WOMEN INHERITANCE AND MATRIMONIAL PROPERTY RIGHTS: EASTERN NIGERIA IN FOCUS.

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MAY 2021.

CERTIFICATION

I, Paul Nzubechukwu Ani, Matriculation Number **LAW1504276**, hereby certify that apart from references made to other person's works, which have been duly acknowledged, the entire work is the product of my personal research and that this project has neither in whole or in part been presented for another degree elsewhere.

______________________________ __________________

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APPROVAL

We certify that this project was completed by **Paul Nzubechukwu ANI,** Matriculation Number **LAW1504276**, in partial fulfillment of the requirements for the award of the Bachelor of Laws Degree (LL. B)

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DEDICATION

This project is dedicated to my Master and Lover of my soul, the Lord Jesus Christ in whom I live and move and have my being. I am most grateful oh monarch of Zion for your hands which have held me up all through this nearly six-year journey. To God alone be all glory!!!

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Success is not a destination but an adventure. Anyone who intends towing that rough path must take intentional steps towards this. However, in the absence of 'help' man will live his life in frustration and the dreams of achieving a successful feat as this will merely be a *willow the wisp.* The role of my Master and Lord- Jesus Christ is first acknowledged. I am grateful for his unending commitment towards ensuring my life is colorful and sorrow free. He made my stay all the five-year journey worthwhile. I duly acknowledge him and return all glory to him alone.

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ABBREVIATIONS.

AEL (Administration Estates Law).

ACHPR (African Charter on Human and Peoples' Rights).

ALL NLR (All Nigerian Law Reports).

BCE (Before Common Era).

CA (Court of Appeal).

CAN (Christian Association of Nigeria)

CESCR (Committee on Economic, Social and Cultural Rights).

CEDAW (Convention on the Elimination of all forms of Discrimination Against Women)

CFRN (Constitution of the Federal Republic of Nigeria).

CJ (Chief Justice)

CLASFON (Christian Lawyers Fellowship of Nigeria).

COP (Commissioner of Police)

EJSC (Erudite Judgements of the Supreme Court).

ERNLR (Eastern Region Nigerian Law Reports).

FOMWAN (Federation of Muslim Women's Association)

FIDA (The International Federation of Women Lawyers)

F.J (Federal Justice).

FNLR (Federation of Nigeria Law Reports).

HC (High Court).

HRLRA (Human Rights Law Reports of Africa)

ICCPR (International Covenant on Civil and Political Rights)

ICESCR (International Covenant on Economic Social and Cultural Rights).

J (Judge)

JCA (Justice of the Court of Appeal).

JSC (Justice of the Supreme Court).

LPELR (Law Pavilion Electronic Law Report).

LRCN (Law Reports of Courts of Nigeria)

MA (Marriage Act)

Md. (Maryland Digest)

NCLR (Nigerian Constitutional Law Reports).

NEPA (Nigerian

NLR (Nigerian Law Reports)

NPA (Nigerian Ports Authority)

NSCC (Nigerian Supreme Court Cases)

NUC (National Universities Commission)

NWLR (Nigerian Weekly Law Reports)

SAN (Senior Advocate of Nigeria)

SC (Supreme Court).

SCNJ (Supreme Court of Nigeria Judgements)

SCNLR (Supreme Court of Nigeria Law Reports)

UDHR (Universal Declaration of Human Rights)

WACA (West African Court of Appeal).

WIN (Women in Nigeria)

WOCON (Women Consortium of Nigeria)

WRAPA (Women's Rights Adavancement and Protection Alternative).

ABSTRACT

The revolt against patriarchy is not a recent development. It can be traced to the hallowed days of the Holy Bible (Numbers 27). Where the Zelophead daughters made agitation against being ousted from their deceased father's inheritance. The creator took the time to make clear what is now incorporated in the constitutions and legal instruments of civilized nations as well as international conventions, which is that sex is not a base to determine propertiary rights.

All human beings are born equal into a free world with equal opportunities, until culture, race and traditions begins to separate us. Thus, the focus of this paper will be an analysis of the position of the law with regards to women inheritance in Nigeria, with the customary practices in Eastern Nigeria as a case study, the rights of spouses to the estate of their husbands, while alive and upon demise. The unfairness in the proprietary customary practices in the eastern Nigeria will be exposed and a plea will be made for enforcement of more favorable practices to women proprietary rights. We will also be looking at the impediments to women's rights in Nigeria. As well as the possible remedies and recommendations for a change in the social-cultural climate in the Eastern Nigeria.

CHAPTER ONE

1.1 Introduction

There is a great yearning from the African women in the modern day sub Saharan Africa. A major plea from the few enlightened ones is the craving for recognition of their place in their husband's material acquisitions, as well as their father's wealth. The methods of inheritance and succession, particularly under intestate estate under customary law in Nigeria is bedeviled by a behoove of ethnic groups. This cultural position which ought to be a blessing has transformed as a torment to the human species of feminine description, especially with reference to inheritance matters of women.

Emphasis on this work will be made on the inheritance of women in eastern Nigeria, we would also take a bed eye view in the state of women inheritance and matrimonial property rights in other cultural climate. Customarily, the woman is in most cases ousted from benefiting or at least reasonably from her father's inheritance. Except as we will see later under some unreasonable terms and stringent conditions.

A major reason for this discriminatory act is that 'she' would soon be married off to a husband with whom they would build and found a family together. However, the conjugal relations do not in any way in reality translate to proprietary rights or entitlements in any form. In fact, it makes it more cumbersome for the women to benefit from her husband's acquisitions.

The husband will raise the traditional flag of dowry or as it is popularly known- bride price. And thus, he supposedly "owns" her just like he owns every other of his properties. This is similar to

what Jibowu F.J observed in the Yoruba customary law case of *Suberu v. Sunmonu.*[1]Where he observed that "it is a well settled rule of native law and custom of the Yoruba people that a wife could not inherit her husband's property since she herself is like a chattel to be inherited by a relative of her husband."

One will wonder why a judge of such magnitude of learning will align with such dehumanizing and degrading custom. Thankfully! Recent judgements like *Aniekwe v. Nweke*[2] have intervened in mitigating such unfriendly position earlier taken by the courts. It is indeed worrisome that the woman is neglected in our customary practices especially with regards to inheritance matters. The primitive assertion which influence birth names amongst the Igbos like "*Obiageli aku"* which means 'one who came to enjoy wealth' is no longer the case today.

In some families today, the women are not merely the 'bread eaters' (wealth eaters) but the "bread winners". Thus it is no longer *"obiageli aku"* alone but *"oduzi aku"*[3]. Women's earnings have increased significantly, with many women in top jobs in the corporate world, business and government. This social phenomenon has financial emotional and psychological implications for both the men and the women. This is especially because it is more like a traditional role reversal.

There is innate in the African man, a deep ego which drives him to be the 'head' of his home in everything and the patriarchal customary practices of which both the woman is subject to seemingly comes to the rescue of his 'manhood'. This does not in any way stop the women from breaking grounds in different sectors of the world's economy, despites visible hurdles faced

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1 [1957] NSCC 4. A reliable source informs us that Jibowu was an Oxford graduate and was appointed a Police Magistrate in1931, the first Nigerian to be so appointed: PC Lloyd, *Yoruba Land Law,* 21.

2 [2014] 9 NWLR (pt. 1412) 393. Also instructive is *Ukeje v. Ukeje* [2014] 11 NWLR (pt. 1418) 384.

3 '*oduzi aku'* is an Igbo expression which means literally 'one who puts wealth in order' or better put, one who manages wealth properly. It is commonly used by Igbo speaking communities of Eastern Nigeria to describe an industrious woman.

culturally and customarily. It still remains any irreplaceable fact that Nigerian women are agents of national development.

In sectors like education, health, politics, agriculture, etc. All these cut across both the private and public sectors of the economy. In 1999, out of the 978 seats in the 36 houses of assembly, 12 women were elected. In 2003, 39 women out of 951 seats were elected. In 2007, 25 seats were won by women. For the senate, in 1999, 3 women out of 109 seats were elected. In 2003, 4 out of 109 seats were elected. In 2007, 9 women out of 109 seats were elected.[4]

In addition, in 1999 Federal cabinet, there were four women senior ministers out of 29, three out of 18 junior ministers, 2 women advisers and 2 senior special assistants, 6 special assistants and 1 special assistant to the Vice President. There were also 8 permanent secretaries. In the 2003 Federal cabinet, there were 6 deputy governors. They include that of Anambra state, Imo state, Lagos state, Ogun state, Osun state, and Plateau state.[5]

In the 2010 Federal cabinet, we had female ministers for aviation, education, information and communication, petroleum resources, and women affairs and finance. In addition, we had 5 female special advisers, 10 ambassadors, 16 judges of court of appeal, 11 permanent secretaries, 16 judges of the federal high court, 3 judges of the supreme court, 6 judges of the national industrial court and Acting President of the court of appeal.[6]

In the 2015 Federal cabinet, there were 6 women ministers. They include the ministers of finance, women affairs, environment, budget and national planning, and Trade, Industry and Investment.

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[4] Dr. Rufai Muftau *"An Appraisal of the Legal Rights of Women in Nigeria"* Department of Public law, Faculty of Law, Usmanu Danfodiyo University, Sokoto, Nigeria. Journal of Law, Policy and Globalization. ISSN 2224-3240 Vo. 52, 2016.

[5] Ibid.

[6] Ibid.

What this showed that 30% of the cabinet members were women politicians, and technocrats. Between 2020 and 2021 women have occupied ministerial positions like the ministry of finance and aviation as well as a lot of senatorial seats amidst a male dominated sector.[7]

Women staff are seen in most key government institutions cutting across both the federal, state, and local governments of Nigeria. In this regard, they have been employed as teachers, nurses, doctors, pharmacists, lawyers, judges, etc. in some cases, they have built up a career in their respective places of work and so risen to the top rank through promotions. In this case, we have women headmistresses and principals, chief, medical directors, chief justices, permanent secretaries, directors, etc.

However, the focus of this paper will be an appraisal of the issues surrounding the rights of women to inheritances and matrimonial rights of female spouses under customary law. The rights of the married woman, and the widows of a deceased testator. But the rights of women(daughters) to their father's inheritance. What are their rights? do they exist? it would be observed that the constitution[8], which is the *fons et origo* provides for the right of every Nigerian to acquire and own immovable property anywhere in Nigeria.

This fundamental right is made nonsense of, in the rural communities in Nigeria. Due to their unwavering belief in the fact that a woman cannot be more valuable than another chattel. It is observed[9] that "even among the elites many still believe that their wives cannot and should not own immovable property in their own names, but the constitution says [i]'every citizen', which

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[7] Ibid.

[8] Constitution of the Federal Republic of Nigeria 1999, s 43.

[9] Adanna Madu, 'Women Empowerment [its relation to National Development and Human Rights]' (Published 2010, Snap Press Limited) 115.

includes women, married or unmarried shall have the right to acquire property anywhere in Nigeria.

Bearing this in mind, the issues surrounding the rights of daughters, wives and widows to inheritance of real property under customary law in the South-Eastern Nigeria would be discussed in this paper. An evaluation of the general discriminatory positions against women will be addressed. The position at common law will also be analyzed. Furthermore, the customary position of matrimonial property in Eastern Nigeria will be evaluated. Then we will make a distinction through comparative analysis of customary inheritance practices in other customs in Nigeria. Particularly the Yoruba and the Bini customary inheritance issues.

Thus, the work will be making a clarion call for judicial review of unfavorably customary practices and discriminatory issues in inheritance matters. The scrapping of discriminatory practices against daughters, wives and women in general with regards to intestate succession and matrimonial property rights.

1.2 History of Women Inheritance Agitation

The history of women inheritance agitations is as old as the bible days. where the Zelophead daughters rose up to the occasion when they were nearly disinherited from their father's estate on account of being women and the absence of a son in their Zelophead immediate family. The response of the creator unequivocally showcases the thoughts of God concerning matters of this nature. Notwithstanding such resplendent act of the Almighty, such scriptural provisions[10] are still craftily manipulated in favor of such inhuman cultural practice.

[10] Scriptural provisions like Ephesians 5:22, Genesis 3:16 of the Holy bible are misinterpreted for personal motives.

It’s an undeniable truth that many cultural practices around the world are entrenched in religion and thus further contributing to the continuous subjugation women. Hinduism and Zoroastrianism are some of the world’s oldest religions which dates back three thousand years. The *Laws of Manu* written around 1500 BCE is the foundation of the Hindu law which describes the righteous codes of conduct, how to pursue a virtuous life, what acts are permissible and which are reprehensible.

In these laws the rules of inheritance stated that women were to be completely excluded from. When the woman’s father died all the inheritance would go to her oldest brother, even if he was an adopted son[11], and he would take over as the father. This is because in all stages of her life a female must never be independent, not even in her own house; she must always be subject to her kinsmen[12]. Agnatic primogeniture was also practiced in ancient western civilizations such as Greece and Rome. One of the major contributors to Western legal theory, Henry Maine writes in his book *Ancient Law* that whenever looking at a family tree the particular branch that stops is the female, whom is considered to be *mulier est finis familia* (Latin: the ceasing of the family) because a female is the genealogical stopping point, her descendants are excluded in primitive notions of family.[13]

It must be noted that the Islamic laws concerning inheritance are not necessarily ‘equal’ but proportionate.[14] For instance if a woman were to receive half of the inheritance that would mean that her children would receive one- fourth each, after payments of debts and if a man died, his

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11 Manu, Smriti; Laws of Manu, Chapter IX: 141

12 Ibid, pg. 148

13 Maine, Henry Ancient Law 1861: Ch. 5, 7.

14 N. Zahra Rizvi, ‘Womens Inheritance and its Historical development’<https://www.al-islam.org/article/womens-inheritance-its-historical-development-n-zahra-rizvi

share is half of what his wife left behind.[15] Hindu scriptures however provides that women are powerless and have no inheritance[16]. With such statements, men thus make their women dependent day and night. It further describes a good wife as a woman whose mind, speech and body are kept in subjection, and who acquires the same abode with her husband in the next world[17]

In ancient Athens women were always minors and subject to male, such as their father, brother or someone masculine. Her consent in marriage was not necessary. She was obliged to submit to the wishes of her parents or husband. In Rome, a wife was also considered a minor, a ward, a person incapable of doing, or acting anything according to her individual taste. She had to be always be under the tutelage and guardianship of her husband.

Under the Roman law, a woman and her property passed unto the power of her husband upon marriage. The wife was considered the purchased property of her husband, acquired only for his benefit. Furthermore, women in ancient Rome could not as much as exercise any civil or public office and could not act as witness, surety, tutor, curator. Women were not also allowed to make a will or contract.[18]

In the late 18th century the question of women's rights became central to political debates in both France and Britain. At the time some of the greatest thinkers of Enlightenment, who defended democratic principles of equality and challenged notions that a privileged few should rule over

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15 Ibid, 10.

16 Hindu scriptural quotes on women: 'An Anthology of sacred quotes from Hinduism on women'. Krishna Yajur Veda Taittriya Samhitta 6.5.8.2https://www.geocites.ws/nshindu accessed on 11 February 2021

17 J. A. Badawi, 'The Status of Women in Islam', 2 *Al-Ittihad Journal of Islamic Studies,* 8 <http://iaislam.tripod.com/TSOWII.htm accessed 11 February 2021

18 Ibid 13

the vast majority of the population, believed that these principles should be applied only to their own gender and their own race.

The philosopher Jean Jacques Rousseau for example thought that it was the order of nature for a woman obey men 'women do wrong to complain of the inequality of man-made laws' and claimed that. 'when she tries to usurp our rights she is our inferior.[19] In his 1869 essay ' the subjection of women', the English philosopher and political theorist John Stuart Mill in describing the situation for women in Britain. He stated that the wife is the actual bondservant of her husband; no less than slaves commonly so called. During the 1800s women in the United States and Britain began to challenge laws that denied them the right to their property once they married.

