unfaithfulness and fornication, then marriage becomes recommended (i.e. Sunnah)

Nevertheless, when someone does not have the resources to maintain a wife and start a family, or if he lacks sexual drive and flavor for children, then he should not marry (detestable). Thus 'fasting becomes prescribed for him, this is according to the following prophetic statement:

> O you assembly of youth, he who among you that is capable to sustain a wife physically and financially, let him marry, and he who is incapable, let him fast as a precaution for him. (Bukhari, 67:2)

The Prophet also was reported to have said:

When a man marries he has fulfilled half of his religious rites, so let him fear Allah in the remaining half

Thus, marriage in Islam is a viable institution which stands as an integral and indispensable part of the religion. It is a must for those who can afford to sustain it physically and financially. There is no forced marriage in Islam as consent of both parties is sought for before the marriage contract is conducted. However, the first *Hadith* above implores those without means to sustains marriage to resort to fasting as this will suppress lewdness and other immoralities in the society

The primary sources of *Shari'ah* (i.e. Qur'an and Hadith) show the functional approach of Islam to human procreation, as it condemns celibacy. It also at the same time unburdens man from unbearable loans, and the holy Prophet (S.A.W) was reported to have said:

> "I do keep fast and I do break it, I do sleep and I am married. So whoever inclines to any other tradition than my S*unnah*, he is not of me." (Bukhari 67:1)

The S*hari'ah* however set out some legal conditions as pillars to be accomplished in the principle of Islamic conjugation. The concepts of *IJab* and *Qubul* (i.e. proposal by the groom and acceptance by the prospective bride) are very fundamental in the institution of marriage, this symbolizes the position of the consent of both parties involved in marriage contract. Thus Islam detests to marriages conducted under duress. The bride's *Waliyy* (i.e. Guardian) must permit and approve the marriage. The *Waliyy* has to be a male who is the father of the bride or any other male accredited representative.

Dowry (Mahr) is the bride price which must be given to the bride by her prospective groom. It has no limitation but should be within the financial capacity of the husband. Meanwhile *Shari'ah* approves a quarter of Dinar as the least to be given. Lastly, the marriage contract is to be witnessed by at least four upright people of religious credibility drawn from both families of the parties concerned (Abdulrahman, 1984).

Maliki school of thought however recommends the concept of *Ijbar* over a girl's choice of marriage partner. *Ijbar* is the overriding authority vested in the guardian or *Waliy* of a virgin girl to decide her groom. This is a precautionary measure to guide against any abominable or unbridled act that might have emanated from the girl, but when the girl comes of age, she is at liberty to challenge the validity of the marriage. (AbdurRahman: 1984).

Finally, Q4: 22-26 spells out categories of women a Muslim cannot marry. These are the marriage impediments which may include among others; marrying from one's blood relation, or on the basis of fosterage affinity. Also forbidden for a Muslim to marry are the idolaters; males and females. (Toki, et al, 2016).

Conclusion and Recommendations

The current incessant cases of sexual harassment in the public and educational sectors as well as reported instances of divorce cases affecting many women at adolescent stages are alarming. The West and the Human rights activists are recently clamoring for gender equity which has being prophesized by Islam fourteen centuries before the advent of women liberation movement. The famous horrible infanticide practices common in the *Jahiliyyah* period had been condemned by Islam and thus exalted the female children's status as dignified citizens. Apparently, Islam stresses on the female intellectualism as a means of giving her

better future. The implication of Islamic early marriage on a female child is not to deprive her intellectual development but rather to curb the society from immoralities and mischievous acts. Marriage is an institution for the development of potentials and not a practice of liability on the parts of the couples.

From the findings of the study, the following recommendations are therefore vital for ideal marriage practice and perfect social harmony in the contemporary society:

The laid down religious fundamental pillars of marriage must be strictly adhered to in any Islamic marriage procedure. This is necessary in order not to debar rights of children and for fair compatibility assessment among the prospective couples. These will enhance reciprocal spousal relationship devoid of matrimonial disorders and marriage under duress.

Government should alleviate poor financial status of contemporary parents in the training of their children. This can be achieved through adequate subsidizing of education and vocational sectors.

Denial of children's rights can be curbed through collaboration of Human Rights association and activists with approved religious bodies and governmental agencies to provide spiritual, psychological, financial and material supports on regular basis to both the parents and their children.

- Parents and guardians should also desist from contravening the Shari'ah law on marriage
- Parents and guardians should not be motivated by greed and money or social status in giving their wards out in marriage so that the rights of the child should not be trampled upon. Etc.

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