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the High Court against the decision of the Appeal Commissioners in which case the proof of the delay will be to the judge.

iii. Appeals to the Appeal Court is only possible if the amount of the tax is not less than ₦1000.²²

The reform of the Nigeria petroleum industry cannot be overemphasized having regard to the need for government to ensure that the country derives maximum benefits from the exploitation of its natural resources incidentally, the petroleum industry accounts for the bulk of the country's GDP. However, the reform agenda cannot be meaningful without an overhaul of the current legal and regulatory regime in the sector. It was found that the person chargeable to tax under the Act are restricted to registered companies. This effectively restricts involvement in petroleum operations to corporate participants only. This negates the spirit of the NIPC Act which restrict participation in any business subject to negative list.

Furthermore, it is recommended that the cruised state of appeal procedures under the petroleum profit tax Act should be ironed out to synchronise it with the modernist procedure under the FIRS Act 2007. Doing so will proactively wipe away any jurisdictional dust it is bound to raise, if left in its current state.

²² Atiwodola Adebisi James: *Companies Taxation in Nigeria Including Petroleum Profit Tax*. Op.cit, pp 279 – 280. Ayua I. A. *The Nigeria Tax Law*. Op.cit, pp 205 – 206.

Health Preservation in Islamic Law: A Scrutiny of Its Theory, Objectivity and Subjectivity

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Abstract

Health is very important in life of human being and it is duty of both government and the citizen to preserve and protect the health. Notwithstanding the available provisions relating to protection of health under Shari'ah, people are still suffering from various contaminating diseases such as AIDS/HIV and others. Therefore, this paper examines preservation of health with focus on Islamic family Law as a mechanism for the protection of health. The paper adopts qualitative method to carry out the research. The paper finds that there is health benefit in lawful sexual intercourse. The paper also argues that unlawful sexual intercourse breeds discomfort and incurable diseases. Therefore, avoidance of unlawful intercourse would be beneficial to health development of human beings.

Introduction

The issue of preservation of health in Islamic law cannot be understood until one clearly understands the fundamental questions relating to Islamic family law. It is true that a family is established through marriage and then grows through the ties of kinship into groups of clan, tribes and nations. The family is truly the fountain of progress, wealth and strength of human civilization. The family institution has always been the core of wellbeing of a community besides economic, material and physical security of man and woman. The teachings of Islam do not contravene with the interests of man as far as the Islamic family law is concerned. It has given full recognition to this aspect by providing its divine rules for safeguarding its interest and ensuring its smooth development which is considered as the main source for the preservation of human health. It thus no surprising that one third of the legal injunctions of the *Qur'anic* verses and *Ahith* of the prophet Muhammad S.A.W. relate to family affairs. These injunctions elucidate rule necessary for successful marriages and morally sound and stable society. Therefore, the paper examines some aspects of laws relating to the institution of family which are regarded as the basis in preserving of human health.

Marriage as Option for Health Preservation

In Islam, a family is established through the means of marriage, which is one the legal contacts sanctioned by the principles of the *Shari'ah*. From the *Qur'anic* point view, two terms are used for marriage, *nikah* and *zawaj*. The term *nikah* means "embrac or bounding".¹ While under Islamic law, it means both the contract and cohabitation contract which purports to legalize cohabitation by words denoting giving in marriage even if it were through a foreign tongue understood by contracting parties and witness. From this point of view, the term *nikah* implies a connection, joining and intermingling

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¹Abd al- Rahman al- Jaziri. n.d. Al- Madhahib al- Arb'ah. Vol 4, P.3

² Ibid.

love and affection. It also indicates the peace of mind; *nikah* provides a secure atmosphere for the growth and progress of human race and it enables the couples to undertake and fulfil their responsibilities conscientiously, with devotion and sincerity.³

One important components of marriage is the conjugal relations between the sexes should be based on mutual feelings of love and kindness for each other, so that both parties, with combined efforts, can lead a happy and peaceful family life. It is generally believed that there are different kinds of love. These are expressed as motherly love, brotherly love, sensual love, emotional love, selfish love and universal love. Love is developed only for sexual or selfish ends and cannot last long. Marriage in Islam is not just a legal living arrangement nor the result of "free love" as practiced by in the *Jahiliyah* period and other system; it is for chastity and purity of purpose which are the fundamental elements for creating a loving and peaceful family life.