Beginning in the 1840s, state legislatures in the United States and British parliament began passing statutes that protected women's property from their husband's and their husband's creditors. These laws were known as the Married Women's Property Acts (more emphasis will be made in this area in Chapter 3 of this work). Courts in the 19th century United States also continued to require privy examinations. A privy examination was a practice in which a married woman who wished to sell her property had to be separately examined by a judge or justice of the peace outside of the presence of her husband and asked if her husband was pressuring her into sign the document[20]

American colonies, thus generally followed the same laws of their mother countries usually, England, France, Spain. And as earlier mentioned, according to British law, husbands controlled

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[19] P.G Lauren, The Evolution of International Human Rights: visions seen (University of Pennysylvia Press 2003) 29 and 30.

[20] S.L. Brackman and M.A Ross, 'Married Women's Property Rights' http://womenhistory.about.com/od married womensproperty/a/property_1848ny.htm accessed 15 February 2021.

women's property. Some colonies or states, however, gradually gave women limited property rights. In 1771, New York passed the Act to confirm certain conveyances and directing the manner of proving deeds to be recorded, legislation gave a woman some say in what her husband did with their assets.

This law required a married man to have his wife's signature on any deed to her property before he sold or transferred it. Moreover, it required that a judge meet privately with the wife to confirm her approval. Three years later, Maryland passed a similar law. It required a private interview between a judge and a married woman to confirm her approval of any trade or sale by her husband of her property. So while the woman may not have technically been allowed to own her property, she was allowed also to prevent her husband from using her property in a way she found objectionable.

This law was put to test in the 1782 case *Flanagan's Lesse v. Young*[21]. It was used to invalidate a property transfer because no one had verified if the woman involved actually wanted the deal to go through. Massachusetts also went further in considering women property rights. In 1787, it passed a law allowing married women, in limited circumstances, to act as femme sole traders. This term refers to women who were allowed to conduct business in their own, especially when their husbands were out to the sea or away from home for another reason. If such a man was a merchant, for example his wife could make transactions during his absence to keep the coffer full.

It is pertinent to point out as well that this review of women's property right mostly refers to "white women". Enslavement was still practiced in the United States at this time, and enslaved Africans certainly did not have property rights; they were deemed property themselves. As the 1800s began, people of color did not have property rights in any meaningful sense of the world

21 [1782], Court of Appeals of Maryland, 2 Md. 38

though matters were improving for white women. In 1809, Connecticut passed a law permitting married women to execute wills and various courts enforced provisions of prenuptial and marriage agreements.

This allowed a man other than a woman's husband to manage the assets she bought to the marriage in trust. Although, such arrangements still deprived women of agency, they likely prevented a man from exercising total control of his wife's property. In 1839, a Mississippi law passed giving white women very limited property rights largely involving slavery. For the first time, they were allowed to own enslaved Africans, just as white men were. This would include even their fellow women. Such a pathetic situation!

New York gave women the most extensive property rights passing the Married Women's Property Act in 1848 and the Act concerning the rights and liabilities of husband and wife in 1860. (emphasis on this Act would be made in chapter 3). Both of these laws expanded the property rights of married women and become a model for other states throughout the century. Under this set of laws, women could conduct business on their own, have sole ownership of gifts they received and file lawsuits.

In fact, after the Act concerning the rights and liabilities of husband and wife also acknowledged 'mothers as joint guardians of their children' along with fathers. This allowed married women to finally have the legal authority over their own sons and daughters. By 1900, every state had given married women substantial control over their property. But women still faced gender bias when it came to financial matters. It would take until the 1970s before women were able to her credit cards. Before then, a woman still needed her husband's signature. The struggle for women to be financially independent of their husband's extended well into the 20th century.

Thus, women's rights became an important issue in the English speaking world. By the 1963 the movement called "feminism" or "women liberation". Reformers wanted the same pay as men, equal rights in law, and the freedom to plan their families or not have children at all. Over the 20th and 21st centuries women in different parts of the world took on greater roles in society such as serving in government. The status which women reached during the present era was not achieved due to the kindness of men or due to natural progress.

It was rather achieved through a long struggle and sacrifice on women's part and only when society needed her contribution and work, more especially; during the two world wars and due to the escalation of technological change.[22] In Africa, and indeed pre-colonial Nigeria, the condition of women was also that of subjugation and perpetual subordination. Women were viewed as subordinates when compared with their male counterparts.

The world belonged to men because most traditions gave premium to men. Women's primary duty was to bear children and their prowess at carrying out this duty endeared them to their husbands. Thus childless women were objects of ridicule to their husbands, other wives and society. They had no voice.[23] Women however, had access to forms, not as the owners, but permission to cultivate on their husbands' or relatives plot of land. They were not entitled to own land; neither were they eligible to inherit family property.

This was especially true when the woman did not have any male child to inherit the father's property instead of her. Women were considered to as properties to be inherited, or shared at the death of their husbands. This is known as widow inheritance (more emphasis will be made in

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[22] Ibid 13.

[23] Sheriff F. Folarin PhD, Associate Professor Department of Political Science and International Relations, Covenant University, Ota, Ogun State. And Oluwakemi D. Udoh, Lecturer, Department of Political Science and International Relations, Covenant University, Ota, Ogun State. "Beijing Declaration and Women's Property Rights in Nigeria." (2015).

chapter 2 of this work) and it was and still is a prominent practice peculiar to the Igbos. This practice elevated the man above the woman. In the colonial era, a lot of changes were introduced in Africa and this affected the rights available to women.

These changes affected the educational, political and economic rights. The European colonies introduced new patriarchal conceptions of the appropriate social roles for women dictated by them. While women were left to grow food crops, men dominated the process of cultivation which was not the case in the precolonial era. The colonial administration placed a lot of restriction on women and introduced the assumption of European patriarchy into the Nigerian society. Women in the colonial era, were engaged in domestic chores; they were considered subordinate to men.

It was believed that, if women were financially independent, they would not respect their husbands and in-laws. Therefore, the colonial administration re-enforced the social inequality system in precolonial Africa. They could not own landed property and in fact their access to land was limited in that women were just planters of crops and not cultivators. Thus, the colonial administration did not improve the economic condition of women at all. It only reinforced the subordination of women and perpetuated gender inequality with its male oriented policies.

However, in the postcolonial era, the rights of women witnessed sporadic improvement. During this period, Nigeria translated from the colonial administration to a regime of constitutional developments in the country. It is important to state that the fundamental human rights have been a prominent feature right from the independent constitution till the current 1999 Constitution of the Federal Republic of Nigeria. Chapter three of the 1960 Constitutional Order in Council

(which paved way for the independence in Nigeria) had provisions for fundamental human rights.[24]

Chapter two of the 1999 constitution of Nigeria states that, discrimination on the basis of sex is prohibited, while chapter four guarantees the fundamental right to life,[25] dignity of human person,[26] personal liberty,[27] freedom of speech (right to fair hearing),[28] freedom from discrimination,[29] and right against compulsory acquisition of property,[30] without compensation. Section 43[31] clearly provides that every citizen of Nigeria shall the right to acquire and own

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24 Constitution of the Federal Republic of Nigeria, 1999 (as amended) s 33-43

25 Ibid *Musa v State* [1993] 2 NWLR pt. 277, p 550 CA. *Bello v AG Oyo State* [1986] 5 NWLR pt. 45, p 828 SC. *Adeniji v State* [2000] 2 NWLR pt. 645, p.354 CA. *Okonkwo v State* [1998] 4 NWLR pt. 544, p.142 (CA.) *Kalu v State* [1998] 13 NWLR pt. 583, p.531 SC. *Odogu v AG Fed* [1996] 6 NWLR pt. 456, p.508 (SC.) *Ibe v State* [1993] 7 NWLR pt. 304, p.185 (CA.)

26 Ibid *Amakiri v Iwowari* [1974] 1 RSLR 5. *Mogaji v Boards of Customs* [1982] 3 NCLR 552. *Alaboh v Boyes* [1984] 5 NCLR 830. *Wabali v COP* [1985] 6 NCLR 424 HC.

27 Ibid *Mohammed v Olawunmi* [1990] 2 NWLR pt. 133, p.458 SC. *COP v Obolo* [1989] 5 NWLR pt. 120, p. 130 CA. *Madiebo v. Nwankwo* [2002] 1 NWLR pt. 748, p. 426 CA. *Iyere v. Duru* [1986] 5 NWLR pt. 44, p.665 SC. *Edo v COP* [1962] 1 ALL NLR 92. *Enwere v COP* [1993] 6 NWLR pt. 299, p. 333 CA. *Ubani v Director SSS* [1999] 11 NWLR PT. 525, P. 129 CA. *Bamayi v State* [2001] 8 NWLR pt. 715, p.270 SC. *Shugaba v Minister of Internal Affairs* [1981] 2 NCLR 459. *COP V Oruware* [1974] 1 ALL NLR 627.

28 Ibid *Ariori v Elemo* [1983] 1 ALL NLR SC. *LPDC v Fawehinmi [*1985] 1NWLR pt. 7, p. 300 SC. *Aiyetan v NIFOR* [1987] 3 NWLR pt. 59, p.48 SC.

29 Ibid *Solomon v. Gbobo* [1974] 2 RSLR 30. *Re Effiong Okon* Ata [1930] 10 NLR 65. *Salubi v Nwariaku* [1997] 9 NWLR pt. 505, p.442 CA. *Uzoukwu v Ezeonu II* [1991] 6 NWLR pt. 200, p. 708. *Nzekwu v Nzekwu* [1989] 2 NWLR pt. 104, p. 373. *Mojekwu v Mojekwu* [1997] 7 NWLR pt. 512, p.283 CA. *Badejo v Fed Ministry of Education* [1996] 8 NWLR pt. 464, p.15 SC. *Lewis v Bankole* [1990] 1 NLR 82. *Inyang v Ita [*1929] 9 NLR 82. *Okoli v Okoli* [2003] 8 NWLR pt. 823, p.565 CA. *Aderounmu v Aderounmu* [2003] 2 NWLR pt. 803, p.1 CA. *Mohammadu v Mohammed* [2001] 6 NWLR pt. 708, p. 104 CA. Folami v Cole [1990] 2 NWLR pt. 133, p. 445 SC. *Ebiriukwu v Ohanyerewa* [1959] 4 FSC 212.

30 Ibid *Anthony v AG. Lagos* [2003] 10 NWLR pt. 828, p. 288 CA. *Umukoro v NPA* [1997] 4 NWLR pt. 502, p. 652 SC. *Idundun v Okumagba* [1976] 9-10 SC 227. *NUC v Oluwo* [2001] 3 NWLR pt. 699, p. 90 CA.

31 Constitution of the Federal Republic of Nigeria 1999(as amended)

immovable property anywhere in Nigeria.[32] These constitutional provisions form the basis upon which the rights of women in Nigeria are premised.

More so, efforts were made in Nigeria to protect the rights of women. Some of these efforts included participating in international conferences. These includes. The First International Women's Conference in Mexico (1995), World Conference in Copenhagen (1980), Nairobi Conference (1985), The World Conference on Human Rights (1993) and the 1995 Beijing Conference. Nigeria has also ratified some regional and international treaties.[33]

The enforceability of these treaties is altogether a different matter. But it is stated however to showcase the efforts made at progress with regards to Women rights, and in fact, human rights in general. It is a significant progress though lacking in some respect. In 1987, a department of Women in the Federal Ministry of Social Development, Youths and Sports was established to plan and execute projects relating to women. Also in accordance with the Nairobi 1985 Forward Looking Strategies, the government established the National Commission for Women.

They had a major objective of complete elimination of all social and cultural practices relating to the discrimination and dehumanization of womanhood. In 1999, the Federal Ministry of Women Affairs and Youth Development came into being, and later metamorphosed into the Federal Ministry of Women Affairs in April 21, 2004. Their assignment was and is the promotion of equal rights between men and women and corresponding obligation through advocacy and service delivery programs.

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32 *Peenock Investment Limited v. Hotel Presidential Limited* [1982] 13 NSCC 4770

33 At the continental level, we have ratified the *African Charter on Human and Peoples' Rights*. International treaties like the *Covenant on the Elimination of all forms of Discrimination Against Women.*

It is the responsibility of promoting the cause of the Nigerian women and children. It is also responsible for formulating policies that focus on the needs and aspiration of Nigerian women and children. Hence women's rights to property have received significant recognition both at the international and national levels in Nigeria.

Narrowing it down to Eastern Nigeria, commendable progress has been initiated in recent times with regards to women inheritance matters. Efforts are being made in some Igbo speaking communities to guarantee the rights of women. The Igbo community in focus here is the Nkpologwu community in Aguata Local Government in Anambra State. The community being aware of the multifarious degrading treatment meted out to women in the area of inheritance either unmarried women, or widows, or female children of a widow, the Igwe (traditional ruler) in council in 2001 came up with a book on these matters.[34]

This book treated a lot of issues, including our present pre-occupation. Thus, when a case is that of a man who died leaving behind wife and daughters, the cabinet decided that the wife and daughters should remain in the house as bona fide owners of the man's share of land until the wife dies and the daughters are married away. The cabinet also decided what should happen if a man is married to two wives and one be unfortunate not to have a male issue before or even after her husband's death. It also resolved that such a woman without a male issue should also be given land and trees for their use until she dies and all her daughters are given out in marriage. This was far from the situation in the past.

Thus, women inheritance has evolved in the favor of the feminine folk. From legislations of first world countries even down to the third world countries. However, the evolution is not complete. In fact, it has not in reality gotten into the grassroots of our culture. It has not informed the what

[34] Nkpologwu Customs and Traditions, (2001). p 17

Savigny will call ‘the spirit of the people’. In many rural areas wives, widows and daughters are still treated discriminatorily with regards to proprietary rights, especially in Eastern Nigeria.

1.3 Scope of Study.

The scope of the study is tailored towards evaluation of the rights of women to inherit or to benefit from conjugal relations. That is to say this work will be making critical assessment of the state of women proprietary rights in Nigeria. With a microscopic concentration on the eastern part of Nigeria. Thus unreserved and unbiased analysis will be carried out. The attitude of native people to these matters. The position of customs in these issues.

As well as the response of the courts to matters of this nature. The rights of wives to benefit from matrimonial relations. The rights of daughters to benefit from their deceased father or mother. What is the rationale behind the distribution of estate in eastern Nigeria and how is it carried out? Do spousal rights exist under customary law? These questions will be judiciously dealt with in course of this work.

We will also be involving the Constitution of the Federal Republic of Nigeria 1999 in this discourse. We would take view of the stand of the constitution, in matters such as we are pre-occupied. We would also make critical analysis of court judgements on matters of women inheritance and matrimonial property rights.

More so, we will also be making comparative analysis of the Igbo inheritance custom, *vis-à-vis* the Yoruba and Benin Customary law of inheritance and property distribution and other customs within the southern Nigeria. We would also be discussing the role of international treaties and regional agreements in Women proprietary rights.

Treaties like the Universal Declaration of Human Rights 1948 (UDHR), African Charter on Human and Peoples' Rights 1981(ACHPR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) 1979, European Court of Human Rights would be engaged in a bid to underlying the relevant provisions in favor of women rights. At the West African level, the Supplemental Protocol which was codified in 2005 will also be instructive in our appraisal. The finally, our findings, conclusion and recommendations will wrap up this work.

CHAPTER TWO

WOMEN INHERITANCE IN EASTERN NIGERIA

2.1 Introduction.

The Igbos in Nigeria, are notorious for having one of the highest number of cases on inheritance in Nigeria. Particularly, under the intestate succession under customary law. The eastern Nigeria is the part comprising majorly of Igbo Nigerians. It sis an acephalous society with strong sense of patriarchy. This work is particularly focused on the eastern part of Nigeria which of course is made up of five states out of the thirty-six states in Nigeria. The five states include Imo, Anambra, Abia, Ebonyi, Enugu states.

