

## CHILD RIGHT: AN APPRAISAL OF THE PREVAILENT ISSUE OF CHILD ABUSE IN NIGERIA.

By

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### Abstract

*The rights of citizens are paramount for the benefit of everyone who belong to the country. It has always been an issue for any of the right been violated more-so when it involves the rights of children. The violation of human rights has been long on going not in Nigeria and other climes. The rise in the abuse of children within and outside the shores of Nigeria is on the increase from the use of children for forced labour, the indulging of children in commercial sexual trade, slavery, kidnapping, so on and so forth. This history of child abuse seems to be continuous and reoccurring. The Doctrinal methodology (desk research) being that materials sourced for was gotten from online adopted while conducting study and this included the use of online sources of materials. The study equally adopted the comparative research method since it compared other climes outside Nigeria in a bid to draw a comparison between the state of the abuse in Nigeria and other climes. What was discovered was that the rights as provided in the Constitution of Nigeria and other climes have provided for rights to all its citizens and equally provided rights for children's welfare and like Nigeria there are issues of abuse which has been figured out to be as a result of poverty, cultural background, politics etc. it is suggested that zero tolerance towards curbing this act of child abuse to not just Nigerian children. There should be encouraging of corporate social responsibility and education/awareness.*

**Keywords:** *Child right, Child abuse*

### 1.0. Introduction

Every individual, has rights be it human right which is given by virtue of being a human being who is breathing, as well as a fundamental rights by virtue of being a citizen of a country and it is found in the constitution whilst the former is engraved in our minds as God-given knowledge. According to the Natural law theorist, man is given the intuition to know what is right and wrong and human rights are the specie of rights which can be said to inhere in human being. Thus, regarded as inalienable and immutable and such rights cannot be taken away from any person without affront to justice.<sup>1</sup> This was given life to in the case of **CHIEF (MRS.)**

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<sup>1</sup> F. Falana, Fundamental Rights Enforcement (Legal Text Publishing Company Ltd, 2004), 1.

***OLUFUMILAYO RANSOME-KUTI &ORS. V. ATTORNEY-GENERAL OF THE FEDERATION.<sup>2</sup>***

Each of those human rights inherent in persons have been recognized and entrenched in the constitution of a country and are provided hitherto for the enhancement of human dignity and liberty. Thus, in the Nigerian Constitution, these human rights are termed Fundamental Right.<sup>3</sup> which makes room for legality and enforceability against violators of any of these rights. These rights are as follows;

1. Right to Life.<sup>4</sup>
2. Right to Dignity of Human Person.<sup>5</sup>
3. Right to Personal Liberty.<sup>6</sup>
4. Right to Fair Hearing.<sup>7</sup>
5. Right to Private and Family Life.<sup>8</sup>
6. Right to Freedom of Thought, Conscience and Religion.<sup>9</sup>
7. Right to Freedom of Expression at the Press.<sup>10</sup>
8. Right to Peaceful Assembly and Association.<sup>11</sup>
9. Right to Freedom of Movement.<sup>12</sup>
10. Right to Freedom from Discrimination.<sup>13</sup>
11. Right to acquire and own Immovable Property anywhere in Nigeria.<sup>14</sup>

For the purpose of this study, our attention with regards to rights should be focused on a few of these rights mentioned, reason being that they directly affect the child who is a member of the society. These rights are; Right to Life, Right to Dignity of Human Person, Right to Personal Liberty and Right to Freedom of Movement. It should be noted that these rights do not have universal applicability and are only particular to the Nigeria state and differ from those obtainable in other climes. However, some are similar to the rights of people in other climes.

Human trafficking connotes the process through which individuals are placed in an exploitative situation for profit. The first-ever agreed definition of trafficking was incorporated into the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children supplementing the United Nations Convention against Transnational Organized

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<sup>2</sup> (1985) 6 SC 245 at 276-277.

<sup>3</sup> CFRN 1999 ss33-46.

<sup>4</sup> CFRN 1999 s33.

<sup>5</sup> Ibid s34.

<sup>6</sup> Ibid s35.

<sup>7</sup> Ibid s36

<sup>8</sup> Ibid s37.

<sup>9</sup> Ibid s38.

<sup>10</sup> Ibid s39

<sup>11</sup> Ibid s40.

<sup>12</sup> CFRN s41.

<sup>13</sup> Ibid s42

<sup>14</sup> Ibid s43.

Crime [Trafficking Protocol]. This definition has been incorporated into many other legal and policy instruments.<sup>15</sup> To this effect the protocol defined Trafficking thus;

*... recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat to use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation...*

Key elements which must be present for the crime of trafficking to be said to have occurred include; a) action b) threat c) purpose. From the above definition, it is evident that the range of potentially exploitative practice linked to trafficking is very wide and it affects; men, women, and children.

On a daily basis, we hear of tons of violation of rights of children which include but not limited to; forced child labour, exploitation, child marriage, pedophiles etc. child trafficking is about translocation of children from familiar and protective environment in vulnerable states for illegal and evil purposes.<sup>16</sup> Thinking of child trafficking in the abstract erodes those activities that play out before our very eyes. This could be as simple as moving children inter or intra state, across national borders and continents where demand is cheap and of course the labour condition is hazardous for these children. Because of the physic of some of these children, they are not seen with the eyes of children and so they are indulged in forced labour such as commercial sexual exploitation and prostitution, drugs, child soldiering, informal industrial sectors etc.