Marriage as a Therapy for Pure love

In order to avert mental diseases, Ibn al-Qayyim advised that if we agree that pure love and carnal desire are sicknesses that necessitate treatment, the satisfaction of such pure love is the best therapy. In order to highlight the importance of Islamic family law in relation to *Nikah*, IbnQayyim confirms that marriage is the best solution for two people who are in love. First, if the lover can reach and associate with the beloved in accordance with *Shari'ah* as decreed by fate, then, this is correct remedy.⁴ IbnQayyim substantiated this based on medical ground. He explains love and compassion not only enable spouses to lead a happy and peaceful family life, but enable the man to eject the semen as much as possible from his body during sexual intercourse. This, according to IbnQayyim and other Muslim physicians, is of utmost importance to preserve human health, for suppression or retention of congested semen can cause various kinds of diseases. Thus, it must be noted that when sexual intercourse is coupled with love and compassion, it intensifies love for another, heighten pleasure, lessens bodily exhaustion and maximizes emission of semen during sexual intercourse. On the other hand, when the husband lacks love or interest, or when he does not think highly of his wife, then sexual intercourse will weaken the body, reduces his ability to have an erection and mimizes the emission of semen during cohabitation. All the above facts are rooted from one of the *Quranic* verses which says:

And among His signs that He created for you mates from among yourselves, so that you may dwell in tranquility with them and He has put love and mercy between your hearts verily, in that are signs for those who reflect.⁵

Health Benefits of Lawful Sexual Intercourse

Lawful sexual intercourse is a wonderful gift from Allah and should be accepted graciously. It is observed that lawful sexual intercourse and considered as the primary means to maintain health. Thus, marriage is essential for the preservation of human health.

³ See Al-Quran 2 suratulbaqarah v 25, Al nisai: Quran 4 verse 19. In order to achieve the above quality, Islamic law is crucial to the development of Muslim society, not only because of its intellectual pre-eminence, but first and foremost because of its basis to harmonize the life of human being as a whole and for its social, moral and political role in the Islamic history. In social and society aspects, Islam has its own regulation to be followed.

⁴ IbnQayyim. AL-tibbNabawi p. 272-274.

⁵ Al-Quran. Al-Rum 30 v 21.

It is asserted that lawful sexual intercourse is considered by all learned physicians to be essential for health benefits.⁶ Islamic law has ordained the institution of marriage sanctioning sexual intercourse between the opposite sexes. This is the lawful means of fulfilling their natural inclinations in a responsible way and is considered by all physicians to be essential for a healthy and stable life. This is because by having lawful sexual intercourse, a husband may release semen from the body, for the suppression or retention of congested semen can cause various kinds of serious illness.⁷

The above position is supported by modern research that lawful sexual intercourse is one of the means to prevent sexually transmitted diseases. As agreed, sex represents a universal nature, but for the human being this universal phenomenon is special and unique in the animal kingdom. An unmarried woman submits sexually to men is considered unclean. Therefore, Islam strictly forbids any unlawful sexual intercourse. In this regards, Islam as a way of life which is harmonious with nature, provides human solution to complex situation and avoid extremes. In the case of men who are sexually overactive and are not content with one wife, they are permitted by law to have more than one wife but not exceeding four. This is to prevent them from having illicit sexual intercourse with other women, a situation that is not tolerated by the *Shari'ah*. Similarly, it said that abstaining from sexual intercourse for an extended period weakens one's nervous system, causes obstruction of the urethra and shrinks the penis. It is also observed that some people who vowed temporary abstinence from sexual intercourse had diminished sexual energy, suffered general weakness of their bodies, became doleful, lost their desire and their digestive system became corrupt.⁸

Preservation of Lineage

Shari'ah advocates for the preservation of lineage through the union of a man and woman through *Nikah*. In other words, there cannot be a sexual relationship without the marital bond.⁹ Prophet Muhammad S.A.W has said on many occasions that adultery is one of the three major sins. Islam considers adultery not only a great sin, but also an act which opens the gate for many other shameful acts which destroys the very basis of the family. Obviously, it leads to quarrels and murders which ruin reputations and property and spread numerous diseases both physically and spiritually. For these reason, Prophet Muhammad S.A.W. announced that:

"Whoever among you has the means to establish a family should get married, for marriage preserves the chastity of one's eyes and sexual organ and whoever cannot afford to establish a family must fast from desiring for abstinence in such a case will protect him from sin."¹⁰

⁶ IbnQayyim.

⁷ Predominant over the substance of semen are fire and air, Its temperament is hot and moist, because of its formed from pure blood by which the primary organs are nourished. When there is an excess of semen, know it should not be emitted save in the seeking of offspring, or else to expel that which is congested... See IbnQayyim.

⁸ Al-Razi 1961. "Kitab al- Murshidwa al- Fusul." Ed A.Z. Iskandar, *Majallah Ma 'had al-muktutat al- Arabiyya* 60.

⁹ IbnQayyim.

¹⁰ Al Bukhari. *Shahi al Bukhar*, KitabbNika, Bab man istatha min kun falyatasawaj.