These five states speak a native language referred to as Igbo. But the official language remains English. We also have some parts of Delta such as Anioma, Ogwashiukwu, Ibusa who speak the Igbo language or languages so similar to that of the Igbo nation. In Rivers state for instance, we also have the Ikwere, Ahoada, Andoni who also speak Igbo language or languages so similar to the Igbo nation.

The origin of the Igbo speaking people in Delta state and Rivers state have not yet been confirmed to be the same with that of the Igbo speaking in south eastern Nigeria. The Igbo speaking people make up for one of the largest ethnic groups in Nigeria. The Igbos occupy a continuous stretch of territory roughly bounded on the North by the Igalla, Idoma, and the Ogoja people. In the east by the Ibibios. In the south by the Ijaw and in the west by the Edo people.

Historically, women's position in Igboland in particular during the pre-colonial and colonial era was that of utter subjugation and unending subordination. Men indeed were seen as the rulers. For them, the primary duty of the women was that of child bearing and during house hold chores.

That was her jurisdiction and nothing more. The Igbo culture on inheritance and succession follows the primogeniture principle, whereby, the first male child succeeds at the latter demise.

The people of the Bini kingdom in Edo state hold this custom tenaciously. In fact, this custom has become so notorious that it has gained judicial notice. We will however concentrate on the Igbo nation of the south eastern part of Nigeria. The concept of primogeniture as practiced by the Igbo people is that the first son succeeds after the father's demise, to the exclusion of his other male and female siblings. The Igbo tribe refer to the eldest as *'diokpala'* or simply *'okpala'*. In the nuclear family setting the eldest son of the deceased succeeds and rules over his father's immediate family. Notwithstanding the fact that some female children of his late father may be far other than him.

In an extended family, where there are several heads of several nuclear families, the eldest man of all nuclear families becomes the head pay allegiance to the head or the diokpala of the extended family. This diokpala of the extended family may as well be the youngest child among several female children in the family. As for instance, where the older male die in a war battle or even in an auto crash or plane crash. No woman can step in as the head of the family.[1]

The Igbos hold their ancestral name in high esteem. That is their surname. The first man that started the family, his name automatically becomes the surname of the family members from generation to generation. Except, a member of the family rebels and voluntarily decides to stop using the family name. When this occurs, which hardly occurs, the other members of the family will appear to him to revert to the common family name for which everybody knows the family. The female is usually married off and thus only the family name temporarily.

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1 Nwogugu, E I *Family law in Nigeria,* Heinemann educational books p. lxxi. p.401, (1974)

Whenever, the founder of the family dies, it his first male child that customarily steps into his shoes as the new head of the family. This new responsibility will mean that he is to continue to bear the surname already in place. For the traditional worshippers, he also takes over the family 'god' exemplified by an idol and he performs the needed sacrifice so that the god will continue to protect the family here on earth. Most of these responsibilities were not allowed to be performed by women because even the 'gods' would frown at it.

In the case where the deceased died intestate, the first son inherits even as little as his clothes. His regalia, his personal cars and personal dwelling house called the 'obi'. To the exclusion of the deceased brothers and widows. The first inherit his father's farming tools and his livestock, if any and the father's immediate surrounding compound[2] The money of the intestate father is inherited by all his male children to the exclusion of the females, no matter the number of the female or their biological ages.

Obi[3] observed that the position of the first son is so important and sacred that a portion of the family's property is specially allocated to him for the habitation and for farming purposes as the head of the family. After the head of the family, the other male children of the deceased heads of the family will thereafter take their turn and share in their late father's estate to the exclusion of the female children. Where the deceased head of the family had no male child, his properties would be inherited by the eldest of his blood brothers and nobody disputes it.

The female child or the widow under the Igbo native law and custom will inherit her late father or late husband's landed property, let alone taking over the headship of the family of her late

[2] Nwafia v Ububa 1 ALL NLR [1966] 8

[3] Obi SNC *The Customary Law Manual,* government printer, Enugu (1977) p.136

father or late husband under Igbo customary law. The case of *Ugboma v Ibeneme and anor.*[4] Rev. Ibeneme, a native of Awkuzu in Anambra Local Government Area in Anambra state Nigeria died intestate, leaving a number of landed properties at Onitsha including N0 44, New Market Road, he was survived by two sons and several daughters.

The plaintiffs are the second son and six of his sisters. The first defendant is the eldest son and head of the late Rev Ibeneme's family. The first defendant sold and conveyed No. 44, New Market Road, Onitsha in Anambra state to the second defendant. The issue before the court was whether the first defendant is entitled to sell and convey the said property to the second defendant to the exclusion of the plaintiffs. The plaintiffs in the pleadings sought the following reliefs:

1. A declaration that the property in question, being the joint property of all the children of Ibeneme, could not be sold and conveyed by the first defendant alone.
2. An order of the honorable court setting aside the sale, the deed of conveyance and
3. An order that the second defendant should account for the proceeds of the sale. The learned trial judge, Egbuna J. (as he then was), held that, towing the line of the laid down Igbo custom, women are not entitled to inherit landed properties of their father.

This custom is highly discriminatory and unfortunate for the Igbo woman; but nevertheless, the daughter of deceased may be maintained by whoever inherited her father's estate until the daughter becomes independent adult or whenever she marries or dies which ever event first

[4] ENLR (1967) p.252

occurs. So long as the daughter remains unmarried, she has the right to be given a portion of the farm until she marries, or dies[5].

It has believed that, the rationale behind this custom is perhaps due to the fact that women are by nature the 'weaker sex' and therefore need special privileges. If this was entirely true, then the modern day women would not want anything different, however, it isn't.

The average African man believe somewhere in his heart that it is a man's world. That the women cannot survive the hostility and hardness required to face the complexities of land matters. These reasons may have their merits, however, this paper will reveal the weakness of these propositions in the light of contemporary times.

A lot of factors contribute to the ousting of female children and women in general from inheritance in Eastern Nigeria. The issue of the *family name.* It's not new that in Africa, the issue of family name is not taken lightly. The male sons are the beneficiaries of this long aged cultural system. They are the carriers of the family name also known as *surname.*

The women cannot carry on the family name. One of the reasons is that the woman upon marriage, takes upon her husband's family name and found a family together. Thus it's was seen as unnecessary or even a waste to gift or transfer ownership of real property to a woman, especially where sons or male relatives are available.

More so, since the woman cannot carry the land to her husband's house, due to the immobility of land, 'it was no use' gifting a woman a land. This is also because the husbands sometimes lived far away from their fatherland. Furthermore, the woman was seen as the weaker sex. She was seen as incapable of maintaining land and protecting it from external intrusions.

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5 Obi SNC *the customary law manual,* government printer, Enugu. p 103.

The contentions on land matters, with regards to ownership and possession in Igbo land, is somewhat cumbersome. These African men thus believes that women are too weak to engage in a traditional battle against a man in land matters. This is because, women were not allowed to speak on land matters.

An exception to this would be an *Nrachi* girl, who has voluntarily allowed herself to remain unmarried with the hope that she would have a son, who would inherit her father's immovable. Upon obtaining her acquiescence, he calls a formal meeting of his agnatic family and at a ceremony he informs them of his decision.

In this way, she can inherit her father's estate. Howbeit, it's only a life estate. And the son she bears, inherits his maternal grandfather's estate absolutely. Thus her inheritance is only a means to an end. The actual goal, is the inheritance of the male child.

The allowance given to his mother is perhaps a form of consolation for the *Nrachi* agreement and also to cater for the son begotten. More details on the *Nrachi* would be discussed later on in the course of our examination of other discriminatory practices against women in this work.

However, it is important to note that generally under Igbo customary law, women cannot inherit real property. They may be allowed to remain in their husband's house subject to good conduct. They may also be granted a chattel, depending on the benevolence of the male relative inheriting. Notwithstanding, it is seen nearly as an abomination for a woman to inherit or even own real property in Igbo land.

Thus this paper is dedicated to the general examination of the issue of women inheritance in eastern Nigeria. The discriminatory practices against women, daughter's right to intestate

inheritance, the inheritance right if widows under native law, and finally other forms of women inheritance will be discussed.

2.2 Discriminatory practices against women; the effect of Section 42 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

Discrimination against women is defined by Article 1 of the United Nations Convention on the Elimination of all forms of Discrimination Against Women 1979 (referred to as the 1979 Convention) as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field."[6]

The term 'discrimination' has been defined[7] as the effect of a law or established practice that confers privileges on a certain class or that denies privileges to a certain class because of race, age, sex, nationality, religion, or handicap. It is a form of distinct treatment of an individual or group to their disadvantage; treatment or consideration based on class or category rather than individual merit; partiality; prejudice; bigotry.

It is an unfriendly situation where an individual is deprived of certain entitlements befitting his person, on grounds other than merit. Our constitution frowns seriously at the act of discrimination on the grounds of place of origin, sex, religion, or political opinion. Actually, our differences ought to unify us and not necessitate division. Although, this provision subsists in an

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6 'Accountability to Gender Equality' (2008), http.//www.boellnigeria.org/CEDAW_Accountability to Gender.

7 Black's law dictionary eighth edition. Bryan A Garner Editor in Chief (2004).

extant law as solid as our constitution, it seems as though the 'spirit' of discrimination has eaten deeply into the fabrics of the Nigerian populace.

This can clearly be observed in our choices of candidates in electoral processes. It can be seen in appointments into key positions. It is even evident in the educational system. The issue of indigene-ship bothers my little mind. Our constitution does not provide for State citizenship. The provision[8] in the constitution which provides for our citizenship, does not make allowance for state citizenship. However, the average Nigeria knows that even to be admitted into a university, especially those called "state universities" are indigene based.

Sadly, discrimination in Nigeria is far deeper than that. It is much worse for the women in Nigeria in every respect. Although, modern trends reflect that women in Nigeria are now more engaged and allowed to participate in matters pertaining to governance, top roles in the society and sectors for which they are credible, it has not always been so. Training the girl in the not too distant past was seen as a waste of resources. It was better to invest in the men who will continue the family name.

This situation led to massive disinheritance of women in most cultures in Nigeria. Thus Nigeria is a patrilineal society and men are the receivers of inheritance through their fathers. In Esan, a tribe of the Edo people of Nigeria, an idiom is usually stated that "a woman never inherits a sword" or "you do not have a daughter and name her the family keeper- she would marry and leave not only the family, but the village, a wasted asset"[9]

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8 Section 25 1999 Constitution of the Federal republic of Nigeria (as amended).

9 *Okhuo ile aghada bhe uku; ei bie omo khuo he ole iriogbe.* Okogie, CG; Esan Native Laws and Customs (1994) at 124

Inegbedion and Odion[10] observed that there are two factors-economic and spiritual that validate the custom of disinheritance of women and girl children. It is believed in Esanland that when a woman marries, all her possessions go to her husband thereby draining the family's wealth. Admittedly, it is on the basis of this economic consideration that a man, while alive, acts with restraint when sharing his property among the children. They also observed that this property sharing sometimes takes place because of his love for his daughter. He disproportionately gives his assets to his daughter at the expense of the eldest son.

In a case like this, elders of the land will immediately reverse the action of the dead or living man. This is why it is sad in Esan land that "*Olimin yiyi obe egbele khuale.*"[11] A spiritual dimension is employed to validate the disinheritance of Esan women. It is believed that women are inferior to men in both the physical world and the spiritual realm. Thus, no matter what a woman gets is not by right but as an act of goodwill.

In eastern Nigeria, a married woman may die an even leave behind real and personal estates. The male children will inherit the real estate of their late mother. In the absence of a male child, the husband inherits her real estate acquired during the marriage. On will only wonder will it's a different scenario when the man dies intestate. After all, what is good for the goose is good for gander.

The Constitution of the Federal Republic of Nigeria 1999 (as amended) in Section 42 subsection (1) provides that every citizen of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person, be subjected to either expressly by, or in the practical application of, any law in force in Nigeria or any executive

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10 N A Inegbedion and J O Odion, *Constitutional Law in Nigeria* (2011) p 281

11 It means "bad laws made by the dead can be reversed by the living."

or administrative action of government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject; or be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other commodities, ethnic groups, places of origin.

Under subsection (2), no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth. These two subsections are however subject to any law which imposes restrictions with respect to the appointment of any person to any office under the state or as a member of armed forces of the federation or a member of the Police or to an office in the service of a body corporate established directly by any law in force in Nigeria. What this section guarantees are a right against discrimination by law or executive actions on certain enumerated grounds like ethnic groups, place of birth, sex, religion and political opinion. There may be discrimination on other grounds like age, education, experience or physical qualities.

This section has been relevantly most engaged in the area of cultural matters and issues bordering on inheritance. But that not all there is to this section. At the foreign scene and even domestically, we see the issue of discrimination cutting across other aspects of life.

Women are often subjected to discriminatory employment practices all over the world, such as the requirement to present a non-pregnancy certificate to gain employment or to avoid dismissal from employment. A good example of this is the Maquiladora (Textile) industry in Mexico

which as at 2006 required women to present non-pregnancy certificates in order to be hired or to avoid being dismissed[12]

Recently, the Nigeria Police Force has sacked[13] an unmarried female corporal, Olajide Omolara for getting pregnant. This is contained in a police wireless message with reference number CJ:4161/EKS/IY/Vol.2/236, DTO:181330/01/2021 which was obtained by *The PUNCH.* the signal originated from the Department of Finance and Administration in Ado Ekiti and was addressed to the Divisional Police officer at Iye Ekiti where Omolara is based.

In the document it was stated that Omolara completed police training on April 24, 2020 and was attached to Iye Ekiti. The chief financial officer was asked to relay the information of her dismissal to the integrated Personnel and payroll information system to ensure that her salary is stopped. The document read 'Section 127 of the Police Act and Regulation against women police getting pregnant before marriage W/PC (woman corporal) Olajide Omolara passed out of Police Training School on 24/04/2020 attached to yours contravened above provisions.'

'She stands dismissed from the Force. Dekit her. Retrieve police documents in her possession with immediate effect.' This is another example of a discriminatory acts against women. In August, the Nigerian Army dismissed a soldier for getting pregnant after she was raped by suspected bandits while travelling to Ogbomosho, Oyo State. The rape victim was charged with one count of 'conduct prejudicial to service discipline', found guilty and dismissed from the regiment.

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[12] CESCR Concluding Observations Mexico Future E/C12/CO/MEX/4 (17 May 2006) at paragraph 15.

[13] https://punchng-com.cdn.ampproject.org/v/s/punchng.com/unmarried-policewoman-sacked-for-getting-pregnant/?amp=1.

The issues surrounding the confirming of Justice Akon Ikpeme as the chief judge of Cross River State is another case scenario of discrimination. Mrs. Ikpeme is of Akwa Ibom parentage. She was born in Calabar, Cross River, when Akwa Ibom was a part of Cross River. She is married to a man from Cross River, and has been working for decades as a judicial officer, including being a director of public prosecution, and a judge in Cross River.

Her confirmation by the house of assembly of cross river state had previously been manipulated by some "forces." Even though the issue of indigenship was rumored at the background as a major factor for her rejection, one will only wonder if her male counterpart would have been treated in the same discriminatory manner.

In African States like Togo, there is an extremely high rate of illiteracy among women, which in 1998 stood at 60.5 percent in the rural areas and 27 percent in the urban areas[14]the denial of women's economic, social and cultural rights in turn undermines women's capacity to influence decision and policy making in public life.

In *Phillips v Martin Marretta Corporation*[15], a company regulation which denied employment to women with pre-school age children was held to be unconstitutional and invalid for being discriminatory against women with in fact children. Also, *Brown v Board of Education*[16], the United States Supreme Court held; that the provision of separate educational institutions for different races was discriminatory and unconstitutional.