The earliest form of global human trafficking began with the African Slave trade. Since the American and European Continents were involved as buyers, and the different African groups were both items of trade and middlemen. This was known as the first international flow of human trafficking.<sup>17</sup> Human trafficking has an impact on the individuals it victimizes in all areas of their lives. Every stage of the trafficking process can involve physical, sexual and psychological abuse and violence, deprivation and torture, the forced use of substances, manipulation, economic exploitation and abusive working and living conditions. Unlike most other violent crime, trafficking usually involves prolonged and repeated trauma.

According to the United Nations Office on Drug and Crime (Vienna),<sup>18</sup> between 2010 and 2012, victims with 152 different citizenships were identified in 124 countries across the globe. It also stated that the UNODC has identified at least 510 trafficking flows. In 2012, 42,177 cases of trafficking reported in the 2010-2012 period when broken down totaled 13,392 persons

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<sup>15</sup> United Nations Human Rights Office of the Commission: Human Rights and Human Trafficking (UN Newyork and Geneva, 2014) fact sheet No. 36.

<sup>16</sup> ILO: Trafficking in Children <https://www.ilo.org/ipecc/areas/Traffickingofchildren/lang--en/index.htm> (accessed 23/9/2021).

<sup>17</sup> G. Oster, The History of Human Trafficking (2021) <https://hankeringforhistory.com/the-history-of-human-trafficking/> (accessed 24/9/2021).

<sup>18</sup> UNODC, Global Report on Trafficking in Persons (Newyork, 2014), 11.

trafficked a year with 36 trafficked every day that is an average of one trafficked person to an hour.<sup>19</sup>

Another limb of this would be child abuse. Every year more than 3 million reports of child abuse are made in the United States. Child abuse could be physical, emotional, psychological, sexual, bullying and cyber bullying, child neglect, Grooming, early child marriage etc. it's a reoccurring issue from homes, care givers, schools, stepfathers, and parents to children.<sup>20</sup> In Nigeria, we have lost count of cases of child abuse amongst male and female children. Having the largest number of child abuse cases. For the girl child, Female Genital Mutilation/cutting (FGM/C) is still on the increase and to be honest, I have had personally counseled a family with this issue against it.<sup>21</sup>

Amongst all the forms of child abuse prevalent, some of the mind provoking cases are those of sexual abuse, child marriage, labour, neglect, maltreatment and grievous bodily harm which in the layman's term is generally referred to as abuse and which result in death and in some cases deforming the child's physic. They appear on the news constantly and culprits slid past in most cases. The World Health Organization (WHO) defines Child Sexual Abuse (CSA) as the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to or for which the child is not developmentally prepared and cannot give consent, or that violate the laws or social taboos of society.<sup>22</sup> By sexual act, it includes all form of touching or fondling of delicate and private parts of the child, exposure to phonographic content or taking sexual images. On instances in Nigeria which dealt on the issue of sexual abuse, we have instances as *HABIBU MUSA V THE STATE*,<sup>23</sup> a little about the case showed that the accused was raped the 5year old child not once but severally. The accused was slammed with a 14years imprisonment term and appealed to the court of appeal which held same as the lower court. On further appeal, the accused now appellant had the same ruling as all courts found him guilty.

The Child Rights Act<sup>24</sup> requires that the well being of every child must be respected and considered paramount and provides that sex with a child is rape and anyone who has sexual intercourse with a child is liable to imprisonment for life upon conviction. The issue of child abuse gained recognition as a social problem from the 1960s.<sup>25</sup> in trying to define child abuse some authors have had to impute one or two definition which we agree with. Nnanbue<sup>26</sup> defined child abuse as the 'totality of behavioral attitudes and practices which are harmful and non-beneficial to the child.' And Ebigo<sup>27</sup> on the other hand said that child abuse is 'connoted so long as a child's well-being is endangered irrespective of motive and socio-cultural norms.'

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<sup>19</sup> G. Oster, The History of Human Trafficking (2021) <https://hankeringforhistory.com/the-history-of-human-trafficking/> (24/9/2021).

<sup>20</sup> Childhelp, The Issue of Child Abuse <https://www.childhelp.org/child-abuse> (accessed 23/9/2021).

<sup>21</sup> UNICEF: Child Protection <https://www.Unicef.org/Nigeria/child-protection> (accessed 23/9/2021).

<sup>22</sup> K. Bala, Legal Consequences of Child Abuse in Nigeria, (2020).

<sup>23</sup> (2013) LOR SC 409/2011.

<sup>24</sup> CRA 2003.

<sup>25</sup> M.D.A. Freeman, The Rights and Wrongs of Children (London Pinter, 1983), 105.

<sup>26</sup> S. F. Nnanbue, Draft Convention on the Rights of the Child in Nigeria, (Enugu, 1988).

<sup>27</sup> P.O. Ebigo, Psychological Aspects of Child Abuse and Neglect in Africa, (Enugu, 1988).

In the words of Korbin<sup>28</sup> 'there is not a unitary and cross-culturally valid standard for either optimal child-rearing or for child maltreatment. What is acceptable or unacceptable becomes inextricably linked to ecological constraints and to the cultural context in which behavior occurs.' For Gil,<sup>29</sup> in his opinion, he posits on the issue of child abuse as 'the intentional, non-accidental use of physical force or intentional, non-accidental acts of omission, on the part of a parent or other care-taker inter-acting with a child in his care, aimed at hurting, injuring or destroying that child. To Gil, there is the presence of *Actus Reus*, and *Mens Rea* which are ingredients of criminality on the part of the abuser.