It is suggested by the learned physicians, healthy sexual intercourse relies on a variety of factors, the person's age, time of day, place, custom, physical characteristics of the body, diet, desire and the moisture of family genitals.¹¹ Therefore, it is better for a young man to avoid having sexual intercourse with a young girl who is immature, or who does better to avoid having sexual intercourse with an old woman, with a sick woman and it is not have sexual urges.¹² One of the *ashabih* of Prophet Muhammad places emphasis on the factors that contribute to the preservation of health as follows:

*Narrated by Jabir ibn Abdullah: "when I got married, Allah's Messenger S.A.W. said to me: 'what type of lady have you married?' I replied 'I have married a matron. He said: 'why don't you have a link for the virgins and for fornicating them. Jabir also said Allah's messenger S.A.W. said: 'why didn't you marry a young girl, so that you might play with her and play with you.'"*¹³

It is argued that the best for sexual intercourse is after food has been properly digested and the couple is not too exhausted. It is observed that it is healthier to have sexual intercourse after complete digestion and when body's temperament is stable, resulting in the balance of heat and cold, dryness, moisture or the stomach's fullness and emptiness. In addition, it is less harmful to have sexual intercourse while the stomach is full, rather when it is empty. Similarly, its harm is less with excessive body moisture versus dryness and with higher body temperature versus colder temperature. Under normal circumstances, one should approach his wife when his desire for sex has grown naturally and when he feels sexually fit.¹⁴

Preventing Sexually Transmitted Diseases through Prohibiting Unlawful sexual intercourse

It is undisputed that one of the most causes of sexually transmitted diseases like Acquired Immunodeficiency Syndrome (AIDS) and other sexually transmitted diseases is through sex and resolves mostly around unhealthy human pleasures particularly through unlawful sexual intercourse. It is for these reasons that all revealed laws have prohibited adultery, fornication and homosexuality. It is therefore imperative to look at the prohibition of unlawful sexual intercourse under the *Shari'ah* as a means of preventing sexually transmitted and destructive diseases, most notable dangerous, AIDS.

Adultery and Fornication (al-Zina)

Shari'ah has given much attention to the health and wellbeing of society by preventing sexual intercourse and strongly prohibiting all kinds of unlawful sexual intercourse. In order to prevent the transmission of sexually transmitted diseases, Islam generally all other revealed religions do not content with simple declarations or with respect to unlawful or harmful activities and behavior. Islam is eager to and eliminate the means leading to such conduct. In this context, Islam is the last fully revealed religious, in prohibiting unlawful sexual intercourse, for unlawful only leads to confusion of lineage, child abuse, the break-up of families, moral

corruption, but also is the main avenue for the spreading of sexually transmitted diseases. For this reason, Islam commands Muslims to move away from all means which lead to the performance of unlawful sexual intercourse. It should be noted that under the *Shari'ah*, the various organs of the body can be said to commit *zina* (*zina al-jawarih*), the eyes, the ears, the mouth, and even the legs that move a person from place to place. Obviously, they can be accessories to the ultimate sin of unlawful sexual intercourse. In this regards, the prophet Muhammad S.A.W. said:

*"the place of adultery of legs is walking towards unlawful woman with bad intention and the adultery of the hands is touching and putting an unlawful woman and the adultery of eyes is casting passionate glances at a woman."*¹⁵

In line with this recommendation, the Holy Quran rules that:

*"Do not approach adultery"*¹⁶.

As a result of the above verse, the commentators of the Quran have interpreted that Islam not only prohibits unlawful sexual acts but also prohibits those paths that lead to it. By prohibiting the means to perform the prohibited, one may not become a vehicle for indulging in the prohibited. Under the *Shari'ah*, there is a principle known as *saddalharai* blocking the means. Blocking the means is deemed necessary as any particular act that would lead to the prohibited or that would bring harm to mankind is considered unlawful and illegitimate.¹⁷

ii. Homosexuality

Shari'ah has prohibited not only unlawful sexual intercourse (*zina*) and all way lead to it, but also the sexual deviation known as homosexuality (*al-liwat*) whether it with one's own wife or with any other woman or man. Even though Muslim scholars agreed that homosexuality is forbidden in Islam. There are view of some scholars who regarded sodomy with their wives as permissible. They support their view by quoting following verse *"Your wives are as a tilth unto you, so approach your tilth when or how will."*¹⁸ To refute this idea, al-shafii in his al-Umm and al-Mawardi mention that act the word *harth* (*tilth*) in the verse refers to a place where seed can be sown, produced obtained.¹⁹ Rationally, there is no possibility of offspring having been obtained through the anus.

In Islam, the prevention of sexually transmitted diseases is the top priority enjoying sex. Adherence to Islamic teachings, avoiding unlawful sexual relations happiness in this world and in the hereafter and is considered an important means to protect one's self from HIV infection and other sexually transmitted diseases. In words, having unnatural sexual relationships, particularly with members of the same sex is regarded as a means to new epidemic. In fact, there are many traditions which declare sodomy as main reason for the emergence of new epidemic and new diseases. Prophet Muhammad said:

¹⁵ Al- Bukhari, ShahihBukhari. Kitab al- Istitdhan. Bab zina al- jawariduna al- farj.

¹⁶ Al- Quran . Al- Isra'i. 17 :32

¹⁷ Ahmad ibnHanbali.nd. al-Musnad. Vol. 2, p.286.