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14 CEDAW Concluding Observations: Togo CEDAW/C/TGO/CO/3 (3 February, 2006) at paragraphs 24-25

15 [1917] 400 US 542.

16 [1954] 347 US 483.

More so, in *Reed v Reed*[17], the United States Supreme Court held an Idaho State law which gave arbitrary preference to fathers over mothers in the administration of their children's estate was discriminatory and cannot stand in the face of the fourteenth Amendment of the constitution of the United States made on July 28, 1868 which states that citizenship rights are not to be abridged, and each person is to enjoy equal rights and protection under the laws of the United States of America.

Malemi[18] pointed however that, a law is not invalid if it imposes restrictions with respect to appointment of any person to any office under the state such as minimum age stipulation or to membership of the armed forces or other government security service established by law or for election to any public office and so forth.

Furthermore, he observed that government may implement special programs and measures to assist specific categories of people who are under particular disabilities, disadvantages, or less opportuned communities and minorities to enable them catch up, or properly participate in the development of a modern and united country. Laws, which confer maternity benefits on women are not discriminatory and so forth.

The focal point however in our discourse is the relationship between the provision of section 42 and the issue of women inheritance in Nigeria. In *Asika v Atunaya*[19] the appellants at the trial court, being women instituted the action to enforce their right to inheritance of their late father's property under the latter's Will. The said property situated at No 25 New American Road,

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17 [1971] 404 US 71.

18 Ese Malemi '*The Nigeria Constitutional Law*' (2012) 3rd edition p 308.

19 [2008] 17 NWLR (pt 1117) 484.

Onitsha was bequeathed by the testator, Late Michael Amachukwu Atunaya in his Will to be shared equally by his children.

Paulina, Michael, fidelis, Catherine, Cordelia, and Felicia are the names of his children. The respondent, who was the surviving male child of one of the children, Late Fidelis Atunaya contended that under Onitsha customary law, no female child can inherit property of her late father. He claimed to be the only one entitled to the property, being the only surviving male child of the family.

At the high court, the appellants sought a declaration that the along with the estate of the two other children were entitled to inherit the property, and also sought the portioning and sharing of the property to the said beneficiaries. At the conclusion of the hearing, the trial court found in favor of the appellants but refused to grant the orders as to portioning and sharing, on the ground that it could lead to injustice.

Aggrieved, the appellants appealed to the court of appeal. The respondent also filed a cross appeal which was later withdrawn. In determining the appeal, the Court of Appeal considered the provisions of sections 17, 21,42 and 43 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the court held that the provisions of the Nigeria 1999 Constitution in sections 42 and 43 prohibits against discrimination of women in whatever dimension and it is a grundnorm that could not be subjected to any custom especially where same is being vehemently resisted as in this case by the appellants who are co-beneficiaries with the respondent and another under the Will of their late father.

Per Denton-West JCA in that case said:

> “however, it is my humble view that the constitutional provisions earlier mentioned in my judgement apply in situations where if a

> custom tends to discriminate against a particular section of the populace, that custom even if not subject to litigation should not be allowed to prevail since it is against the tenets of the Constitution of the Federal Republic of Nigeria, 1999. Any custom or culture that does not enhance the human dignity of man or woman is inconsistent with the fundamental objectives of the Constitution and should therefore not be allowed."

The hallowed words of this learned judge cannot be taken with a pinch of salt. The Constitution amongst its other roles must be seen to protect the human dignity of every person. Anything makes a Nigerian citizen to be treated a second class human being must be seriously frowned against. This does not exclude people called "illegitimate."

The term "illegitimate" according the black's law dictionary[20] is defined as a child born out of wedlock and never having been legitimated. It is also defined as a child conceived while the mother is married but born after she is divorced or widowed. More so, according to Kasumu and Salacuse[21], legitimacy is a status acquired by a person who is born in lawful wedlock, and such a person is regarded as been legitimate from birth.

Since lawful wedlock includes marriage under the Act, as well as customary and Islamic marriages, any child born during the subsistence of either of these marriages is legitimate. Also, if the child is born within 280 days after his parents have obtained a decree absolute, the presumption of legitimacy will still apply to the child. Under Islamic law a child is presumed to be legitimate once he is conceived during the subsistence of the marriage. It is immaterial whether the child is born after the marriage has been dissolved.

According to common law, legitimacy is connected with paternity of a child. The father and mother of the child must have been validly married either at the time he was born or at the time

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20 Ibid 6.

21 Kasunmu & Salacus, *Nigerian Family Law* (1966) at 207

he was conceived. At common law the illegitimate child has no right whatsoever with regard to his parents. He is described as *filius nullius.* Chianu[22] wondered why under the general law that paternity is linked with paternity of the child and not the maternity. He went ahead to posit two possible reasons for this legal position.

Firstly, he pointed out that is rare for a person to be in doubt as to who his mother is. But as some decisions show, it may be a matter of doubt who the father is. Thus, a legitimate person is one who has the legal status of being born of a mother who then possessed the legal status of marriage. Or who, if her husband was already dead at the time of the birth, had possessed that status within the possible period of gestation.

Secondly, he posited that legitimacy is usually tied to succession to property and for most part the man is the higher income earner and he leaves his property behind for inheritance. He pointed out that the issues of legitimacy are of little practical importance except in determining the rights of succession.

However, we know the typical African society and their level of discriminatory tendencies. An illegitimate child in modern day Africa may not suffer so much (except as regards issues of succession), due to some significant level of enlightenment and exposure in some parts of the African world. However, this has not always been the case. Nigeria has had its own peculiar experiences.

In *Alake v Pratt*[23] the brief before the West African Court of Appeal. The issue for determination was whether an intestate's out-of-wedlock children were in his entitled to share in his estate together with his children who were issues of a statutory marriage. The trial judge found that by

22 Chianu, *Law of Succession* (2019) p 209.

23 [1955] 15 WACA 20

Yoruba law the out of wedlock children who were acknowledged by their father were legitimate children and could share equally with their in-wedlock half-siblings.

However, he considered it contrary to public policy for the out-of-wedlock children to inherit as they could not be placed on the same footing as in-wedlock children. It would be otherwise, he said, if all the children were born without marriage, in which case, all would inherit equally. He was influenced by an Obiter in Verity CJ's judgment in *Re Adadevoh*[24] to the effect that upholding the claim of children born out of wedlock would offend public policy which discourages promiscuous intercourse.

Prior to the enactment of the aforementioned section, and as pointed out earlier, it is only children that are born out of wedlock or those acknowledged by their putative father that have rights of inheritance in the estate of the deceased. In *Cole v Akinyele*[25] the deceased was married under the Act. He had an amorous relationship with another woman whilst his marriage subsisted. That extra-marital relationship resulted in two children. The first being born during the subsistence of the statutory marriage, while the other child was conceived during the marriage but shortly after the death of the wife of the statutory marriage.

The issue for determination before the court was whether the two children of the deceased could be regarded as legitimate children, as a result of the acknowledgement of their paternity by the deceased. For the child born during the subsistence of the statutory marriage, the court held that it was contrary to public policy to allow the father to legitimize that child by any other method other than the procedure provided by the Legitimacy Ordinance.

According to Brett FJ (Delivering the lead Judgment of the Court) held as follows:

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24 [1951] 13 WACA 304, 310

25 [1960] SCNLR 192

> 'The judgment in Alake v Pratt does not go into the question of what constitutes a sufficient acknowledgement by the father to make a child legitimate, nor does it decide whether the acknowledgement must be given at the time of the child's birth, or whether it may be given at any time during the joint lives of the father and the child, and no evidence has been called in this case to suggest that the fact that the deceased continued to treat the first appellant as his child after the death of his first wife could constitute, as it were, a fresh acknowledgement on which the first appellant could rely. I prefer, however, to base my judgment not on the failure to prove any applicable rule of Yoruba law and custom, but on the ground that such rule would be contrary to public policy. On the death of his first wife it would have been open to the deceased to legitimate the first appellant by marrying his mother under the Marriage Ordinance. He did not do so, and although he was entitled, in the words of Kaine J, "to go back to native law and custom if he chose" in his personal relationships I would hold it contrary to public policy for him to be able to legitimate an illegitimate child born during the continuance of his marriage under the Ordinance by any other method than that provided for in the Legitimacy Ordinance. When a man who might have married under native law and custom has voluntarily accepted the obligations imposed by a marriage under Marriage Ordinance it seems no undue hardship upon him to hold that in order to legitimate the children of an adulterous union he must follow the same procedure as a person to whom a marriage open; indeed to hold otherwise would almost be to reduce the distinction between the effects of the two forms of marriage to a matter of words.'[26]

With regards to the second child, he court held that there was no principle of public policy to exclude the rule under which he as the acknowledged son could be deprived from being entitled to share in the distribution of his father's estate. The coming of the Section 42 of the Constitution of the Federal Republic of Nigeria[27] had made equalized the status of the illegitimate child and the illegitimate child in Nigeria.

[26] Ibid 195

[27] Formerly s 39(2) of the 1979 Constitution.

In *Olulode v Oviosu*[28] the court held that the "pith and substance of the above section(Section 39(2) is to abolish the status of legitimacy and illegitimacy and to treat every Nigerian citizen as a citizen, whether born within wedlock or outside wedlock". The provision of section 42 broke new frontiers and revolutionized the law. Not just on legitimacy and illegitimacy, but on all issues bordering on all forms of discrimination.

The deceased in *Dr. T.E.A Salubi v Mrs. Benedicta Nwariakwu*[29] had two other children out of wedlock from two women. After the death of Chief Salubi in 1982, his first son, the appellant in this case and his mother were granted letters of administration to administer the estate in 1985. Later the appellant became the sole administrator as a result of their mother's illness and old age. The first respondent being dissatisfied with the manner in which the appellant was handling the affairs of the estate, instituted an action at the high court.

The first respondent sought to set aside the letter of administration, and an order that the probate registrar should effect the distribution of the estate of the deceased to all beneficiaries in accordance with the marriage ordinance applicable to the deceased. The trial court set aside the letter of administration as sought and ordered that the administration-general should distribute the estate between the two children of the statutory marriage.

It further held that the two children of the deceased, born out of wedlock, being illegitimate were not entitled to share in the distribution of the estate. The appellant appealed to the Court of Appeal. On the exclusion of the other two children born out of wedlock because they were illegitimate children. The court of appeal rejected the argument and held that the court cannot

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[28] Olulode v Oviosu. Unreported High Court of Lagos State, Ikeja Judicial Division 27th November 1981. Suit No. M/150 80

[29] [1997] 5 NWLR (pt 505) 442.

shut its eyes to the specific provision of Section 39(2) of the 1979 Constitution and that to hold that the two children born out of wedlock in the instant case were not entitled to benefit from the estate of their acknowledged father who had died intestate amounted to subjecting them to a disability or deprivation merely by reason of the circumstances of their born out of wedlock which was exactly what the Section 39(2) of the Constitution was aimed at preventing.

Ige JCA, commenting further, observed as follows "Under our law and the provisions of the Constitution of the Federal Republic of Nigeria 179 they are lawful children and entitled as beneficiaries under the estate of their late father… the decision in *Cole v Akinyele…* is no longer the law.[30] On further appeal to the Supreme Court, the Supreme Court held that the trial court had jurisdiction to entertain the claim before it and that the two issues born out of wedlock are entitled in equal shares with the two other issues of the marriage of the deceased and the widow[31].

What can be deduced from these decisions, is that section 39(2) now section 42(2) of the Constitution of the Federal of Republic of Nigeria 1999 (as amended)[32] is that the law now recognizes as legitimate children, children born out of wedlock provided their paternity was acknowledged by their putative father irrespective of the form of marriage contacted by their father. This has ameliorated the discriminatory practices of disinheriting "illegitimate" children.

However, the issue of children who were not acknowledged by their putative father remains unresolved. Can such a child inherit his father's estate? Can he raise the issue of discrimination on the circumstances of his birth as provide for in Section 42(2) of the 1999 Constitution? It

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30 Page 447 of the law report.

31 [2003] 2 SC 161.

32 Hereinafter referred to as the 1999 Constitution.

could be submitted that such a child cannot legally lay any claim to the intestate estate of his putative father where acknowledgement is lacking.

Where the crucial element of acknowledgment is lacking, it will be a very cumbersome journey for the 'illegitimate' child. But where the mother of the child himself is sure that the putative father is the biological father, he can institute for the determination of his paternity while the putative father is still alive and relying on the provisions of Section 6(6)(b) of the 1999 Constitution. Thus, the seemingly settled issues of illegitimacy still face some legal dilemma. This is not even with cognizance to the customary people, who will still discriminate the illegitimate child.

Hence, the matter of discrimination with regards to inheritance and intestate succession has been quelled by the provision of Section 42(2) of 1999 Constitution[33]. Howbeit, it has not totally eliminated it. Even with the presence of the Section 39(2) of the 1979 Constitution which is *impari materiae* with the provision of Section 42(2) of the 1999 Constitution, cases of female disinheritance still persisted. The courts even upheld and took judicial notice of some these discriminatory practices.

The progress in this chapter will see the examination of these issues as well as significant efforts made by the courts in mitigating the harshness of these discriminatory acts against women particularly. I will however not be taking the matter holistically. Emphasis will be made on the different inheritance conditions faced by females in Igbo land; that is in Eastern Nigeria. The rights of daughters to intestate inheritance. Then, the rights of widows, upon the demise of their husband.

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[33] Ibid

2.3 Daughter's right to Intestate Inheritance

The woman belongs to the family but her membership of the family in relation to participating in the sharing of family property depends on the particular prevailing cultural system. The Igbo customary law is basically patrilineal in nature; and thus, the main principle of customary inheritance is that of primogeniture.

Under this system, land and landed property devolve on the males, to the exclusion of daughters and wives. In Igboland, a daughter cannot inherit her father's estate which is reserved for the absolute inheritance of the male children. The female child cannot ascend the family stool as the family head either.

The preference for males amongst the Igbos is not a hidden act at all. This is even reflected in the kind of celebration and jubilation that takes place during the birth of male children and in the kind of names they give to male children; which connote and extol the importance of the male children in the family. Practices like this, aggravates the deprivation of female inheritance rights to parent's property.

Azuakor, Paul Okwuchukwu[34] underwent oral interviews to investigate women's place in inheritance in Igboland. The researcher went into four Igbo communities and the results are as shown below:

For Sir (Nze) Livinus Obiagbapunam Obinwe (of Ifite village, Oko, Orumba North LGA, Anambra State, 28th April 2016,), the making of a will is called *ikeekpe* while the act of inheritance is called *iri ekpe* in Igbo language. The things traditionally inherited include lands,

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[34] Ph.D. Department of Social Sciences, Federal Polytechnic, Oko, Anambra State, Nigeria. '*The Women's Place in Family Inheritance in Igboland: A rationale and legal critique'.* (2017) Vol 1 No 2, Nnadiebube Journal of Social Sciences (NJSS).

trees, money, and other properties. And to signify the right of inheritance we have such expression as *oke onye ketere na be nna ya,* that is, the share of wealth/property which one has gotten from the father.

On the women's place in inheritance in Igboland, he held that in Onitsha they *could* (emphasis mine) get inheritance, but not so in Oko. He said that about 3-5% of Igbo men could occasionally give little portions to their cherished daughters in which case it not *okeo ketere na be nna ya,* but *oo nna ya nyere ya,* that is, it is not what she has inherited from the father but rather a gift given to her by her father. *O soghi n'oke-* she does not have inheritance rights.

Rather, her portion of property is in the husband's place. If the father gave her a tree, once that tree died, or out of necessity it was felled, that was the end. But what if she is unmarried? The answer was that she still had no share in her father's house. However, the brothers are expected to take care of her and allow her make use of some of the properties out of charity. If not she would stay and suffer, she would go around begging for land to cultivate and maybe engage in commerce.