In Nigeria, as in many African and other poor countries, poverty, ignorance and religion are isolated as the main causes.<sup>30</sup> Girls of tender age and below are made to go through marriage, sometimes to men who are old enough to be their grandfathers. According to Oyebanji<sup>31</sup> there are serious dangers associated with child marriage. He stated that it was wrong that the burden of performing the role of a wife which includes sexual intercourse and childbirth should be imposed on a child who was both mentally and physically unprepared for it. A child who is made to go through the burden of marriage is deprived of the opportunity to develop 'physically, mentally, morally, socially in a healthy and normal manner' and this contravenes the United Nations Declaration of the Rights of the Child.<sup>32</sup>

Another aspect of child abuse is child labour this could be in form of street-trading and hawking, bus conducting, work in hotels and restaurants, work in industry and agricultural farms and finally work as servants and nannies, employment of children aged from about eight as maids and servants for middle-income urban city dwellers is another form of child labour.

Child marriage is portrayed as the best alternative to curbing crisis if not the very best option considered by families and communities for protecting the child. Fear of rape, sexual violence, unwanted pregnancies out of wedlock which will bring shame and dishonor to the family. It can be vividly remembered that at a point in history, it went down in history that the issue of child marriage was put up for deliberation in the senate, giving the right adult-males have to marry under aged girls. The situation in girl-child marriages is that in most situations, the girl may never have met her groom.<sup>33</sup> Girl child marriages could be due to certain factors such;

- Cultural Practices
- Social Pressure.
- Forced Migration.
- Financial Challenges.
- Poverty.

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<sup>28</sup> J. Korbin, 'What is Acceptable and Non-acceptable Child Rearing - A Cross Cultural Consideration' in K. Oates (ed), *Child Abuse - A Community Concern*, (London, Butterworths, 1982), 257.

<sup>29</sup> D. Gil, *Violence Against Children* (Harvard University Press, 1970), 6.

<sup>30</sup> E. Okpara, *Child Labour as a Significant Index of Poverty in Nigeria- Implication for Social Change*, in *Child Labour in Africa*, (Chuka Printing Company, 1986), 5.

<sup>31</sup> M.B. Oyebanji, *Proposals for Reform of Marriage Laws in Nigeria* In T.A. Aguda, *Marriage Laws of Nigeria* (1981), 151.

<sup>32</sup> UNGeneral Assembly Resolution 1386 (XIV) 1959.

<sup>33</sup> C. Nwonu and others, *Nigeria and Child Marriage: Legal Issues, Complications, Implications, Prospects and Solutions* [2014] (29), 122.

- Economic Transaction.
- Lack of Education.
- Lower Values Placed on Girls as against the girl child.

The issue of Kidnapping is not left out of the line of abuses. This affects the rights of children and individuals generally. According to the Vanguard newspaper report<sup>34</sup> that there has been a total of a hundred and eleven (111) cases of kidnap in eight months that is from January to Mid- August. This total figure, represents the confirmed cases by the police and eyewitnesses. This is to say the statistics could be more as some may not have been reported as they may have not been seen or fear for the kidnappers coming for the lives of those who reported. It can be remembered that in April 2014 after the Boko Haram terrorist abducted a total number of Two Hundred and Seventy- Six (276) school Girls from their dormitories in Chibok, Borno State. The SBM Intelligence revealed in this same paper that an average of 13 persons were abducted daily in Nigeria in the first half of 2021.

Since after the Chibok case, kidnapping on school children has become a reoccurring phenomenon thus, putting the lives of these kids in danger. Still on the issue of Kidnapping, another serious attack was made on the Dapchi Local Government Area of Yobe State where over a Hundred (100) Nigerian School girls (children) were abducted by a terrorist group. This took place on the 19<sup>th</sup> of February, 2018. Out of those kidnapped, 5 couldn't survive.<sup>35</sup> Since then it's one issue of payment of ransom to another and insecurity heightening.

The issue of child abuse has been faced with different approach, among which is the view that the child protection is overshadowed by political and economic problems, the lack of resources, lack of experience and the inability of defining child abuse, has to do with the fact that cultural attitude towards abuse vary a great deal. For instance, the difficulty in differentiating between abuse and discipline. <sup>36</sup> In West Africa generally and with particular reference to Nigeria, the emphasis is placed on child fostering.<sup>37</sup>

The question of who a child is answered morally and theoretically. In the moral sense, a child can be seen as an individual who has not attained maturity and does not know what is right or wrong and he or she is under the protection of a parent or guardian who decides and dictates for/to him or her. Physically, such a person is adjudged by their physical characteristics and age. Thus, it would be correct to say that a child is any person below the age of puberty or below the legal age of maturity.

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<sup>34</sup> N. Ojiego, Nigeria Records 111 Kidnaping Cases in Eight Months (Vanguard 2021) <http://www.vanguardngr.com/2021/08/nigeru-records-111-kidnapping-cases-in-eight-months/amp/> (accessed 27/9/2021).

<sup>35</sup> BBC News, Nigerian Dapchi Abductions: Schoolgirls Finally Home <https://www.google.com/amp/s/www.bbc.com/news/world-africa-43535872.amp> (accessed 27/9/2021)

<sup>36</sup> P. Lachman, Child Protection in Africa: The Road Ahead. Child Abuse and Neglect (1996) [https://doi.org/10.1016/0145-2134\(96\)00042-7](https://doi.org/10.1016/0145-2134(96)00042-7).

<sup>37</sup> E. P. Renne, Population and Progress in a Yoruba Town (London International African Library, 2003), 89 <https://doi.org/10.3998/mpub.9686>.



Theoretically speaking the National Child Welfare Policy<sup>38</sup> defines a child as anybody who is 12 years or below. However, by law, the age of a child in Nigeria is said to be 18 years or below<sup>39</sup> this is supported by Children's Act.<sup>40</sup> It is already in practice under Municipal Law.