¹⁸ Al- Quran al baqarah 2 : 223

¹⁹ Al- Mwardi, al- Hawi al- Kabir. Vol.15, p.433

If fornication and all kinds of sinful sexual intercourse become rampant and openly practiced without inhibition in any group or nation, Allah will punish them with new epidemic and new diseases which were not known to their fore father and earlier generations.²⁰

Based on the above hadith, the majority of Muslim scholars firmly sanction that homosexuality is both sin and crime, although they had various views on the prescribed punishment.

iii. The Role of Islamic Law in Preventing the Sexually Transmitted Diseases

In order to show case the role of the Islamic law in the prevention of sexual transmitted diseases, it is essential to highlight what has been proven by modern research. According to modern medical research, prohibiting unlawful sexual intercourse is one of the most effective methods of preventing the risk of AIDS infections and other transmitted diseases. Research has proven that diseases transmitted through sexual contacts whether between heterosexuals or homosexuals are the most common communicable diseases in the world.

It is a common belief that encouraging young couples to marry and satisfying their sexual needs within the marital unit is extremely important in preventing the spread of sexually transmitted diseases. In fact, this has been recommended by the prophet S.A.W. on different occasions:

"He who can afford to marry should marry because it will help him to lower his gaze (from looking at forbidden things and other women) and save his private parts (from committing illegal sexual acts e.t.c) and he who cannot afford to marry is advised to observe the fasts as it will diminish his sexual power."²¹

The importance of marriage is clear when Muslim jurists and others are unanimous in recommending marriage to any person whose soul longs for it and whoever fears that he might commit fornication. In Islam, there are rules and regulations stipulated to prevent any harms or diseases. These rules are for the benefit of the individual as well as society as a whole. Besides avoiding unlawful sexual intercourse as the primary important weapon in combating sexually transmitted diseases, one is advised to bear in mind the 'do's' and 'don't' while performing sexual intercourse, lest one may unknowingly transgress the limits and indulge in unlawful practice. If spouses follow the rules and regulations of matrimonial life as stipulated in the Quran and hadith, they will not have any diseases, such as AIDS and syphilis. They will continue to enjoy life by performing safe sex and at the same time, they will be rewarded in this life and in the hereafter.

Health Benefits of Ghushl Al- janabah

It is widely accepted that *ghushl* (bathing) is a necessary cleaning process which is used extensively in traditional health care. Bathing induces sleep, cleanses the skin,

²⁰ Ibn Majah, Sunan Ibn Majah. Kitab- al -Fitn. Bab al Uqubat, Vol 2 hadith no. 4019.

²¹ Al- Bukhari, Sahih Bukhari. Kitab sawm. Bab al -sawm li man khaafa alana fsihi al- uzibah.

removes fatigue, disposes waste and draws blood towards the surface of the skin. It is reported that the Prophet Muhammad S.A.W said: "cleanliness is one half of the faith."²²

This emphasis on cleanliness is not new in religion which makes cleanliness obligatory prior to performing *salat*, for the Muslim's *salat* is not acceptable unless his body, cloth and place where he performs his *salat* are clean. In addition to this requirement, *ghushl* is obligatory in the state of *janabah*. Allah says "if you are in a state of *janabah*, purify yourself."²³

Another situation which makes *ghushl* compulsory is on the discharge of semen whether asleep or in a wakeful state. According to shafii school, the discharge of semen makes the *ghushl* compulsory regardless of whether one is sexually aroused or not. On the other hand, the Hanafis, the malikis and the Hambalis hold that *ghushl* is not *wajib* unless the discharge is accompanied with pleasure. Without sexual arousal, no bath is required. Similarly, if seminal fluid flows due to sickness or medication without the accompaniment sexual arousal, *ghushl* is not required.²⁴ As noted above, the Islamic law requires that sexual intercourse, both husband and wife must *ghushl*. Besides being a means to remove body fatigue and bodily dirt, it brings about strength in the body and is an aid per excellence for the enhancement of the vitality of the body.

Conclusion

It is clear from the above discussion that *Shari'ah* plays a vital role in the preservation of health for the protection of progeny against diseases as well as its implications of having unlawful sexual intercourse and the punishment for the doer. Preservation of progeny is one of the *Maqasid al-Shari'ah*. Procreation is one of the purposes of marriage in Islam. It is an avenue of producing a healthy progeny for one's own benefit and the benefit of the entire community. With valid marriage, children are able to live in a complete environment for the betterment of the society.²⁵ The purpose is fulfilled by appropriate healthcare for children to grow into healthy adults able to reproduce. Therefore, preservation of health is very important under Islamic law in order to safe guard human being against diseases and to live a happy family life through lawful marriage.

²² Al- Bukhar. Sahih Bukhari. Kitab al- gushl. Bab idhailtaqa al-khitman.