She has no rights. But in the majority of the cases brothers give their unmarried sisters lands and trees if they are unmarried, a situation capable of fueling quarrels between the brother and wife. She would normally be given a room to live in, usually in the backyard or what is called boys' quarters. But if these are not available, then she must be given room in the main house. What if she was married and lost the husband without an issue for him? The husband's family would take all the property except maybe the money she is able to take.

This was more so in the olden times when they would struggle over the property with her and if she eventually died, they took over everything. Today, they still encroach, but her exposure level

could fight for her. She could dispose of the property, but this usually generates conflicts and some can kill for that. What if she has only female issues? Some would do *nhaikwa* even till today, a situation where one of the daughters will have to be made to stay at home without marrying and beget children (male children for that matter) to secure the family line and inheritance. Today, because of the influence of the church, even if *nhaikwa* is not made official, some men and women who have no males encourage their daughters to become promiscuous to see if they could become pregnant and beget a male who would have inheritance rights.

When he was asked if steps are taken in his community to change the status quo and to give girls inheritance rights, his answer was a frim firm "No". he posited that even the property ownerships in the modern world, existing in townships, the females are still given only a stint, if at all. He concluded his response be admitting that though the position is unjust, it would be a herculean task to change the custom.

A further interview was held by Azuakor with Mrs. Marcelina Ogechukwu Igwe (of Anyim Azuinyagba, Isielu LGA, Ebonyi State, April 29th, 2016. She said that among her people, inheritance is called *ikporo ekpe.* She said women were not allowed to inherit. Women only got *ngwongwo maka ibi na-ezinulo,* that is movable property given to her by her family as farewell presents to go live with her husband. She pointed out however, that, the property is usually substantial, like car, refrigerator, pots depending on the means of the family.

She said the unmarried woman is taken care of by her brothers but is never given land. But she advised that such unmarried women should not be idle or dependent, though their brothers would ordinarily not abandon them. She also held that such a woman must be given a room and that some wealthy families have even built them houses. Women whose husbands are dead, in her

place, owns their husband's property until the children grow and then she co-jointly owns it with them.

If all the children are girls, they and their mother own the property until they are married. The property does not revert to the brothers of the husband until the woman dies. If the woman had no issue at all, nobody disturbs her over her husband's property, she uses everything until death except if she leaves on her own, she loses everything. In her own opinion women are not maltreated on the matters of inheritance in her place, that they enjoy property as much as they want, but in their husband's family.

She believed that things should be left as they are. And for her, a man who owns five houses in the town, who also has five children, three boys and two girls for instance, will not give any of the houses to the girls, but will only distribute it among the boys, giving more to his most beloved, though the first born will naturally choose one first before any of the sons get anything. And for her, inasmuch as the girls would marry, it is no maltreatment not to give them any house. She said that even though their husbands are poor, they could be assisted with money or businesses started for them, but never to give them houses.

These interview reveals the ideas around women inheritance in some aspects of Eastern Nigeria. It also showcases the attitude of the typical African woman towards the matters of female succession. The average Nigerian woman does not see anything wrong with primogeniture and patriarchy. Their concerns only begin rise upon maltreatment as widows. Haven, discussed the views of this persons, what then is the attitude of the courts towards issues of this sort.

Normally, a legitimate child born during the subsistence of a statutory marriage, especially marriage under the Act, is entitled as a bonafide beneficiary of the estate of her father. Thus the

right of a daughter to inherit under the Administration of Estates Law. She can take advantage of statutory provisions like the Administration of Estates Law, where her parents contracted marriage under the Marriage Act 1914.

Section 49(5) of the Administration of Estates Law, the estate of a person who contracted statutory marriage is distributed in a manner set down in the law "any customary law to the contrary notwithstanding"[35] In *Re Adadevoh*[36], Verity CJ stated that if by native laws sons were entitled to a double portion, they would not be so entitled under the law if it would implicate discriminations on grounds of gender. Neither can anyone dispute a daughter's right to inherit via a provision in a valid will. However, the focus of this sub heading is a daughter's inheritance from her father under customary or native law.

Chianu[37] observed that matters on female succession hinged mostly on land matters. He however pointed that in the not too distant future economic development will cause a change so that disputes relating to entitlements to movables, choses in action such as bank deposits and shares, as well as pension and superannuation claims. He also took note of a reported decision, where it was held that under native law daughters who cannot succeed to immovables may share in money or other movables.[38]

Among the Yorubas, distribution of estate is equal irrespective of gender. In matters like partitioning of family property priority of choice is based on the eldest born, notwithstanding the

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35 Reference to the AEL is to that of Lagos State. There are similar provisions in States that have AEL.

36 Ibid 23.

37 Ibid 21.

38 *Nkeaka v Nkeaka* [1994] 5 NWLR (pt 346) 599 (a case which rose from Ibusa, an Igbo speaking part of Delta State

person's gender.[39] In *Sule v Ajisegiri*[40], the court held that where a family property is sold: the proceeds of sale are shared equally among siblings without preference for sons. The court also in *Folami v Cole*[41] held that all children daughters; eldest daughter automatically became the head of the family and thus held that her sale of the land in question was voidable, not void. Therefore, in the absence of a son, all of a person's estate goes to the heiress; collateral relations have no foothold in the estate. In *Lewis v Bankole*[42], Osborne CJ made a decision to the effect that a capable female can hold the position of the headship of the family. Daughters in Benin are entitled to 'something reasonable' from the intestate estate.[43]

In Rivers State, amongst the Ikwerres, unmarried daughter can survive to immovable property partitioned in her mother's favor. However, not without her father. One strong observation here is that not all customs like the Igbo custom ousts and disinherit daughters and women. A daughter in *Ezenna v Attangwu*[44] failed in her attempt at asserting her right to inherit to from her father's immovable property. The claim arose from Nsukka area of the present Enugu State. The deceased property owner was survived by three widows, several daughters and an only son who was a minor at his death.

The son's paternal cousin took over his guardianship and the management of the deceased's estate for the son's benefit. In this claim one of the widows and her only daughter challenged the son's guardian on account that contrary to the well-known native law among majority of Igbos,

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39 *Ricardo v Abal* (1926) 7 NLR 58

40 (1937) 13 NLR 146; *Barretto v Oniga* [1961] 1 WNLR 112.

41 [1990] 2 NWLR (pt 133) 445

42 (1909 1 NLR 82

43 Benin Traditional Council, *A handbook on Some Benin Customs and Usages,* 1996, p 13

44 [1987] 1 Quarterly LRN 199.

widows and daughters may inherit. By motion on notice, the plaintiffs moved to have the daughter's out of wedlock son joined as the third plaintiff. Under cross-examination, the daughter made three testimonies that gave a knock-out blow to her case:

(a) She was 15 when her father died

(b) She was in elementary three at the time

(c) She had five out of wedlock children (four girls and a boy)

But she alleged that, if her non-uterine brother died, her only son would be the *Okpala* (head of the family). Her claim that her father instructed her to remain unmarried so as to beget him a son, was not upheld by the court as unlikely as she was only 15 at his death. And by conceding that her son should be the next head of her father's family when her half-brother dies, she showed that according to the applicable native law daughters have no inheritance interest in their father's immovables.

The motion was dismissed. Edozie J declared:

> "Although the prayer sought is to join [the second plaintiff's son] as a co-plaintiff, in reality it is an attempt by the plaintiffs to sue in a different capacity having realized the weakness of their case for if the purpose of the entire amendment sought by this motion is to represent the interests of the children of the [second plaintiff], why should the male issue….be singled out from the other four female issues to be joined as a co-plaintiff?"[45]

This judgment was devoid of the application of fundamental rights provisions which was in force then, namely section 39 of the 1979 Constitution which prohibits discrimination on account of, amongst others, gender. Generally, widows are barred from inheriting their deceased husband's estate. However, the crux of this subheading is only daughters disinherited. A widow who had a

45 Ibid 43.

son before the demise of her husband would normally not be disturbed. She could remain in the house under her son's umbrella.

There is therefore clear from the aforementioned cases that daughters in Igbo land ordinarily do not inherit real property. But there are instances where a daughter could escape the rigors of the harsh customary discriminatory provision of primogeniture. One of such instances is upon the application of the *Lex Situs rule.*

Chianu[46] observed that where a person's personal law disallows his daughters from inheriting but the land in which he wants to bequeath to his daughters, is in a part of the country where daughters right to inherit is recognized, the courts will apply the *Lex situs* rule for their benefit. In the case of *Udensi v Mogbo*[47], the land in dispute was subject of kola tenancy in Onitsha. It was granted to the plaintiffs' father and upon his death, their uncle started to share possession with them.

Upon their uncle's death, his son (the plaintiffs'' cousin) claimed title to the land on account that the plaintiffs were daughters who were prohibited from inheriting land according to Ezinifite law, the parties' town of origin. The daughters succeeded in their claim for an account of moneys received from the property and an injunction to restrain the defendant from collecting any money from the tenants of the property. They succeeded because the court applied the *Lex situs* rule since daughters can inherit land subject of kola tenancy.

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46 Ibid 21.

47 [1976] NSCC 375

The court also applied the *Lex situs* rule in *Mojekwu v Iwuchukwu*[48]. The plaintiff sought a declaration of title to a property subject of kola tenancy in Onitsha. The original owner had two wives, two daughters and a son. The first wife had two daughters while the second wife (the defendant) had a son. The only son died before he could marry or have a child. The plaintiff is the landowner's paternal nephew. Under the misimpression that he became the heir to the property in dispute, the two daughters accompanied him to the customary overlords who inserted his name in their docket as the new tenant.

When the defendant made attempt to further improve the property, the plaintiff sued to stop her and assert his title. The crux of his case was that in the absence of a surviving son from the original landowner's lineage, he became the sole heir. In counter, the defendant as the widow who had a son, albeit dead, claimed entitlement to the property.

The court held that the issue from the angle that since the original land owner's daughters were alive, the property should go them notwithstanding that they were not parties to the suit. The court held against the plaintiff. The court further held, that he could not bolster his claim with the document the overlords signed in his favor and which the landowner's daughters attested as witnesses. The document was inconsistent with the incidents of kola tenancy, was ineffectual to confer title on the plaintiff.

The *Nrachi* custom earlier identified in this work, is another ground in which women in Igbo land can inherit real property. The idea of the *Nrachi* is that, a man whose wife bore only daughters will 'consecrate' one of his daughters to remain unmarried so as to produce a son for her father. The *Nrachi* ceremony is performed, and the daughter inherits a life estate in her

48 [2004] 11 NWLR (pt 883) 196.

father's immovables and any son begotten by her inherits his maternal grandfather's estate absolutely.

The Court of Appeal discussed the *nrachi* custom in the case of *Muojekwu v Ejikeme*[49] the original landowner died being survived of a widow and two daughters. The first daughter died unmarried and childless; the second had two out of wedlock daughters during her father's lifetime. One of the grand-daughters gave birth to two daughters and a son. The children of the widow resided in the deceased's property until the grandchildren's paternal cousins disturbed their possession on account that *nrachi* was not performed on the deceased's surviving daughter who begat the grand-children, the present plaintiffs.

The trial court held that the deceased's lineage went extinct when his first daughter on whom *nrachi* was performed died childless, and as *nrachi* was not performed on the surviving daughter, none of her children could inherit. The Court of Appeal reversed him. It held that inheritance was by blood and the plaintiff, as the grand-children of the deceased, had a better title to the land than the deceased's nephews.

Olagunju JCA out rightly and mercilessly condemn the *nrachi* custom he said:

> 'what is intriguing is the wholesale disqualification of the direct progeny of the founder of an estate from the right of inheritance which is passed over to the distant relations of the founder by sheer accident of the founder being survived by a female child who was not in the lifetime of the founder availed of the ceremony of nrachi that confines her to a promiscuous existence of staying unmarried in her father's house for the singular purpose of producing male children for the parent's family. This practice is preposterous as

49 [2005] 5 NWLR (pt 657) 402, CA

> compromising the basic tenets of the family life that institutionalized marriage as the foundation of that fulfillment.'[50]

The Court of Appeal also refused to disinherit the plaintiff for the what the court considered as the transgression of his mother and maternal grand-father being the *nrachi* in *Anode v Mmeka*[51]. The plaintiff was the grandson of the man who acquired the property. As the man had no son, he performed *nrachi* ceremony on his daughter who begat the plaintiff. When the defendant, the plaintiff's paternal uncle, disturbed his possession of the original landowner's land the plaintiff sued him for declaration of right of occupancy over the property. He prevailed as the defendant failed in his bid to nullify the *nrachi* ceremony.

The Courts in recent years have made useful progress in mitigating native laws which discriminate against women inheritance. This may arguably be due to the rise of more women in the judiciary and in the different departments of justice in Nigeria. The victorious cases of *Onyibor Aniekwe and Chinweze v Mrs Maria Nweke*[52] and the case of *Ukeje v Ukeje*[53] which are both 2014 cases. These judgements of the Supreme Court of Nigeria are landmark judgements where the apex court refused to enforce and out rightly condemned discriminatory practices against women and declared them repugnant to natural justice, equity and good conscience. We shall analyze these cases with their facts to bring out their relevance to this discussion.

In *Ukeje v Ukeje*[54] one Mr. Lazarus Ogbonnaya Ukeje a native of Umuahia in Abia State (then Imo State) who lived all his life in Lagos State died on 27th day of December, 1961 intestate. He

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50 Ibid at 438

51 [2008] 10 NWLR (pt 1094) 1; *Okoli v Okoli* [2003] 8 NWLR (pt 823) 565, CA is another decision relating to *nrachi*; the son of the daughter on which the ceremony was performed inherited his maternal grand-father's immovable.

52 [2014] 9 NWLR (pt 1412) p 393-422.

53 [2014] 11 NWLR (pt 1418) p 384.

54 Ibid 49.

acquired real property in Lagos. The deceased was married to the 1st appellant Mrs. Lois Chituru Ukeje and the marriage produced four children. The 2nd appellant Enyinnaya Lazarus and the respondent Mrs Gladys Ada Ukeje were among the children.

Upon death of Lazarus Ogbonnaya Ukeje, the 1st and 2nd appellant (mother and son) obtained letters of administration for and over the deceased estate. Mrs Gladys Ada Ukeje the plaintiff/ respondent on knowing of this development filed an action in Lagos High Court wherein she claimed among other things that as a daughter of the deceased that she is entitled to partake in their late father's estate.

The trial court ruled in her favor and frowned at such Igbo discriminatory rules of customary law that denies women right to property as contrary to section 42(1) and 42(2) of the 1999 Constitution. Unsatisfied with the judgment of the High Court, an appeal was before the Appeal Court. The Appeal Court did not waste time in affirming with the decision of the trial judge in declaring the Igbo native law and custom that disentitles a female from sharing in her father's estate as not only being repugnant to natural justice, equity and good conscience but discriminatory and unconstitutional.

Rhodes-Vivour JSC (Delivering the lead judgment) held as follows:

> 'This appeal is on the paternity of the respondent; whether the respondent was a daughter of O Ukeje (deceased) L O Ukeje deceased is subjected to the Igbo Customary Law. Agreeing with the High Court, the Court of Appeal correctly found that the Igbo native law and custom which disentitles a female from inheriting in her late father's estate is void as it conflicts with sections 39(1)(a) and (2) of the 1979 Constitution (as amended). This finding was affirmed by the Court of Appeal. There is no appeal on it. The findings remain inviolate.'

Sections 39(1)(a) and (2) of the 1979 Constitution is now contained in the 1999 Constitution as section 42(1)(a); (2) and it states that:

"42(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not by reason only that he is a person:

(a) Be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities, or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin sex, religion or political opinions are made subject: or, …
(b) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth."

No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate. Consequently, the Igbo customary law which disentitles a female child from partaking in the sharing of her deceased father's estate is in breach of section 42(1) and (2) of the constitution. The justices delivering the lead judgment concluded and said, "in the light of all that I have been saying, the appeal is dismissed. In the spirit of reconciliation parties to bear their own costs."