Other definition of who a child is as stated in the **Initial State Party Report on the Convention on the Right of the Child: Gabon**<sup>41</sup> "a child can be every human below the age of 18 years unless, under the law applicable to the child majority is attained earlier." This is also the view of the **Act on the Definition and Prosecution of Trafficking in Children**<sup>42</sup> which corroborates the earlier assertion of **Initial State Party Report on the Convention on the Right of the Child: Gabon** by saying that "a child is every human being below the age of eighteen (18) years."

We cannot get a universally accepted definition of who a child is since we have so many apart from those mentioned above. This was the view in *Okoye v. The State*<sup>43</sup> the Criminal Code<sup>44</sup> merely described a child for the purpose of liability for murder and then under the children and young person law a Child means a person under the age of fourteen years. Other definitions include; The United Nations Convention on the Rights of the Child<sup>45</sup> and the O.A.U. Charter on the Rights and Welfare of the Child<sup>46</sup> both of which Nigeria is signatory.

It is necessary that we understand the different rights enshrined in the constitution for the protection of its citizenry. These rights have legal backing and by this nature can be enforced. A child can equally enjoy from the rights by virtue of the fact that he/she is a citizen of the country. These rights include;

#### **i. Right to Life**

This can be found in Section 33 of the grundnorm, that is the Constitution of Nigeria. This provision ensures that the life of "Every" well-meaning citizen or person generally in the country is safeguarded and such a persons' life is not intentionally deprived. By this same provision, where a life is intentionally taken away, the life of the guilty party is equally taken away. To buttress this the section reads; "Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of criminal offences of which he has been guilty in Nigeria." The right to life of any individual more or that of a child can be in danger where the child is made to undergo abuse or any kind or trafficking. The mindset of the abuser or trafficker is not to be argued as they are of no good and only think of the financial benefits' they can get from it.

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<sup>38</sup> NCWP 1989.

<sup>39</sup> Juvenile Justice Information Portfolio, Committee on the Rights of the Child <https://www.unicef-irc.org> (accessed 23/9/2021).

<sup>40</sup> CCA 2005.

<sup>41</sup> CRC 2000.

<sup>42</sup> ADPTC 2003 Art.

<sup>43</sup> (1992).

<sup>44</sup> CC S307.

<sup>45</sup> UNCRC 1989.

<sup>46</sup> OAUCRWC 1991.

## ii. Right to Dignity of Human Person

This is contained in sections 34 of the same Constitution of Nigeria. It provides that there shall be respect for a persons' dignity and this entails that no one would be subjected to in humane and degrading treatment, slavery or servitude, required to perform forced or compulsory labour. this is a protection against the use of persons and as in the case in this study, a child ought not to be indulged in any form of labour what so ever.

## iii. Right to Personal Liberty

Section 35 of the constitution equally provides the unrestricted personal liberty of a every person. In layman terms, a person should not be stopped from deciding where, when and how to move about. This was the position in *SHUGABA V MINISTER OF INTERNAL AFFAIRS*.<sup>47</sup> The purport of this section Is that the movement of everyone is uninhibited for any purpose and movement can be made at any time, at will but this is however not the case in instances where an individual is held captive and taken to a place that is not of choice. This is a total impediment on the right of that individual. In the words of 2 notable scholars, "The freedom of every law-abiding citizen to think what he will. To say what he will on his lawful occasions without let or hinderance from any other person"<sup>48</sup> and "The right not to be subjected to imprisonment, arrest, and any other physical coercion, in any manner that does not admit of legal justification".<sup>49</sup>

## iv. Right to Freedom of movement

As stated in the constitution in section 36, every individual is entitled to reside wherever he/she wants to reside and shall not be expelled. The case of *SHUGABA V MINISTER OF INTERNAL AFFAIRS*<sup>50</sup> is equally applicable to this case. This is however used interchangeably with the Right to Personal Liberty in sections 35 of the Constitution.

The constitution provides for other rights as contained on the constitution and they include; Right to Fair Hearing, Right to Private and Family Life, Right to Freedom of Thought, Conscience and Religion, Right to Freedom of Expression and the Press, Right to Peaceful Assembly and Association, Right to Freedom of Assembly and Association, Right to Acquire and Own Immovable Property Anywhere in Nigeria. For the purpose of this study, the Rights discussed are those rights which directly relates to the topic of discussion.

Haven known this the question then is what Human are available for children? The concept of Human Right (HR) stems from the core value of human dignity and they are universally accepted and applicable though they may be couched differently depending on the clime. However, some are similar on the face and in context. These rights are the Right to Life, Freedom from torture or inhuman and degrading treatment, Right to Liberty, Right to Privacy and Freedom of Thought, Religion and Expression. These rights are reflected in the Nigerian Constitution, the Universal Declaration of Human Right (UDHR), International Covenant on Civil and Political Rights.

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<sup>47</sup> (1981) 2 NCLR 459.

<sup>48</sup> A. T. B. Denning, Freedom Under the Law.

<sup>49</sup> A. V. Dicey, Constitutional Law, (9<sup>th</sup> ed),207-208.

<sup>50</sup> (1981) 2 NCLR 459.



Children are human beings and are entitled to core human rights. This in the ordinary reasoning is simply because they rely so much on the assistance and care and can barely differentiate between which is right and wrong as such they wholly depend on their parents/guardians and the society at large for direction. This is the most reason why they deserve so much if not absolute protection and preservation of their rights.