²³ Al quran . al maidah 5 v 6

²⁴ Sayyidsabitn.d.Fiqh al- sunnah

²⁵ n.a.2014. "Importance of Marriage in Islam. Corollary. The International Journal for the Psychological of Religion. Vol. 4. No.1.pp.41-50.

The Mirage of the Girl-Child's Right to Dignity of the Human Person in the Niger Delta: Examining the...
The Mirage of the Girl-Child's Right to Dignity of the Human Person in the Niger Delta: Examining the Relevance of Bride-Price.
G. O. Akolokwu*

Abstract

This paper examined the rights of the girl-child domiciled in the Niger Delta of Nigeria to dignity of the human person especially against the background of the insistence of customary law in demanding the payment of a negotiated price for the girl-child upon marriage. This work is relevant to highlight the various indignities the girl-child is subjected to under the guise of customs and which are totally at variance with the provisions of the Nigerian constitution and other international legal instruments. This work suggested ways to stem these culturally compromised and approved violations of the rights of the girl-child to the near total disregard of legal provisions and protection. It examined the relevance of the bride price and its continued retention as an instrument of validity of customary marriages. The work established that the payment and collection of a price on the head of a girl-child at marriage reduces her to a piece of chattel which is inconsistent with her right to the dignity of the human person.

KEYWORDS: Rights, Girl-Child, Bride-Price, Niger Delta

Introduction

The human rights of the girl-child and the protection of same are issues attracting global attention irrespective of the geographical location of the girl-child. Abuses and violations of the rights of the girl-child continue to exist in different climes including the Niger Delta despite the plethora of domestic and international legislation recognizing and protecting the rights of the girl-child. The question that bogs the mind is, what is responsible for the fact that a society that should be protective of the girl-child who by natural endowments is one of the most vulnerable human species and critical to the survival of the human race, turns around to treat that same girl-child as 'sub-human' by subjecting her to many social indignities attributable mainly to custom and the acculturation process.

The girl-child in the Niger Delta is generally not equated to a man hence the preference in many parts of the Niger Delta for a male child to carry on the family name. Traditionally she is not permitted to sit in the gathering of men except on invitation and with the clear permission of men. She is not allowed by custom to speak on issues discussed by men even if she is directly affected by these same issues except upon permission of the men. She is most of the times not allowed to exercise her will in the choice of a husband as husbands are chosen for her by her father, uncle or brother but is rather regarded as a priced commodity to be haggled over in the name of bride-price. The girl-child is not considered when inheritance issues are discussed but is rather treated as

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a specie of property to be inherited by the men. She is a "mere chattel who is useful for domestic chores and child bearing. She is owned by her husband."¹

Oftentimes questions as to the rights of a married woman to own property despite constitutional and statutory provisions arise especially against the background of some of our customary laws. Should a woman's right to own property be subsumed under the husband's? The regularity of abuse of the child and women in the family, work and school settings are on the increase. The recent abduction, forceful marriage and impregnation of 13year old Ese Oruru speak volumes of the subjection of the girl-child to different forms of human rights abuses and indignities. This paper discusses the mirage of the girl-child's right to dignity of the human person in the Niger Delta especially against the continued demand and receipt of a bride-price (or purchase price) for the girl-child during marriage. This practice of payment of bride-price raises the question of whether the girl-child in the Niger Delta is not a member of the human family or whether she is excluded from possessing inviolable human rights with universal application. Are the rights enshrined in our Constitution and other international instruments protecting the right of the girl-child to dignity of the human persons not a mirage in the Niger Delta against the background of the continuous application of some obnoxious customary practices? What is the way out of this quagmire of constitutional rights granted on the one hand and the removal or non- recognition of these same rights by customary practices which still govern the lives of persons to whom they apply?

Human rights and its application to the Girl-child

Human rights are generally those rights a person is entitled to for no reason other than that he is a human being. They are based on the principle of respect for the individual and the assumption that each person is a moral and rational being who deserves to be treated with dignity.² Human rights have been variously defined. It has been given judicial definition in *Ransome Kuti v Attorney General of the Federation*³ where the Supreme Court per Kayode Eso JSC declared that a human right:

Is a right which stands above the ordinary laws of the land and which is in fact antecedent to the political society itself. It is a primary condition to a civilized existence and what has been done by our constitution since independence is to have these rights enshrined in the constitution so that the right could be immutable to the extent of the immutability of the constitution itself.

Igwe⁴ captures the essence of human rights when he noted that:

¹ M O Izzi, 'The Plight of the Girl-Child under Esan Customary Law' (2000)3 Journal of Commercial, Private and Property Law, p.93; M Ndulo; 'African Customary Law, Customs and Women's Rights' (2011) 18, No 1, India Journal of Global Legal Studies pp.88-89; O Udochukwu, UNCEDAW AND WOMEN SOCIO-POLITICAL RIGHTS NIGERIA; THE SOUTH - SOUTH EXPERIENCE(1999-2010) available at <http://www.Slideshare.net/udojoel/unced> accessed on the 26th of May 2014; M Ducker, 'How to Empower Women' in Ducker M. (ed.) *Philosophy and Politics Discourse on Values, Politics and Powers in Africa*, (Malthouse Press Lagos, 2006)p. 83; A.C.Madu, *War Empowerment. Its Relation to National Development and Human Rights* (Snaap Press Ltd, 2010)p.99; H Ala *Politics and Governance in Nigeria*: (Port Harcourt: Amethyst 2004)p.154.