In a concurring judgment Ogunbiyi JSC remarked:

> "the trial court …rightly [declared] as unconstitutional the law that disinherits children from their father's estate. It follows therefore that the Igbo native laws and custom which deprives children born out of wedlock from sharing the benefits of their father's estate[conflicts] with the section 42(2) of the 1999 Constitution"

This judgment is a welcome development in the struggle and crusade in support for war against all forms of discrimination against women's rights to property in Igbo society. It is a victory to the women folk in Igboland. Thus the Supreme court added her voice in the fight against female discrimination in terms of property rights in customary societies. The Supreme Court's decision in *Aniekwe v Nweke*[55] is also another affront on the discriminatory practice of disinheriting women.

In that case, a widow who had six daughters sued to retain a right in her husband's immovable property. She instituted this action because, her daughters feared that the suit would be unsuccessful. Two justices in this case made remarks on the right of a daughter to inherit. Ngwuta JSC stated briefly that a custom that bars daughters from inheriting their father's property cannot be justified by the practical realities of today's world. Children whether male or female, are gifts from the creator for which the parents should be grateful.

Ariwoola JSC gave a more detailed comment on the issue. He said:

> 'the defendants stated that the reason why their custom [forbade the widow from inheriting land] in her matrimonial family was the fact that she [had six daughters] without a single [son]. By this, it meant that the said six daughters were denied their entitlement to inherit their father's property because of gender. There is no doubt that this custom….is to say the least, repugnant to natural justice, equity and good conscience. It is even barbaric. On wonders whether it was the [widows] making what sex the pregnancy that her late husband made with her will come out with. Indeed, such a custom that discriminates against[daughters] is a challenge on God Almighty who is the maker and producer of children. He (God) alone determines what pregnancy will produce what type of sex-male or female. It therefore be inhuman and injustice to discriminate against a [daughter] on her father's property or a widow on the grounds that she has only [daughters] for her late husband.'

55 Ibid.

What can be said from the decision of the supreme court in this cases are the condemnation of this particular practice. Even though it has been argued and in fact is actually true, that the rejection of a customary practice by the court does invalidate the custom. The decision of the court in condemning a particular custom, only means they've refused to accept the custom as binding and enforceable in the court not necessarily that the custom is invalidated.[56]

It is for this reason that even with landmark judgments like these, the denial of females from intestate succession may still continue in perpetuity. Prior to the Supreme Court's decision in those cases, Pats-Acholonu's dictum in *Uke v Iro*[57] made a profound statement on the issue of women's rights. He said:

> 'any law or custom that seeks to relegate women to the status of a second citizen thus depriving them of their invaluable and constitutionally guaranteed rights are laws and customs fit for the garbage and consigned to history. It is apostasy to say that a woman cannot be sued or cannot be called to give evidence in relation to land subject to customary rights of occupancy. I reject that argument in its entirety. A custom which strives to deprive a woman of constitutionally guaranteed rights is otiose and offends the provisions that guarantee sexual protection under the law.'[58]

With the provisions of the 1999 constitution and Supreme Court cases which will serve as precedents, it hopeful that gradually there will be a new form of acculturalization amongst the

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56 Enabulele and Bazuaye, both Professors of Jurisprudence in the Faculty of Law University of Benin in their work '*Validity and Enforceability of Customary Law in Nigeria: Towards a Correct Delimitation of the Province of the Courts'* [2019] Journal of African Law, p 14 to 21, argued passionately that since customary laws are a product of the accepted way of life of a people, the people are the ones who validates the custom. Thus they posited that it was erroneous using the repugnancy test as the validity test. They hold that the courts are only empowered to determine whether rights and obligations arising from customs are enforceable by the sanction of the courts and never to determine whether a custom is valid. "In other words, a rule of customary law ceases to be valid when it is no longer recognized as such by the people. On the other hand, the refusal of a court to enforce a rule of custom, for failing the 'enforceability' test, only denies the customary law the force of positive law; it does not strip it of its traditional aura among the people to whom it applies." p 18.

57 [2001] 11 NWLR (pt 723) 196

58 Ibid at 202-203.

Igbos which is impact into the spirit of the people adequate allowance for both genders-male and female children to be able to succeed their father's intestate estate. As Chianu pointed out 'Tradition is strong, yet even if complete equality is not achievable, right to inherit subject to uneven distribution is within view.'[59]

2.4 Inheritance Rights of Widows under Native Law.

Widowhood has been defined as the state of mourning the loss of one's husband or wife through death[60]. Widowhood is seen as a life event with wide range of consequences. For instance, widowhood is known to be responsible for the poor health status of widows and widowers, with minimal long term consequences and is also associated with intense grief and angry expressions.

One of the most painful experiences a widow face is what is referred to as widowhood rites. Under Igbo culture, widows are subjected to all manner of degrading treatment. They are often the primary suspects upon the demise of their husband. Therefore, they are expected to go through fetish rituals in order to absolve themselves from the complicity in their husband's death.

Any woman who is accused and cannot defend herself automatically loses all rights in the family, including rights to use the landed property. This dangerous widowhood practice is an infringement of the widows' right and their dignity. Men are not in any way treated in such a degrading manner upon the demise of their wives. (except the circumstances surrounding her death are mysterious).

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59 Ibid 21 at 199.

60 E E Abolarin, "*A Cross-ethnic comparison of support network in widowhood in Nigeria" (1997)* Unpublished Ph.D. thesis. Department of Guidance and Counselling, University of Ilorin, Ilorin.

A widow is usually deprived of any rights in her husband's property by the members of the man's extended family. In almost all native laws, a widow is disinherited from her an absolute interest in her husband's estate. She could only be given at best a life estate in her matrimonial home. But this happens especially if she gave birth at least to a daughter for their deceased brother.

In *Onwo v Oko*[61], a widow who was a member of the Assemblies of God Church, conscientiously refused to perform some widowhood rites. Her husband's relations doubted her convictions, since their late brother was not a member of that church. Notwithstanding her protestation, she was shaved and locked in a room to compulsory fulfill a part of the funeral rites. In her action her damages for infringement of her constitutional right to freedom of worship, also of conscience, the court of first instance ruled that actions to enforce fundamental human rights could only be commenced against a public institution, not a private individual. This decision was reversed on appeal and the appellate court ordered for a re-trial.

As earlier mentioned, even though the native law does not recognize a widow's right to inherit she is not thrown out automatically after her husband's death in many native laws. Some native laws actually allow a widow who remains of good behavior to remain as long as she has a child. Even with this, there is a need for the recognition of widows right to inheritance of her husband's estate rather than "inherit" through her children.

In *Nzekwu v Nzekwu*[62], the widow had two daughters for her husband; she had no son. The marriage was under native law. For nearly four decades after her husband's death, she stayed in

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61 [1996] 6 NWLR (pt 456) 585.

62 [1989] 1 NSCC 582.

the family property that was allotted to her husband. Her husband's nephew who was head of the extended family, sold the land to a third party with the intent of dispossessing the widow. Her claim for recovery of possession and injunction to restrain the head of the family and the purchaser succeeded. The court also upheld widow's right to repair and rebuild a dilapidated house. She only needs the consent of the family if she wants to grant a long lease.

The widow in *Ojukwu v Ojukwu*[63]*,* had three daughters and no son for her deceased husband. She interfered in the extended family's immovables along with the vast business of her late husband, as well as his house properties. The intestate's brother sued to challenge her interference with the extended family's immovables. The widow's challenge of his locus standi failed. But Ubaezonu JCA's rhetoric question is noteworthy. He opined "Why should the widow not manage the deceased husband's store when she has three female children of the deceased to look after.

The recently celebrated case of *Aniekwe v Nweke*[64] is one poignant Supreme Court judgement regarding a widow's right to inherit. The Supreme Court held that the Awka (Igbo) law that bars a widow from inheriting more than a life estate on account of not having a son surviving her husband is repugnant to natural justice. In a supporting judgement IT Muhammed JSC stated:

> 'it baffles one to still find in a civilized society which cherishes equality between the sexes, a practice that disentitles a [widow from inheriting] from her late husband's estate simply because she had no male child from her husband. This practice is a direct challenge to God the creator who bestows male children only; female children only…or an amalgam of both males and females, to whom He like. He also has the sole owner to make one barren. There is nothing…one can do if one finds oneself in any of the situations. To perpetuate such a practice as is claimed in this matter will appear anachronistic, discriminatory and unprogressive. It

63 [2000] 11 NWLR (pt 677) 65

64 [2014] 9 NWLR (pt 1412) 393

> offends the rule of natural justice…that practice must fade out and allow equity, justice and fair play to reign in the society.'[65]

A wife who abandons her husband during his illness and takes up residence elsewhere is disentitled to maintenance from his estate if he died from the illness[66]. The evidence of misbehavior was considered by the Court in *Obusez v Obusez*[67]. It was suggested that the widow was insensitive and unwilling to accommodate the rival claims of the larger family of her deceased husband. This nebulous accusation took the accuser nowhere.

It is noteworthy that the Enugu State Widow's and Widower's Fundamental Rights Law 2001 makes no provision to improve the lot of widows in this regard. It merely provides that no person for whatever purpose or reason shall compel a widow to vacate the matrimonial home. Noting is however mentioned about a life estate in her husband's estate. It is silent on her right to choses in action such as shares or benefit in insurance policies.

Throughout the law, the emphasis is on checking dehumanizing customary practices. One may boldly say that when confronted with poverty some widows may subject themselves to dehumanizing practices to lay their hands on their husband's estate so that prohibiting dehumanizing practices does little to alleviate the destitute state of some widows. This is the sorry state of widows in customary Igbo societies.

Generally, a childless widow is at the mercy of her husband's agnates. The argument for the retention of a widow's life estate in the aforementioned cases have been in situations where she has at least a daughter. A childless widow is viewed in some customary societies as a witch or

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65 Ibid

66 *Ajoke v Olateju* [1962] Lagos LR 137, 142.

67 [2007] 10 NWLR (pt 1043) 430

half human. People ignore the fact that the complexities of child bearing are not only attributable to women: husbands may also be responsible.

It is indeed a terrible situation for widows especially as they may have had children who died or who did not see the light of life whether through miscarriages or stillbirths. Why must she then by deprived of inheritance when in most cases she played a pivotal role in one way or the other to the estate of the deceased? The position of the childless widow amongst the Nupe is that she may inherit from her husband and in some cases where there are no children and she is known to have been a specially good wife the brothers of the deceased forgo their right in her favour.[68]

The courts in situations where a childless widow is disinherited from her husband's real property, the courts can resort to various judicial devices to prevent the law from inflicting too much injustice. This challenge can be handled by giving her a conditional life estate, subject to good behavior. Section 127(1) of the Enugu State Administration of Estate Law 1991 blazes a trail in this respect. It enables a surviving widow or widower whose spouse died domiciled in the State to apply to court for maintenance whether or not the spouse died testate or intestate.

[68] *Tapa v Kuka* (1945) 18 NLR 5,6, *per* Brooke J.

CHAPTER THREE

MATRIMONIAL PROPERTY RIGHTS

3.1 Marriage, Family and Marital Property Practices in Nigeria.

Marriage involves a voluntary union between a man and a woman or women (in the case of customary marriage) for life to the exclusion of any other. Thus, it is a legal union that exists between a man and a woman. The women in Nigeria have not enjoyed their property rights in marriage. This is due to certain customs and traditions that have made this possible.

Marriage in Nigeria is hardly conceived as partnership in relation to property rights of spouses during marriage and divorce. In Nigeria, the courts do not redistribute property at divorce. This leaves the financially weaker spouse at a disadvantaged position. Nigeria is a pluralistic and multifaceted society both in terms of religion and composition and possesses several ethnic groups.

In Nigeria, marriages could be Statutory, Customary or Islamic in nature. Statutory marriage is also known as marriage under the Act. Statutory marriage is governed by the Matrimonial Causes Act. Statutory marriage confers on the husband and wife, rights and obligations that are peculiar to persons who have acquired that status. These rights and obligations relates inter alia, to consortium, maintenance, property and other civil matters,

Spouses in this form of marriage has the right to the other's consortium. Consortium is not amenable to easy or precise definition but it has been described as the 'living together as husband and wife with all the incidents that flows from the relationship'.[1] One of the primary purpose of

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[1] Nwogugu E I *Family Law in Nigeria* (2011) HEBN Publishers p 156.

this consortium is the duty of spouses to cohabit. This duty is not absolute being subject to the circumstances of the parties.

Cohabitation does not necessarily imply that a husband and wife are living together physically under the same roof.[2] Where, for example, the nature of their employment so demands, the spouses may live apart for most of the time. Obvious examples are where the husband is on military service abroad, or if his business take him away from the matrimonial home for a major part of the year.

Compared to statutory marriage, customary law has not developed a full range of rights protecting a married woman. It could be said that all a customary law marriage confers is the right to each other's consortium and mutual protection. Customary law requires each spouse to cohabit. Each spouse is entitled to the society and company of the other. Each spouse normally is entitled to assistance of the other spouse in case of danger to life or limb. A woman who contracted a statutory marriage is governed by the *Matrimonial Causes Act*[3] and is treated like a person who married under English law.

This is not the case under customary law. Under customary law, the right of a woman to property becomes prejudiced right from the payment of the bride price otherwise known as dowry. Customary law marriage recognizes polygamy with the implication that none of the wives can hold a unilateral claim to the husband's property.[4] This is rather unjust to the married woman.

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2 *Bradshaw v Bradshaw* Ch.D (1897)

3 Matrimonial Causes Act 1970.

4 Adeleke FA (2010) Lagos State University Law Journal, Vol VIII Ecowatch Publications (Nigeria) Ltd.

Under Islamic law, a woman has the right to marry a husband of her choice and also to retain her father's name. However the husband has the primary right of divorce.[5]

The family is a social group. The family actually is in fact a community in itself, a small relatively permanent group of people, related to each other in the most intimate way, bound together by the most personal aspects of life; who experience amongst themselves the whole range of human emotions; who have to strive continually to resolve those claims and counter-claims which stem from mutual but often conflicting needs; who experience a sense of "belonging" to each other in the most intimately felt sense of that word. The members of a family most times, share the same name, the same collective reputation, the same home, the same intricate, peculiar tradition of their own making and the same neighborhood.[6]

The Nigerian Constitution recognizes and establishes rights of all its citizens.[7] These constitutional rights applies to all including married women. However, despite these provisions and the provisions in other international instruments, women still experience all sorts of infringements of their right to own property simply because they are females and also because the different customary laws applicable in Nigeria dictate and approve same.

Customs regulate the way of people a d cannot be disregarded or merely wished away by modern legislations as the laws derivable from them continue to play a significant role in regulating the lives of persons to whom they apply. These customary laws are still very much acknowledged and they limit the property rights of women in Nigeria.

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[5] Holy Qu'ran Chapter 2:237.

[6] Brenda M. Hogget and David S. Pearl, *The Family, Law, and Society. Cases and Materials.* Butterworths, London, Dublin, Edinburgh (1987).

[7] Sections 33 to 46, Constitution of the Federal Republic of Nigeria 1999 (as amended).

Property generally concern goods tangible or intangible that are capable of being owned by a person and to which a person can exercise proprietary rights of alienation. It has been defined as "the right to possess, use and enjoy a determinate thing (either a tract of land or a chattel); the right of ownership; and any external thing to which the rights of possession, use and enjoyment are exercised"[8]

In Nigeria, the recognition of a married woman's rights to property either as an unmarried woman or as a married person is still debatable despite the guarantees and ratification of various covenants and protocols. A major challenge militating against the freedom of women in Nigeria to exercise their human rights is the patriarchal system of the Nigerian society.