Another major reason is that there is so much damage an abused child is bound to have done to his body (physical makeup) and his mind (psychological makeup) which will take a longer time to break free from. In situations where a girl child is forced into marriage, she is denied the right to make vital decisions about their sexual health and well-being, some no longer continue with their education.<sup>51</sup> Due to the fact that their spouses are older than them, there would virtually be cases of Battered Spouse Syndrome (BSS), depriving the girl of financial needs in most cases, she loses her liberty and there is likely to be increased risks of violence, abuse, ill health or early death which could be as a result of child birth. Not also forgetting the medical history of Vesico-Vaginal Fistula which is a serious disability that can be experienced by women after child birth. This is mostly caused by obstructed labour. These girls are usually abandoned by their husbands and isolated due to smell. This makes the girl child vulnerable to contacting several diseases as she is not properly guarded.

The short-term effect of a child who has been domestically abused is that there is every likelihood of having the phobia that there could be that reoccurrence in their own relationship and as they are not properly guided, might replicate the same experience. For teenagers who have experienced fighting between their parents, they are likely to take to fighting classmates and people generally.<sup>52</sup> This is because this is the only form of protection, he has learnt all through his life. It is possible to find children who have been sexually abused having emotional (highly sensitive), Psychological turn down. They are more prone to depression, anxiety, low self-esteem and other problems.<sup>53</sup> These are not good feats for a child who has much longer ways to go in life. Hence, we see suicidal situations where these children rather than speak up prefer taking their own lives.

Comparatively, the position of child abuse is any better in other climes. There are increasing sprouts of cases on child abuse, child marriage, child neglect, child trafficking and so on as the case may be. No situation is at advantage over the other however, the comparison is aimed at learning ways one can tackle such fast-rising problems from escalating more than it is.

In the Indian State, both boys and girls face child marriage (early marriage), domestic abuse, sexual violence, violence in school and at home, trafficking, online violence, child labour and bullying. As much as the term abuse can cover, these children experience it. The National

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<sup>51</sup> Plan International, Child Marriage (2021) <https://plan-international.org/sexual-health/child-marriage-early-forced#:~:text=Early%20marriage%20is%20a%20harmful> (accessed 27/9/2021).

<sup>52</sup> Child Welfare Information Gateway, Domestic Violence and the Child Welfare System (Washington DC, 2014).

<sup>53</sup> S.M. Monnat and another, Long Term Physical Health Consequences of Adverse Childhood Experience [2015] (56) (4); The Socialist Quarterly, 723-752.

Crime Record Bureau, in its report, stated that 109 Children in India face some form of child sexual abuse daily.<sup>54</sup>

Historically, child sexual abuse (CSA) was not all that spoken of and was a hidden problem in India. It was neither a public discuss. Sexually abused children were severally let down by systemic failure of the criminal justice system to redress their grievances and by social ostracism associated with such abuse.<sup>55</sup> Children being a generic name for both genders that is either Boy or male child or Girls or Female child, sexual exploitation and abuse in the India State is correlated to poverty. The CSA cases are not redressed by the Criminal Judicial System. This happens to be the situation with most other Asian countries.

A study conducted on 13 states, two from each of the geographic zones in the country (India), showed crime was done against 12,447 children, 2324 young adults and 2449 evidence of other groups such as; children in the family, at workplace, in schools, in the streets and in institutions. The study equally reported increase in emotional, physical and sexual abuse prevalent in all the states surveyed.<sup>56</sup> From the findings of this study conducted as mentioned above the position has this clear similarity with the Nigerian position in the sense that child abuse of any kind, ranging from sexual abuse maltreatment, on both male and female are prevalent in the schools, homes, in the streets. It was due to the increasing outcry and activism that legal response was given which in-turn heralded the promulgation of a special law called the Protection of Children from Sexual Offences. The act criminalizes sexual assault, sexual harassment. Unlike the position in Nigeria, where the High Court is vested with the jurisdiction to try matters of violation of human right generally, the POCSO mandated the setting up of special courts to expedite trials of offences which it kicks against.<sup>57</sup> The position is the exact opposite in Nigeria as the prosecuted in the regular court.

It is important to note the provisions of the Indian constitution,<sup>58</sup> regarding the rights of children. These rights encompass most rights included in the UN Convention on the Rights and Directive Principles of State Policy. These are exclusive to children and include;

1. Right to Free and Compulsory Elementary Education for all Children in the 6-14 years Age Group.<sup>59</sup>
2. Right to be protected from any hazardous employment till the age of 14years.<sup>60</sup>
3. right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength.<sup>61</sup>

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<sup>54</sup> Helpline Law, Child Abuse in India (2021) <https://www.helplinelaw.com/employment-criminal-and-labour/CAII/child-abuse-in-india.html#:~:text=According%20to%20the%20the%20National%20crime,children%20are%20often%20reported%20less> (accessed 27/9/2021).

<sup>55</sup> Human Right Watch, Breaking the Silent: Child Sexual Abuse in India [USA 2013], Human Right Watch ISBN1-56432-980-1.

<sup>56</sup> J. Belur and another, Child Sexual Abuse and the Law in India: A Commentary [2015] (26): Crime Science. <https://doi.org/10.1186/s40163-015-0037-2> (accessed 28/9/2021).

<sup>57</sup> POCSO 2012.

<sup>58</sup> 1950.

<sup>59</sup> Art 21 (a).

<sup>60</sup> Art 24.

<sup>61</sup> Art 39(e).

4. Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment.<sup>62</sup>
5. Right to early childhood care and education to all children until they complete the age of 6 (six) years.<sup>63</sup>

As citizens of India their rights are;

6. Right to equity.<sup>64</sup>
7. Right against discrimination.<sup>65</sup>
8. Right to personal liberty and due process of law.<sup>66</sup>
9. Right to being protected from being trafficked and forced into bonded labour.<sup>67</sup>
10. Right of minorities for protection of their interest.<sup>68</sup>
11. Right of weaker sections of the people to be protected from social injustice and all forms of exploitation.<sup>69</sup>
12. Right to nutrition and standard of living and improved public health.<sup>70</sup>

This is however not alien to the Nigerian State, as there are provisions made for this same purpose but couched differently. The hindrance to actualizing this would be found in the same constitution.<sup>71</sup> For easy read, I quote;

*Shall not except as otherwise provided by this constitution extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principle of State Policy set out in Chapter II of this Constitution.*

By the foregoing, what this can be interpreted as, is simply the fact that despite the fact that the constitution recognizes certain aspects that they need to perform, in the event they fail to perform wholly or partly, judicial action cannot be brought on them. It is worthy of note that we understand that therein Chapter II of the Nigerian constitution, lie rights beneficial to the Nigerian child and Citizenry generally. This can be seen with a careful perusal of Chapter II.<sup>72</sup>

In the UK, the issue of child sexual abuse has been reported in the country throughout its history. In 2012, celebrity Jimmy Savile was posthumously identified as having been a

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<sup>62</sup> Art 39(f).

<sup>63</sup> Art 45.

<sup>64</sup> Art 14.

<sup>65</sup> Art 15.

<sup>66</sup> Art 21.

<sup>67</sup> Art 23.

<sup>68</sup> Art 29.

<sup>69</sup> Art 46.

<sup>70</sup> Art 47.

<sup>71</sup> CFRN 1999 (as amended) S6 (6) (C).

<sup>72</sup> CFRN 1999 (as amended) s14,15,17,18,20,23.

predatory child sexual abuser for the previous six decades. In England and Wales, the statistics on child abuse include data on sexual abuse, physical abuse, emotional abuse and neglect.<sup>73</sup> The Crime Survey for England and Wales (CSEW) estimated that out of 1 in 100 adults aged 18 to 74 years experienced physical neglect before the age of 16 years that is about 481,000 people. Also, in the CSEW's estimation, 3.1 million adults aged 18 to 74 years were victims of sexual abuse before the age of 16 years. As at 31<sup>st</sup> March 2019, 49,570 children in Wales were looked after by their local authority because of experience or risk of abuse or neglect.

According to the CSEW, in 2015-16, 7% of people aged between 16 and 59 reported that there was a form of sexually abused during their childhood<sup>74</sup> as a in the year ending March 2019, estimated that approximately 8.5 million adults aged 18 to 74 years experienced abuse before the age of 16 years, equivalent to 20.7% of the population who were in the range of 18-74 years of age.

On 31<sup>st</sup> March, 2017, 2,260 children in England who were subjected to a child protection plan had sexual abuse recorded as the initial type of abuse and this was equivalent to 4.4% of all children under a child protection plan and from Wales, the same statistics showed that there were about 120 potential sexual abuse victims who were primarily at risk of sexual abuse and this was equivalent of the 4.1% of all children on the Child Protection Register in Wales (CPR)<sup>75</sup>

In UK, the rights<sup>76</sup> of a child and the citizens generally include;

1. Life, survival and development.
2. Freedom from violence, abuse and neglect.
3. Express their views in matters affecting them, including in legal proceedings.
4. Education.
5. An adequate standard of living.

In order to ensure that the rights of children are safe guarded, there then became a very essential need to codify some laws as well as set up some institutions to help cushion the effect of protecting the child. Every country is armed with theses laws and institutions for the protection of the lives of children. These can be referred to as the legal and institutional framework for the protection of children from abuse of any kind.

## **2.0. The Constitution of the Federal Republic of Nigeria 1999 (As Amended):**

For every citizen of a country, there is a guiding law that provides for rights and duties of its citizens. In Nigeria, these rights are found in sections 33 to 42 of the constitution. These rights

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<sup>73</sup> M. Elkin, Child Abuse in England and Wales (Office for National Statistics, 2020).

<sup>74</sup> Survey for England and Wales Office for National Statistics (2016).

<sup>75</sup> Children on Child Protection Register by Local Authority, Category of Abuse and Age Group Stats Wales (2017).

<sup>76</sup> CRC 1989.

are of general application. However, there are provisions that are particular to children. It tackles the rights and protection of these children specifically. These specific rights are;

**a) The Right to Life**

This is found in section 33 of the 1999 constitution. Its provision is to the extent that the life of its citizenry is paramount and for no reason should a person under its protection be deprived from enjoying the right to life. It ensures that where the life of any person is snatched away, such perpetrators are made to pay consequential penalties.

**b) Right to Dignity of Human Person**

This is contained in sections 34 of the same Constitution of Nigeria. No persons' dignity should be tampered with at any point in his human existence be it a child or an adult. By this same provision, no one should be made to undergo any form of in human and degrading treatment, slavery or servitude, required to perform forced or compulsory labour. this is a protection against the use of persons and as in the case in this study, a child ought not to be indulged in any form of labour be it hawking/street trade, house help or whatever labour can be thought of.

**c) Right to Personal Liberty**

Section 35 of the constitution makes it clear that a child's freedom/liberty should unrestricted as far as he is a citizen of the country. In layman terms, a person or in this case a child should not be stopped from deciding where, when and how to move about. The purport of this section is that the movement of everyone is uninhibited for any purpose and movement can be made at any time, at will.

**d) Right to Freedom of Movement**

This provision as contained in section 36 of the constitution 1999 (as amended) is sometimes used interchangeably with the previous provision that is the Right to personal Liberty. In synopsis, a person or child as is the case of the study, should not be stopped from moving to any part of the country of choice. Conversely such a child should not be forced to be in a place or asked to move to a place which is not of choice.