² United For Human Rights available at www.humanrights.com/what-are-human-rights.html.

³ (1975)2 NWLR, Part 6, P211.

⁴ O W Igwe, *Preliminary Studies in Human Rights Law* (Lagos: Rings and Favolit Ltd, 2002) p.1.

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Human rights represent the legal expression of life. It therefore impresses that without human life there can be no human rights. More so since life means free and dignified existence in the framework of a legal order that ensures the harmonious co-existence of rights and duties, the purpose of recognizing and safeguarding human rights is to ensure the possibility of living fully and completely in dignified freedom.

On the application of human rights, Malemi declares that every human being anywhere in the world is born with human rights; that human right is what enables a person to continue his humanity, and without human rights, life is meaningless, worthless and a mere shadow; and these norms are respected and protected everywhere.⁵ Human rights are not to be arbitrarily applied nor can they be excluded from applying to some persons. In *Ullmann v Olundare*,⁶ the Court of appeal on the issue of whether parties can by arrangement remove constitutionally guaranteed rights, clearly stated that "a complaint against an infringement of fundamental right to fair hearing is a constitutionally guaranteed right which cannot be taken away by any domestic arrangement between the parties."

Human rights and its application to the girl-child in whatever locale was succinctly captured by the Bangkok Declaration of 1992 which stated that "the universal human rights standards are rooted in many cultures. We affirm the basis of universality of human rights which afford protection to all humanity... while advocating cultural pluralism, those cultural practices which derogate from universally accepted human rights including women's rights must not be tolerated."

The United Nations also recognized the application of human rights to all members of the human family when it proclaimed in 1948 the basis of international peace and stability to be the inherent dignity, rights of members and respect of human rights. The Universal Declaration of Human Rights of the United Nations upholds the human rights of the girl-child when it stated that "whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world; whereas disregard and contempt for human rights have resulted in barbarous acts... and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear... whereas the peoples of the United Nations have in the Charter re-affirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women..."⁷

The Girl-Child's Right to Dignity of the Human Person

The globally recognized rights inherent in every man as human rights are guaranteed in Chapter Four of the 1999 constitution of Nigeria as fundamental rights. Ama Oji states clearly that "it is in this chapter that most of the rights of the individual are

comprehensively set out and protected."⁸ The constitution provides that every individual is entitled to respect for the dignity of his person, and accordingly no person shall be subjected to torture or inhuman or degrading treatment; no person shall be held in slavery or servitude; and no person shall be required to perform forced or compulsory labour. By this provision, the girl-child's right to dignity of the human person is guaranteed and any practice customary or otherwise which demean the girl-child and treat her as a piece of chattel is clearly unconstitutional.

The courts threw light on the purport of section 34(1) when it stated that inhuman treatment characterizes any act without feeling for the suffering of the other person; and degrading treatment involves the element of lowering the societal status, character, value or position of a person.⁹ This right demands that no citizen of Nigeria be treated with ridicule and in a degrading manner especially in line with the constitutional provision. This constitutional provision of course renders the traditional classing of persons into categories and the treatment of them as such is unconstitutional. So the variants of the *osu* system in some parts of Igboland which treat Nigerian citizens as inferior and second class work against the human rights enshrined in S.34(1) of the Constitution.

Globally the right of the girl-child to dignity of the human person is also recognized and protected where the United Nations stated that "all human beings are born free and equal in dignity and rights..."¹⁰ The ICCPR provides the right of the girl-child, "men or women of marriageable age to marry and to found a family;"¹¹ The girl-child by this law is protected from forced marriages as it provides that "no marriage shall be entered into without the free and full consent of the intending spouses."¹²

The Mirage of the Girl-child's Right to the Dignity of the Human Person

The girl-child's right to the dignity of the human person is not respected when she is forced into an early marriage because it is customary and her family needed the money and support her marriage would fetch them to survive. The right to dignity of a human person becomes a mirage where she becomes a victim of *vesico vagina fistula* because her body is not matured to accommodate the sexual responsibilities imposed on her in the forced marriage and she starts to leak urine and faeces, is unable to birth a child, becomes rejected by husband and relatives as unprofitable and may finally even succumb to death. This right becomes a mirage where she is beaten at will by the husband as a form of correction, or where she is made to sit on the floor for weeks without regular meals or social interactions to show grief at the demise of her husband, or where her hair is nor is her right to the dignity of the human person respected where under customary law she is stripped naked and paraded in the village if caught stealing without an opportunity to defend herself to act as a deterrent to others.