This customary system of succession overrides the women's capacity and right to inherit the husband's property after his death even when she was contributory to the purchase or acquisition of the property. Under customary law marriage, a woman who jointly built a house with the husband has no claim over the house owned by her husband. The right to be provide with a home by her husband terminates upon divorce and she cannot claim the house she jointly owned with her husband.

One major challenge in the *Matrimonial Causes Act* is on the provisions on maintenance and settlement of property in cases of dissolution of marriage. It excludes the application of its provisions to marriage under customary and Islamic law. It is important to note that on issues of settlement of property for those married under the Act, the woman would be entitled to a part of

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[8] Garner, BA., "Black's Law Dictionary", (Seventh edition; USA, West Group 1999), 1232.

the property commensurate to her contribution to the house or property even when such contributions to the house or property are not demanded of the husband.[9]

The *Married Women's Property Act of 1882* empowered married women with rights to own their property but discriminatory cultural practices and highly patriarchal society hinders this. The Yorubas for instance do not allow a widow to inherit the deceased husband's property.[10] Among the Igbos, women generally do not have right to inherit either their father's property or their husband's.[11] This is despite the recent supreme court decision of *Aniekwe v Nweke*[12]

Among the Idoma people, a widow does not have the right to inherit her husband's property although she may be entitled if her children are grown up. It should be noted that intestate succession in most customary laws in Nigeria is primarily based on blood relationship and according to Udoh,[13] "*registration of land in husband's name is also another cause for denial of right to property…after divorce women have to prove that they contributed to the family holdings while after death, the family property is divided among his heirs".*

Most times, couples buy property jointly in the husband's name; and registration of land in the husband's name is another cause or source of denial of right to property. It is acknowledged that women's right to own property and inherit same is more acknowledged on paper than in reality. Women in sub Saharan Africa face a distinct social predicament because their rights are denied.[14]

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9 *Nwanya v Nwanya;* (1987) 3 NWLR (pt 62) 239; *Shodipo v Shodipo* (1990) WRN 98.

10 *Dawodu v Danmole* (1958) 3FSc 46.

11 "Law relating to inheritance in marriage in Nigeria"- http://www.facebook.com/Thereadingnation accessed on 6/4/2021

12 [2014] 9 NWLR (pt 1412), 393

13 Udoh, OD., *"The Beijing Declaration, Women and Property Rights in Nigeria",* (PhD, Covenant University. 2015).

14 Ibid p 35.

In most customary laws, and African societies, women are treated as property to be owned by men so they cannot own or inherit land which is seen as the preserve of men who are the socially acclaimed custodians of the family name and lineage. These men control the "household land and property because communal authorities who are mainly men have allotted landed property to male households heads who in turn pass the lands to their male children"[15]

In many sub-Saharan countries, the idea of women inheriting land is seen as a threat to the community. Cultural attitudes and lack of clarity about implementation of such provisions go hand in hand to prevent the implementation of joint titling for spouses. Women generally played subordinate roles to the men folk. They had recognized rights like "personal rights". For example right to use land for farming purposes but not to own land.[16]

In *Dairo v Dairo,*[17] it was the husband who instituted an action for the dissolution of the marriage. The respondent wife averred that upon an agreement with her husband early in the marriage she spent her income in maintaining the family and providing their needs while the husband deployed his earnings into building their matrimonial home. Upon the suit for dissolution of the marriage, she prayed the court for a share in the home.

It is important to note, that although her averment was not contradicted by her husband, the trial court completely ignored her prayer for settlement of the house and to be given a share as her earlier agreement and sacrifice to maintain the home were not recognized.

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15 Ibid p 36.

16 Abdulraheem, NM., "*Rights of Women in Pre & Post-Colonial Era in Nigeria: Challenges for Today"*, Journal of Public Law, Department of Public Law, Kogi State University, Anyigba, Nigeria. (2010) p 83-93.

17 *Dairo v Dairo,* Unreported; Suit No ID/90HD/86 OF 15/7/88.

The case of *Shodipo v Shodipo*[18] is even more discriminatory. Here the woman, whose financial contributions to a 43year old marriage were hardly regarded by the trial judge when he only awarded the sum of #200.000,00 to the woman after placing the total value of the property at N10m because he refused to consider her age, her non-financial contributions and her reduced productivity due to age, in determining her entitlements after settling their marital property.

Thu, despite the provisions of the Nigerian Constitution, our customs and traditions still deny a woman the right to inherit property from her parents and even her late husband. The Constitutional rights of women in this regards are seemingly like a myth. Since she cannot have the exclusive enjoyment of her property acquired personally or jointly without the clear permission of her husband and sometimes by his family. Where she needs consent before she can accommodate her siblings, before she can develop real property and of course before she can transfer interest in any property she even manages to acquire.

3.2 Matrimonial Property Rights under Statutory marriage versus Native law marriage.

Statutory marriage is on which complies fully with the provisions of the *Marriage Act 1914*. The Marriage Act is the main legislation that provides for the celebration of marriage in Nigeria. The only form of marriage recognized here is monogamous marriage (marriage between one man and woman).

There are certain formalities for statutory marriages in Nigeria. By *Section 7 of the Marriage Act* statutory marriage is initiated by the giving of a notice of marriage by either party to the Registrar of Marriages where the marriage is intended to take place. This notice shall be in Form A and should be signed by the party giving the notice.

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18 [1990] WRN 98.

Upon paying the prescribed fees, the registrar shall publish a copy of the notice by pasting it on the outer door of his office and then the notice board of the registry after it has been entered in the “Marriage Notice Book”. After publication, but before the issuance of the Registrar’s certificate in Form C, which can be issued at any time after the expiration of 21 days’ period open for entering a caveat but before it expiration of three months from the notice of the marriage, any person who has just reasons why the parties should not get married can enter a caveat against the issuance of the Registrar’s Certificate by writing the word “forbidden” opposite the entry of the notice in the Marriage Notice Book.

The person must include his or her name, address and the grounds for the objection in compliance with the Marriage Act.[19] Persons who can enter a caveat include any person whose consent to the marriage is required or who may know of any must cause why the marriage should not take place. Where the judge decides that certificate ought to be issued, he shall remove the caveat by cancelling the word “forbidden” and writing below it: “cancelled by order of the high court”.[20] The Registrar shall then issue his certificate and then the marriage will go on as if the caveat was never entered.

In the Marriage Act,[21] the marriage must be celebrated within 3 months of the date of the notice of marriage. Of the marriage is not held within this period, the notice and other subsequent processes shall become void, and a fresh notice must be given before the parties can lawfully get married. A statutory marriage may be conducted in a licensed place of worship before any

19 s 14 Marriage Act.

20 s16 Marriage Act.

21 s 12 Marriage Act.

recognized Minister of the Church denomination or body to which such place of worship belongs; the Registrar's office.[22]

In *Akparanta v Akpranta*[23] there was no evidence that the church where the marriage was celebrated was licensed for that purpose, but Agbakoba J noted that if there was evidence or circumstances strongly suggesting that the parties intended a monogamous marriage and did in fact celebrate a marriage in a place of worship licensed for the celebration of marriages, the marriage should take effect as statutory.

It is important to note what makes a marriage a statutory one because of the effect of such kind of marriages especially with regards to proprietary rights. Widows who contracted a statutory marriage with their deceased husband have some proprietary rights. Even more, under English law where the Marriage Act draw inspiration from, provides grounds where a married woman is entitled to proprietary rights.

For instance, in cases of joint tenancy, where there is evidence that the woman contributed to the property. In *Brown v Draper*[24] the husband tenant had left the matrimonial home after a quarrel leaving behind some of his furniture. The court held that the husband could not put an end to the tenancy, even by such acts as delivering the keys to the landlord, so long as his wife remains there by her, and so long as he does so, whatever else he does or says, the tenancy remains.

I personally find it interesting that the wife here is not only allowed to own property but also to lease out the property to whomever she so pleased, including her husband. This would rather be at best illusory in a customary or native law marriage. In an English law marriage, where a

22 s 18 Marriage Act.

23 [1972] 2 ECSLR at 785.

24 [1944] 1 ALL ER 246.

document is laid down in the name of husband and wife, the presumption is that they both acquired the property, and hold it in tenancy in common. It is immaterial that the husband alone or the wife alone provided the purchase price.[25]

In Nigeria even though *Section 72 of the Matrimonial Causes Act*[26] empowers a judge with discretion to share matrimonial property as he deems fit, it is still contended whether a husband and wife can actually own a land together in Nigeria. Onyekachi[27] said a couple may jointly own a property but their specific names cannot be written on a deed of assignment/sale or certificate of occupancy. Just like the case of members of an association where the name of an association is written in a deed of assignment/sale or certificate of occupancy to contain and cover the names of all members of the association.

He further said, that for a couple, the danger with this is that, the person whose name is on a deed of sale or certificate of occupancy may secretly sell or mortgage a jointly owned property even without the knowledge and consent of his/her owner. However, this position have been challenged by Udemezue[28] holds a contrary view.

He argued that husband and wife are two separate human beings each with full legal capacity to own or purchase property separately or jointly as they may desire. He posited that no law in Nigeria bars a husband and wife from joint purchase or ownership of property. He argued that

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25 [1985] High Court of Nigeria Law Report 787.

26 Matrimonial Causes Act 1970.

27 Husband and Wife cannot buy/own a land together in Nigeria. *Daily Law Tips, Sabi Business Law.* https://learnnigerianlaws.com/husband-andwife-cannot-buy-own-a-land-together-in-nigeria-daily-law-tips-571-by-onyekachi-umeh-esql-llm-aciarbuk/ May 18th 2020 accessed April 8th 2021.

28 https://thenigerialawyer.com/there-is-no-law-in-nigeria-that-bars-husband-wife-from-buying-or-selling-land-together-or-from-joint-ownership-of-property/ May 18th 2020 accessed 8th April 2021.

the *Osuji v Ekeocha*[29] where the court held that parties were joint owners of property, was in fact reiterating joint ownership of property by any two or more persons including a couple.

What can be clearly seen from the above argument line, is that there is a possibility of women holding proprietary rights especially as a wife. This coverage is only however peculiar to women married under the Act. This is not the express situation when the woman is married under native law alone. She would be under the whips and caprices of the native law and custom.

A widow under statutory marriage by virtue of the *Administration of Estates Law (AEL)* which is applicable in almost all states. Where a widow can be able to prove some contribution to the acquisition of the property in dispute, she is better advised to found her claim as a right of property, rather than consider it as one of succession or a matrimonial right.[30]

Section 49(5) AEL[31] provides that where any person contracts marriage in accordance with the provisions of the *Marriage Act 1914 (MA)* and such a person dies intestate a widow or any issue of such marriage, any property of which the said intestate might have disposed by will shall be distributed in accordance with the provisions of the Administration of Estates Law, provided that any property the succession to which cannot by customary law be affected by testamentary disposition shall descend in accordance with customary law.

In *Salubi v Nwariaku*[32] the issue of residuary estate of an intestate was explained. By the tenor of *section 49(1) AEL,* such estate goes absolutely to the surviving widow if the deceased leaves no issue and no parent, sibling of the whole blood, or nephew or niece of the whole blood. In the

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29 [2009] LPELR-2826 (SC).

30 Emeka Chianu "*Law of Succession*" (2019) p 150.

31 Administration of Estates Law.

32 [2003] 7 NWLR (pt 819) 426.

extant case, at the Court of Appeal Akintan JCA suggested that it meant movables or personality and did not include immovables or realty.

Correcting this wrong view, Ayoola JSC said that in cases of total intestacy, residuary estate includes the entire estate of the intestate after payment of funeral, testamentary and administration expenses, debts and other liabilities of the estate. Thus, in the context of law, residuary estate would include realty as well as personalty which is not part of personal chattels as defined in *section 2 AEL.*

However, there are instances where a woman even though married under statutory marriage will not benefit from her deceased husband's estate. *Johnson v United Africa Co Ltd,*[33] shows that a widow cannot eat her cake and have it: if she becomes a judgement debtor her one-third interest would be attachable. This particular involved the estate of a man who married under the Marriage Act.

His wife and their four children survived him. The defendant obtained money judgement against the widow and sought to attach the real property which was part of the estate. The intestate's first son moved to release the property from attachment, contending that the house which the intestate acquired by purchase devolved as family property under native law. Butler Lloyd J threw out the contention. The widow inherited one-third, and the children two-thirds. The widow's one-third interest was attachable.

A widow can inherit only property which her husband could have disposed of by will, that is his property wherein he has title that is not encumbered under native law.[34] Under *section 49(1)(a)* a widow inherits her husband's personal chattels absolutely. "Personal Chattels" has a broad

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33 [1936] 13 NLR 13.

34 Section 1(3) AEL.

definition in *section 2 AEL*. Personal chattels here include articles of household use, furniture, motor cars. However, money as well as chattels used for business is excluded.

When a person dies the contest for his estate starts almost before his corpse gets cold. Usually when a widow applies for letters of administration, the intestate's relations contest the application, and the matter becomes subject of litigation for determination on who should be granted the letters. *Section 26 AEL* that provides that priority should be given to a person who has interest in the estate, such as a widow.

Notwithstanding, gentlemen of the bench exercise wide discretion in the matter so that whereas the law favors a widow in contests for the grant of letters of administration in the exercise in the discretion a judge can turn the table against her. Haven realized this, advocates have developed a skill of adducing facts to whip up the sentiments against widows, especially childless and sonless ones.[35]

In *Asere v Asere,*[36] the widow sued for a declaration that letters of administration should be granted to her and her daughter to the exclusion of the defendants. She described the first defendant as a mistress; the second defendant was her son. The widow claimed to have married the deceased at the Magistrate's Court, under the native law ten days later and finally a thanksgiving service was held at a church. The defendants moved the High Court to strike out the case for lack of jurisdiction as the marriage the widow described could not be statutory. The motion failed at the trial but the Court of Appeal granted it.

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35 *Okon v Administrator-General* [1992] 6 NWLR (pt 248) 273; *Williams v Ogundipe* [2006] 11NWLR (pt 990) 157.

36 [1991] 6NWLR (pt 197) 316).

The Administration of Estates Law does not in any way make provision that only parties who contract statutory marriage can apply for letters of administration, nor does it state that dispute over who may be granted letter of administration should be commenced only in a Customary Court. The issue of jurisdiction arises only where parties to a statutory marriage seeks matrimonial relief under *section 114 of the Matrimonial Causes Act 1970.* Obtainment of letters of administration is not a matrimonial relief.[37]

In *Obusez v Obusez,*[38] the twin brother of the intestate along with other siblings attempted to the grant of letters of administration to the intestate's widow and friend on account that the intestate's widow and friend on account that the intestate was governed by native law notwithstanding his marriage under the *Marriage Act.*

Their line of arguments was that the intestate was buried in the twin brother's house, also that he took out a life policy in his twin brother's name, as well as that of his two children, not the wife's. Tobi JSC made a mince-meat of the issue:

> "By contracting the marriage under the Marriage Act, the deceased intended the succession to his estate under English Law and not under customary law. I realize that two of the appellants' claims of succession to the estate were based on the fact that the deceased was buried in the personal residence of [his twin brother] and the life policy of the deceased where he made his first and second children and his [twin brother] beneficiaries.
>
> I know of no law which says that succession to property is determined by the place of burial of the deceased intestate or by a life policy made inter vivos. The fact that the deceased did not make [his wife] a beneficiary of his life policy does not mean that she cannot benefit under…the [Marriage] Act. Conversely, the fact

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37 Emeka Chianu *"Law of Succession"* (2019) p 162.

38 [2007] 10 NWLR (pt 1043) 430, affirming [2001] 15 NWLR (pt 736) 377, CA.