The constitution has made adequate provisions in its chapter 2 which equally bothers on the rights generally applicable to every citizen. However, there still remains an issue of justiciability of the rights therein chapter 2 of the constitution. In section 6 subsections 6 (c), the judicial powers vested in accordance with this section shall not extend to whether any omission by any authority or person or any law or judicial decision is in conformity with the fundamental objectives and directives of state policy as stated in Chapter II herein the constitution.

It is worthy of note that the Fundamental Rights in Chapter IV of the Constitution may be enforced by the High Court. The High Court has the Original Jurisdiction to hear such matters. This power, conferred on it along with any further powers as may be deemed are conferred by the National Assembly. In the words of the Constitution, I quote:

*Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a*

*High Court in that State for redress. Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcement or securing the enforcing within that State of any right to which the person who makes the application may be entitled under this Chapter.<sup>77</sup>*

This is equally the provided in the Child right Act where it clearly states that the court at High Court level shall have the power to deal with all matters relating to the enforcement of the rights of the child as set out in this Act on the application for redress by a child who alleges that a right has been is being or is likely to be infringed in respect of him.”<sup>78</sup>

## **2.1. The Criminal Code**

The abuse of a child is purely a criminal act done against that child. The criminal code makes us understand that whether the act is done against a male or a female child, in whatsoever form or manner, that is a criminal offence. The Criminal Code sets out plethora of punishments in order to safeguard the innocence of children.

As a corollary to the provisions of the constitutional provision of right to life, the Criminal Code provision prohibiting unlawful killing.<sup>79</sup> For this purpose, a child becomes a person capable of being killed when it has proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.<sup>80</sup> .

It provides that any person who unlawfully and indecently deals with a boy under the age of fourteen years is guilty of a felony, and is liable to imprisonment for seven years.<sup>81</sup> Similar indecent practices between males attract imprisonment for three years.<sup>82</sup> In another Section,<sup>83</sup> any person who has unlawful carnal knowledge of girl under the age of thirteen years is guilty of a felony, and liable to imprisonment for life, with or without whipping. An attempt to commit this offence is similarly punishable with fourteen years imprisonment under the Section.

The Criminal Code laid down salient provisions regarding punishment for those who perpetrate criminal acts of child abuse and these provisions include;

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<sup>77</sup> CFRN 1999 s46(1)-(2).

<sup>78</sup> CRA 152(4).

<sup>79</sup> CC s306.

<sup>80</sup> CC s307.

<sup>81</sup> CC s216.

<sup>82</sup> CC s217.

<sup>83</sup> CC s218.



- Under circumstances whereby a householder who permits his premises to be used for the above crime or induces its commission in his premises is liable to imprisonment for 2 (two) years if the girl is above thirteen but under sixteen years of age. For the householder, imprisonment for life, with or without whipping if the girl is under thirteen years of age.<sup>84</sup>
- A two years imprisonment for anybody who has or attempts to have unlawful carnal knowledge of a girl who is thirteen years or above but below sixteen years of age.<sup>85</sup>
- In an unlawful and indecent dealing with a girl under the age of thirteen years, the Criminal Code put an imprisonment term of 3 (three) years. Where the girl is thirteen years and above but below sixteen years, the punishment of the offender is 2 (two) years imprisonment.<sup>86</sup>
- Whosoever, in whose custody and / or care of a girl under the age of sixteen years, causes or encourages the seduction, unlawful carnal knowledge or prostitution of, or the commission of an indecent assault upon, such a girl, is liable to imprisonment for two years.<sup>87</sup>
- Whoever, having the custody, charge or care of a child or young person of four years but under the age of sixteen years, allows that child or young person to reside in or frequent a brothel is liable to imprisonment for six months with or without a fine.<sup>88</sup>
- Procurement of a girl under the age of eighteen years to have unlawful carnal connection with any other person or persons, either in Nigeria or elsewhere attracts imprisonment for two years for the offender. The prescribed punishment under this section is 2 (two) years imprisonment for an offender who abducts a girl under eighteen years of age with intent to have her to be unlawfully carnally known by any man.<sup>89</sup>
- Where a woman or a girl is unlawfully detained against her will to be defiled in a brothel, such a person is guilty of a misdemeanor and is liable to imprisonment for 2 (two) years.<sup>90</sup>
- For the duties for guardians and those *In loco parentis* to protect the child's right to life, protection and preservation, the Criminal Code imposes duties on those having charge of children either as Masters or guardians or heads of family to provide for necessities of life for the children.<sup>91</sup>

### 3.0. Child Right Act 2003

The CRA consolidates all laws relating to children into one single piece of legislation, incorporating all the rights and responsibilities of children and specifying the duties and obligations of government, parents and other authorities, organizations and bodies. The Act provides that the best interest of a Child shall be of paramount consideration in all actions In every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority.<sup>92</sup> The Act went

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<sup>84</sup> CC s219.

<sup>85</sup> CC s221.

<sup>86</sup> CC s222.

<sup>87</sup> CC s222A.

<sup>88</sup> CC s22A.

<sup>89</sup> CC s225.

<sup>90</sup> CC s 226.

<sup>91</sup> CC s300-301.