⁵ E. Malemi, *Constitutional Law in Nigeria* (Princeton Publications, 2010) p. 113.

⁶ (2003) 3 NWLR (Part 808), p. 557.

⁷ Cited in S. Ghahadi, *Blackstone's International Human Rights Documents*, 2010 p. 113.

⁸ Ibid. pp. 10-12.

⁹ *Okpara, op. cit.*

¹⁰ *Uzoukwu v Ezeonu* (1991) 6 NWLR, Part 708 at 764.

¹¹ Art. 23, para 2 *ibid.*

¹² *Ibid.*, para 3.

The girl-child is subjected to the indignity of her private parts touched, mutilated and altered without her consent in circumcision rites to prepare her for marriage. This is a clear invasion of her privacy and an abnegation of her right to dignity. Violence meted to the girl-child in any guise is a violation of her right to human dignity, freedom from all forms of oppression and torture. Even in the more recent case of *Akinnubi v Akinnubi*,¹³ the Supreme Court confirmed that the custom in most Nigerian communities is that a widow is regarded as a mere chattel, a part of her deceased husband's property and is inheritable by her deceased husband's male relatives.

Examining the relevance of bride price

Bride price is the totality of the consideration for the marriage agreement moving from the man who is a suitor to his bride's family in exchange for her hand in marriage under customary law. The payment of a bride price has been described as one of the most essential ingredients that gives validity to a customary law marriage.¹⁴ It may also be more than money, and can include other gifts like wrappers, drinks, farm produce and an agreement to sponsor the formal education of the bride's siblings or their acquisition of a skill or trade. These considerations pass to the bride's parents or relatives on account of the proposed marriage. The bride price is statutorily defined. It is "any gift or payment, in money, natural produce, brass rods, cowries or in any other kind of property whatsoever to a parent or guardian of a female person on account of a marriage of that person before, at the time of or after that marriage."¹⁵ The bride-price has been described further as the "marriage symbol."¹⁶ It is any item given by the groom to the bride's family as a symbol of his commitment to marriage. This marriage symbol is variously described as "child price, marriage -cattle, marriage payment, bride-wealth, and dowry" which are considered inappropriate.¹⁷ The position of Cotran is instructive on the definition of bride-price which is stated to be the payment or payments of cattle, other livestock, move-able property, money or their equivalent rendered by or on behalf of the bridegroom to the parent, guardian or other relative of the bride in consideration of the marriage, and designed to validate the union and determine the affiliation or legal control of the issue thereof; it may be repayable in whole or in part on the dissolution of the marriage.¹⁸

The bride-price is significant in our native marriages as they bring about a bonding of the families which is recognized by all. It is further regarded as a reward or compensation to the family for the loss of a daughter's contribution which upon the marriage becomes essentially directed to her husband and his family. It is also significant in the sense that the return of the bride-price paid on the woman by her family to her husband on their own accord or upon the request of the husband; and their acceptance of same signifies the termination of the customary marriage.

The customary law operative in an area determines the nature and quantum of bride price to be paid on the head of a woman to be married. There is no uniform standard.

¹³ (1997)4 NWLR, Part 486, p. 144.

¹⁴ Nwogugu E.I; *Family Law in Nigeria*, (Revised edition); Heinemann Educational Books (Nigeria) Plc. (1996) p. 51

¹⁵ S.2 Limitation of Dowry Law 1956, Cap 76, Laws of Eastern Nigeria, 1963.

¹⁶ Onokah M.C; *Family Law*, (Spectrum Books Limited 2003) p. 90.

¹⁷ *Ibid*, p. 90

¹⁸ Cotran E. quoted in Onokah M.C. *ibid*, p 31.

The amount of bride price a family collects on behalf of a daughter who is getting married is relative. Some communities place a higher premium on their daughters than other communities resulting in the demand for higher bride price. So whilst some communities will be satisfied with just an agreed sum of money which varies from place to place, others would in addition to the payment of an agreed sum of money insist on other non-monetary gifts such as heads of palm fruits or cocoa; the rendering of personal service or manual labour to the bride's family by the groom for a specific period. In Rivers State for instance, whilst some riverine communities demand greater number of cartons of Gordon gin, expensive wrappers and little sums of money as bride-price, other up-land areas focus on some kegs of palm wine and a lump sum of money as bride-price. In Igboland, the quantum of bride-price demanded on the head of their daughters varies from tribe to tribe. While some areas are notorious in collecting very high and prohibitive bride-price running into thousands with additional demands of motor cycles, sewing machines and cows.