<sup>92</sup> CRA s1.

further to obligate parents, legal guardians, or other individuals, institutions, services, agencies, organizations or bodies legally responsible for the child for the protection and care as is necessary for the well-being of the child.<sup>93</sup> The care or protection of children shall conform with the standards established by the appropriate authorities, particularly in the areas of safety, health, welfare, number and suitability of their staff and competent supervision.<sup>94</sup>

The act recognizes the rights provided in the Constitution of the Federal Republic of Nigeria 1999 (as amended) as though they were provided in the Act with provision of other rights therein.<sup>95</sup> No child shall enter into a contract, except as provided in this section. The effect of this is that any contract, except a contract for necessities, entered into by a child for repayment of money lent or for payment of goods supplied to the child, shall be void.<sup>96</sup>

By the provision of the CRA, no person under the age of 18 years is capable of contracting a valid marriage, and accordingly a marriage so contracted is null and void and of no effect whatsoever.<sup>97</sup> This also includes the betrothal of the child as no parent, guardian or any other person shall betroth a child to any person.<sup>98</sup> For the act of contravention, such a person is liable on conviction to a fine of N500,000; or imprisonment for a term of five years or to both such fine and imprisonment.<sup>99</sup> The act prohibits the exposure of children to trafficking and narcotics thus, where such a person is found guilty of contravening the provisions of these subsection that is (1) or (2) of this section commits an offence and is liable on conviction to imprisonment for life.<sup>100</sup> Also where children are indulged in other forms of criminal activities, upon conviction to imprisonment for a term of fourteen years.<sup>101</sup>

The act made adequate protective shield for the child as it examined most crucial aspects through which abuse can emanate from such as;

- Abduction, removal and transfer from lawful custody.<sup>102</sup>
- Prohibition of exploitative labour.<sup>103</sup>
- Prohibition of buying, selling, hiring or otherwise dealing in children for the purpose of hawking or begging for alms or prostitution, etc.<sup>104</sup>
- Unlawful sexual intercourse with a child, etc.<sup>105</sup> upon conviction for the offence of rape, is liable to imprisonment for life.<sup>106</sup>
- Forms of sexual abuse and exploitation.<sup>107</sup>

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<sup>93</sup> CRA s2(a).

<sup>94</sup> CRA s2(b).

<sup>95</sup> CRA S3-17.

<sup>96</sup> CRA s 18.

<sup>97</sup> CRA s21.

<sup>98</sup> CRA s22.

<sup>99</sup> CRA s23.

<sup>100</sup> CRA s25.

<sup>101</sup> CRA s26.

<sup>102</sup> CRA s27.

<sup>103</sup> CRA s28.

<sup>104</sup> CRA s30.

<sup>105</sup> CRA s31.

<sup>106</sup> CRA s31(2).

<sup>107</sup> CRA s32.

- Establishment of the Family Court which is established for each State of the Federation and the Federal Capital Territory, Abuja a court to be known as the Family Court (in this Act referred to as the Court) for the purposes of hearing and determining matters relating to children.<sup>108</sup> These courts are established for the purpose of hearing and determining matters relating to children. Each of these courts are to be established for each State of the Federation and the Federal Capital Territory. They will operate at two levels – as a Division of the High Court and as a Magistrates’ Court. Family courts are vested with the jurisdiction to hear all cases in which the existence of a legal right, power, duty, liability, privilege, interest, obligation or claim in respect of a child is in issue, and any criminal proceedings relating to children

#### 4.0. Child Justice Administration

The Act provides for Child Justice Administration, prohibit the subjection of any child to the criminal justice process and guarantee that due process be given to any child subjected to the child justice system at all the stages of the investigation, adjudication and disposition of any case against such a child. The Act frowns upon the institutionalization of pregnant children/teenagers and expectant mothers. There is establishment of Child Rights Implementation Committees at the National, State and Local Government levels: the National Child Rights Implementation Committee, the State Child Rights Implementation Committee, and Local Government Child Right Implementation Committee.<sup>109</sup>

The other legal provisions include;

- The Children and Young Persons Act Children and Young Persons Act (CYPA). Which provision states its purpose as “to make provision for the welfare of the young and the treatment of young offenders and for establishment of juvenile courts.”
- The Labour Act 1974 is another important piece of legislation for protecting the rights of children. It regulates child labour and protects children from exploitation and abuse.
- The Universal Declaration of Human Rights by the United Nations General Assembly (1948). Article 1 thereof contains the declaration that “All human beings are born free and equal in dignity and rights”.
- *The International Covenant on Civil and Political Rights* (1966).
- *United Nations Convention on the Rights of the Child* (1989).
- *African Charter on the Rights and Welfare of the Child* (1991).

The institutions responsible for the protection of children include the police and the prosecution service are the State bodies with responsibility for investigating and prosecuting crime. They have an important role to play in protecting child rights by ensuring that alleged offences against children are properly investigated, and those responsible are prosecuted and punished.

The Courts in Nigerian courts are responsible for prosecuting those who violate children’s rights. The rights contained in the Nigerian Constitution and the Child Rights Act 2003 can be

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<sup>108</sup> CRA s149.

<sup>109</sup> Child Right Manual 2013.

enforced in the High Court. The High Court has original jurisdiction to hear and determine any application made to it in relation to the rights contained in the Constitution and may make orders, issue writs and give directions so as to enforce or secure the enforcement of those rights. There are other institutions depending on the clime. The challenges in these are those of corruption on the part of officers and delayed cases. In other climes there definitely will encounter problems known to them.

### **5.0. Conclusion/Recommendations**

Every individual has a human right which has been recognized by their constitution as Fundamental Rights. In Nigeria the constitution provides for such rights in sections 33-42. The right of a child is paramount and it has been recorded that so many children have been abused either by being trafficked, molested sexually, given out in marriage, beaten and inflicted with grievous bodily harm, neglected and so many other ways as well.

The following recommendations are hereby proffered:

1. Creation for monitoring teams which will be aimed at ensuring that all cases of child abuse are properly addressed.
2. Encourage corporate social responsibility.
3. Creating awareness and sensitization of those in rural settings.
4. Creating more institutions to curb the fight against child abuse.
5. Having a zero-tolerance policy framework towards child abuse in any state within the federation.