The bride-price is usually paid to the girl's father or the eldest brother if the father is deceased, or to the guardian or family head in a patrilineal system while for communities that practice the matrilineal descent and succession system like the Nembe people of Bayelsa State in the Niger Delta, it goes to the maternal uncles of the bride whether or not the father and male siblings are alive. It is important to note that the quantum of bride-price paid is to a large extent informed by the perceived quality of the bride in question; that is the standard of formal educational training she had received, so much so that a medical doctor or a lawyer is more likely to attract a higher bride-price than a merely skilled bride in tailoring or catering, and much more above an illiterate bride. The sentiments propelling this is to a large extent the family's feeling of loss of potential income earner and burden bearer; the natural desire to recoup on investment (and in this case the training of the girl child) and the erroneous equation and evaluation of worth with a price tag which informs the hiking of the price of an item (even a human being) to show and underscore the value of same.

This brings to the fore the question of the role of the bride-price in customary marriages. Is it an outright sale and purchase of the woman? Should it be? Or should it be a token or a mere symbol of commitment of both families to the marriage? And what role should the bride-price play in our customary marriages especially against the background of some ridiculously high demands of some parents for their daughters? Should the girl child be treated as an item of trade to haggled and negotiated over by parents and suitor alike? Do these haggling not reduce her dignity as a human being thus becoming an infringement of her human rights? Is the bride-price to be a seal on the freedom of the girl child/woman under some customary laws and practices which should be done away with as being directly anti-ethical to the tenets and principles of freedom for all human beings enshrined in the various domestic and international laws?¹⁹ Should such customary law

¹⁹ See generally; i. S.SS 34,35 1999 Constitution of the Federal Republic of Nigeria (CFRN). Vol. 3 Cap C23 Laws the Federation of Nigeria(LFN) 2004 which provides for every citizen's fundamental rights to dignity of the human person, and right to liberty; ii. S.42 (1) (2) 1999 CFRN which guarantees equality and equal opportunity to all Nigeria citizens irrespective of their place of origin, sex, religion or political opinion. iii. Article 3, African Charter on Human and Peoples' rights which provides that "every woman has a right to dignity as a human being and a right to recognition and protection of her human rights as men do," iv. The Preamble to the Universal Declaration of Human Rights adopted by the UN General Assembly 1948 which states that "whereas the recognition of

of her fundamental human rights at the hands of her husband and his relatives. Most of the times, the woman's life becomes summed up in her daily struggles to justify the huge sum of money paid as bride-price on her head. The bride-price paid on her head and collected by her family to ease the family's financial crisis or to acquire enough money to train the younger children especially the boys become a noose around her neck which is very difficult to break making the marriage transaction amount to the 'selling' of the girl child. The practice of payment of bride-price

"subjugates women who find themselves in an unhappy marriage... although women and men in theory have equal inheritance rights, in practice men are normally the ones to inherit property. This economic disadvantage reinforces women's lack of freedom and lower status"

Payment of very high bride-price actually means wife imprisonment in the marriage if she is unable to refund the price paid on her. This is a form of 'slavery' and is antithetical to the girl child's rights to the dignity of the human person and so should be discouraged.

Conclusion

This writer takes the view that the payment of bride-price should not be compulsory but optional and not treated as a vital ingredient for the validation of customary law marriages. In fact they should be treated as merely symbolic and not real, that is not translated into real and serious cash negotiations as that would amount to treating women as objects of sale to be haggled about as any other item of trade, reducing the woman to a mere property auctioned off by her parents. The demand and receipt of bride-price for marriage is demeaning to womanhood and is especially so when the price to be paid is determined by her status, skills and education. In such situations it is considered to be the purchase price of the wife which gives the husband the right after marriage to exercise economic control over her.

The problem with this position however is that enforcement of compliance to a statutorily fixed bride-price will be difficult for the various reasons already canvassed and such laws would at best amount to paper tigers. Who will report such intransigence of the law? Is it the groom, his father, relatives or the bride? What would be the procedure to be adopted to prove infringements? Is it by audio or video recordings? Doing away with bride-price completely will save everyone the trauma and indignities it has been associated with.

Recommendations

1. The writer recommends that payment of bride-price in our customary marriages should be done away with. There should be a legislation outlawing the collection of money on a daughter's head as bride-price. The importance attached to it in validating a customary marriage should not be sacrosanct as other items such as a special drink exchanged by key persons in the two families can suffice as evidence of acceptance and commitment to the union.

It is true that a vital element of our traditional or customary marriages is the exchange of drinks between the bride and the groom in the presence of their parents, relations and friends their joining. Some customs go further to demand exchange of drinks between the suitor and the bride's family members, and vice versa which exchange is symbolic of their new union and commitment to each other. These drinks so exchanged should be sufficient acceptance of the marriage to give it validity. The major reason for taking this position is that no matter the angle the demand and collection of bride-price is looked at, it smacks of an attempt to by parents and relatives to get value for money spent on one's daughters and wards and should be discouraged.

The other alternative is the retaining of a legally fixed bride-price which will be uniform across the nation, be merely symbolic and not exploitative and geared towards the preservation of our customs and tradition which is the embodiment of our Africanness.

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3. The place of the bride-price should be replaced by written agreements by all the parties involved in the marriage.