> that [first defendant] is a beneficiary of the life policy does not ipso facto make him a beneficiary of the estate of his twin brother"[39]

According to Prof. Chianu,[40] the philosophy of the Administration of Estates of Law is to the effect that once a person contracts statutory marriage he turns his back on his ascendant and collateral family is considered as alien to our milieu. He argued that many organize their lives according to usages of customs and as such their personal laws are tribal irrespective of the type of marriage they contract. He further posited that upon disputes, many persons first turn to customary arbitral process for resolution. At this un-official forum, customary usages, not the English-type law, are applied and enforced. The result is that people practice one thing while they appear to believe another.

3.3 Matrimonial Property rights under Native Law marriage.

Native law marriage is quite similar to the Statutory marriage in that there still exists similar requirements for validation of the union, for instance *Consent of the parties and Bride Price,* amongst a few others, are non-negotiable requirements for the validation of native law marriage. The formalities for contracting native law marriage are the same nationwide, with relatively few variations.

In *Okekearu v Tanko,*[41] consent is the act of giving approval or acceptance of something done or proposed to be done. It represents the formal and moral expression of the right to have one's autonomy and self-determination respected. In native law marriage, the consent of four parties is

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[39] Ibid 451. Presently, *section 36(1) Marriage Act* is now replaced by *section 49(1) Administration of Estates Law.*

[40] Emeka Chianu *"Law of Succession"* (2019) p 168.

[41] [2002] 15 NWLR (791) 657, 670.

required: the groom, the bride, and that of their respective families. This is because marriage affects the ethical standard of the whole community.

A comprehensive, well considered and carefully crafted statement of Igbo law handed down by *Agbakoba J,* is worthy of being quoted as the processes described are similar to those in many parts of the country:

> "A valid customary marriage possesses two elements: first, the essential element which comprises parental consent [as well as] the agreement of the man and the woman immediately concerned. Parental consent may be given by paterfamilias, i.e. the head of the family invested with partia protestas or by the immediate father of the woman or by a person in loco parentis to her or as may happen in modern society by a widowed parent. The importance and pre-eminent position hitherto given to or occupied by parental consent is gradually yielding ground in recent years to express agreement of the parties to the marriage themselves and in some cases parental consent is now a matter of course."[42]

However, it is doubtful whether the waning of parental consent is correct. This is because without parental consent, bride price (which is another requirement of a valid native law marriage), would not be accepted.

Bride Price, is another major requirement of a valid native law marriage. In many societies, in the course of negotiations for marriage, money, gifts, large and small are exchanged. But actually none of this bride price. In *Egri v Uperi,*[43] the plaintiff sued the father of the lady who was in the center of the dispute for the return of the lady as his wife. The defendant denied ever giving his daughter to the plaintiff as wife.

The plaintiff failed to prove the marriage as he testified that he negotiated for the girl personally. The Customary Court's decision which the Supreme Court upheld was that in Isoko (Delta State)

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42 *Okpanum v Okpanum* (1972) 2 ECSLR 561, 563.

43 [1973] NSCC 584, (1974) 4 ECSLR 632.

marriage negotiated by a suitor's relations, not his friend from another community, as the plaintiff in this case claimed. Furthermore, the go-in between for the payment of bride price must a native of the bride's family or community.

The relevance of bride price was re-emphasized in *Offor v Ofodu.*[44] The plaintiff cohabited with the defendant while the plaintiff made efforts to complete the process of marrying the former under Igbo law. At a certain point, the plaintiff left the home but not before she wrote the defendant a letter wherein she closed the letter affectionately with "Your wife" and addressed herself as "Mrs. Ofodu."

Later on, the plaintiff enlisted in the Nigeria Police Force. The defendant wrote the Police Force that the plaintiff was his wife and joined the police force without his consent. As a result, she was discharged from the Force. In this action, she recovered damages for the malicious and spiteful letter that led to the loss of her employment. At the heart of the action was whether the plaintiff was the defendant's wife. *Ikwechegh J,* that in the absence of evidence of payment of bride price, the defendant had not acquired the plaintiff as a wife. The letter of infatuation could not take the place of bride price.

Haven understood some basic requirements for a valid native law marriage, what are the possible rights a woman may enjoy by virtue of this form of marriage? *In re Whyte,*[45] a widow married under native law was granted inheritance right. The issue related to the application of a Fanti Law. The deceased Ghanaian, who left property in Nigeria, was survived by a widow and their minor daughter as well as a sister. According to the Fanti law which was also his personal law, his estate was to go to his sister.

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44 [1977] Imo State LR 483.

45 (1946) 18 NLR 70.

In this application, the Administrator-General sought direction on how the deceased movables should be shared. The sister sought to have the entire estate and since succession invokes obligations, she was willing to assume responsibility for the education of the minor subject to her taking custody of the child. The court held that it would be inhuman to separate a mother from her child and on that accountant, directed that contrary to Fanti law, the widow and daughter should each have one-sixth of the estate.

Where the widow have no son like in *Nzekwu v Nzekwu,*[46] the widow can still succeed. In this case, the widow had two daughters for her husband; she had no son. The marriage was under native law. For almost 40 years after her husband's demise, she resided in the portion of family property that was allotted to her husband. Her husband's nephew who was the head of the family sold the land to a third party with the intent of dispossessing the widow.

Her claim for recovering of possession and injunction to restrain the head of the family and the purchaser from disturbing her possession succeeded. The Court also upheld the widow's right to repair and rebuild a dilapidated house. She only however needs the consent of the family if she desires to deal with the property – such as by grant of a long lease.

Similarly, a widow in *Ojukwu v Ojukwu,*[47] the widow had three daughters and no son for deceased husband. As she allegedly interfered in the extended family's immovables along with her husband's vast business and house-properties, the intestate's brother sued to challenge her interference with the extended family's immovable properties. The widow's challenge of his *locus standi* failed in the Supreme Court but *Ubaezonu JCA's* rhetoric question was not

46 [1989] 1 NSCC 581.

47 [2000] 11NWLR (pt 677) 65.

impugned: "why should the [widow] not manage [the deceased husband's store] when she has three female children of the deceased to look after?"[48]

The recent case of *Aniekwe v Nweke*[49] is a noteworthy where the court upheld the properietary right of a woman married under native law. The plaintiff a widow, claimed declaration of title to a landed property which belonged to her husband. She had six daughters, but no son for her husband. She claimed title to the land as a widow could inherit her husband's real property whether she had a daughter or son, her interest was limited to a life estate.

At the native arbitral tribunals where the dispute was taken, it was ruled that she was entitled to live on the land.[50] As the defendants kept disturbing her possession, she sued for a declaration of title, damages for trespass and perpetual injunction. The Court of trial, the Court of Appeal and the Supreme Court all granted her claims. The Supreme Court held that the Awka (Igbo) law that bars a widow from inheriting more a life estate on account of not having a son surviving her husband is repugnant to natural justice.

The situation is quite different if the widow is childless. The position is that a childless widow may reside in the matrimonial home at the mercy of her husband's relations. The courts can resort however to various judicial devices to prevent the law from inflicting too much injustice. Notwithstanding, amongst the Nupes, if a man is not survived by brothers and sisters, a woman may inherit from her husband and in some cases where there are no children and she is known to

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48 Ibid at 85.

49 [2014] 9 NWLR (pt 1412) 393.

50 Ibid at 411-413.

have been a specially good wife, the brothers and sisters of the deceased forgo their right in her favour.[51]

3.4 Married Women Property Rights and Matrimonial Causes Act.

This Act explicitly disagrees with the principle of absolute dependence of wives on husbands. It therefore gives women separate personality and independence in the ownership and acquisition of property (in line with the various international legislations).

According to the provisions of this Act,[52] married women are entitled to have an equal share in properties acquired during the marriage as well as those jointly acquired by both of them.[53] This is illustrated in the case of *Patience Oghoyone v Daniel Oghoyone,*[54] where the court held that the claimant and the respondent had equal share in the properties as well as the joint car business operated by both of them.

The Act is the direct opposite of the customary law that is in force in the greater part of Igboland. In all the systems of customary law the property acquired by the man does not become joint property of the man and his wife or wives even if the wife or wives helped in the development. The rationale given for this is that customary law does not recognize monetary or other non-monetary contribution by the wife either to the marriage or to the property, as capable of ripening into legal or equitable interest in property.

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[51] *Tapa v Kuka* (1945) 18 NLR 5, 6, *per* Brooke J.

[52] Married Women's Property Act 1870.

[53] Universal Declaration of Human Rights(UDHR) Article 16: *"Men and women of full age, without any limitations due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage during marriage and at its dissolution."*

[54] [2000] 20 NWLR 130.

Upon dissolution of a marriage the issue of property adjustment becomes critical. In view of most family administration and practices in Nigeria, the husband undertakes capital projects ad investments with his income while the wife in most case undertakes the provision of food, clothing and other non-income yielding and capital generating responsibilities.

As such, the lack of concept of joint or matrimonial property usually works injustice on the wife at the termination of the marriage by divorce or in the case of the death intestate of the husband. A divorced woman cannot claim a share in the property acquired by her husband during the subsistence of the marriage.

Married Women's Property rights must be seen as a veritable means of building families in Igboland, as access to property of any form is a major index of wealth and family peace. Property inheritance determines one's wealth; wealth governs one's ability to take of oneself and to care for one's family. The importance of property inheritance and ownership cannot be over-emphasized. All spouses must therefore have access to family property and partake in the joy and benefits of sharing in and inheriting matrimonial property.

The female spouse of a statutory marriage upon divorce may be able to rely on the provisions of *Section 72 of the Matrimonial Causes Act 1970*for property to be settled on her claim the benefit of *section 17 of the Married Women Property Act* for other property rights. In cases where women are the applicants, the rights of women have been upheld under the *Matrimonial Causes*

Act 1970. In *Kafi v Kafi*[55] the court ordered the man to settle one of his properties for the benefit of his ex-wife and children. Settlement of property was also ordered in *Egunjobi v Egunjobi.*[56]

Under *section 17 of the Married Women Property Act,* the law is applied by the court to allow a wife the right to a percentage of the property in question upon the evidence that she contributed to it financially. Where the wife established that without her assumption of household expenses, the husband would not have been able to purchase the property, a resulting trust will arise in equity in favour of the wife, even if the title deeds are in the husband's name.

The *Married Women Property Act,* however, demands strict evidence and proof of contribution to the property of the family during the marriage. This demand stands as a stumbling block to women who cannot produce any proof of their contribution to the family property. However, under this Act, women have less to lose. A divorcee now has a much surer claim to the property they bought or contributed to during the subsistence of the marriage,

The *Married Women's Property Act* and the *Matrimonial Causes Act* should therefore be put to use for the benefit of all spouses with regard to their rights to family property, since both husbands and wives are legal persons and entitled to proprietary rights.

Under Islamic law, the Qu'ran has 6,236 verses and it cover all aspects of social life, such as civil law, marriage, international law and economic affairs.[57] It however seems, that it is difficult but perhaps not impossible for women married under Sharia law to be granted a divorce.

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55 Cited in Michael Attah's *"Divorcing Marriage from Marital assets: Why Equity and Women fail in Property Readjustment actions in Nigeria."* https://www.cambridge.org/core/journals/journal-of-african-law/article/divorcing-marriage-from-marital-assets-why-equity-and-women-fail-in-property-readjustment-actions-in-nigeria/B512621F1AB0FEC1BFF99ABD01B9F471. Accessed 21st April, 2021.

56 Ibid.

57 Salmi, Ralph H; Majul Cesar Adib & Tanham, George K., (1983: 33) Islam and Conflict Resolution Theories and Practices, Lanham: University Press of America.

Although Islam allows women access to property that they acquired or contributed to their husband's household, in practical terms this is usually not attainable due to the seclusion of the muslim women.

In *Usman v Usman,*[58] the plaintiff divorced her husband using the Islamic injunction of *Khul'u*[59]*.(*an Islamic injunction) however, the plaintiff was ordered to pay a substantial sum to the defendant in order to be freed from the marriage. This sum to be paid amounts to onerous conditions for Muslim women to seek and obtain a decree of divorce. Sharia law provides that men and women can own property (Qur'an 4:7).

Islam recognizes the same freedom in respect of land, housing and property on men and women. However, in practice, it appears that Muslim women in Northern Nigeria do not as much as aspire to own real property, as is the cultural norm that the husband caters for the wife.

3.5 Judicial attitude towards Matrimonial Property Rights in Eastern Nigeria.

The Courts represents the last hope of the common man after which he can only make recourse to God for justice. More so, the law has been defined by *Oliver Wendell Holmes* to be the prophecies of what the courts will do. Thus, even in the very face of the law, it is what the courts interpret as the legislative intent of the law that turns out to be what the law is.

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[58] 2 SMC 459.

The application of customary law in courts is broadly determined by choice of law rules.[60] When a man dies intestate, his personal customary law regulates the distribution of his estate unless he was married under the *Marriage Act* or his property was not subject to customary law.[61] Judges have no firm constitutional basis upon which to adjudicate matrimonial property disputes. For instance, a divorcing wife no legal platform to claim matrimonial property under customary law.[62]

In like manner, she cannot claim maintenance rights as this unknown to customary law.[63] Despite the constitutional right to equality, women are stilled disinherited during to the highly prevalent primogeniture culture which has been upheld by courts over the years, except until recently.[64]

However, it has been argued that even these recent judgments[65] are merely a mask of the indifferent attitude of the apex courts towards women's matrimonial property rights.[66] It has been further argued that this indifference is evident from the Supreme Court's failure to address the social context of property rights under customary law.

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[60] ES Nwauche "*The Constitutional challenge of the integration and interaction and interaction of customary and the received English common law in Nigeria and Ghana"* (2010) 25 *Tuale European and Civil Law Forum* 37.

[61] *Obusez v Obusez* (2001) FWLR (pt 73) 40.

[62] A Osundu *Modern Nigerian Family Law and practice* (2012) p 100. Judges interviewed affirmed that women may only claim property purchased with their own funds using receipts, or marriage gifts in their (maiden) names.

[63] Ibid.

[64] *Ukeje v Ukeje* [2014] 11NWLR (pt 1418) 384-414.

[65] Ibid.

[66] Anthony C Diala "*A critique of the judicial attitude towards matrimonial property rights under customary law in Nigeria's southern states."* (2018) 18 *African Human Rights Law Journal,* 100-122. http://dx.doi.org/10.17159/1996-2096/2018/v18n1a5.

To bring the attitude of the courts in focus, we will be looking at a few divorce and succession judgements delivered by the Supreme Court and Court of Appeal, accompanied by some archival searches.

The decisions that exemplifies the attitude of Nigeria's apex courts to matrimonial property is *Nezianya v Okagbue.*[67] After the death of her husband, a widow began letting his houses to tenants. Later on, she sold a portion of the land and with the proceeds, built two huts on another portion of the land. When she wanted to sell more parcels of the land, her husband's family objected.

She devised the disputed land to her late daughter's child, Mrs. Julie Nezianya, who sued the husband's family. Julie sought exclusive possession of the land, claiming that her grandmother had long adverse possession of it. The trial court held that possession by a widow of her husband's land cannot negate the rights of her husband's family. Julie appealed to the Supreme Court.

Here, the key question was double. The first ambit is the widow's right to her late husband's estate under Onitsha Customary law. The second ambit is the custom of the male primogeniture which gives the first son (*Okpala)* the right to alienate his late brother's property during his widow's lifetime. In declaring the respondent's alienation of his brother's property as failing the repugnancy test, the Court stated:

> "the essence of possession of the wife in such a case is that she occupies the property or deals with it as a recognized member of her husband's family and not as a stranger; nor does she need express consent or permission of the family to occupy the property so long as the family make no objection…the consent, it would appear, any be actual or implied from the circumstances of the case,

[67] (1963) 1 ANLR 352.

> but she cannot assume ownership of the property or alienate it. She cannot by the effluxion of time, claim the property as her own. If the family does not give their consent, she cannot, it would appear, deal with the property. She has, however, a right to occupy the building or part of it, but this is subject to good behavior."[68]

In this case, the Apex court did not examine the philosophical foundations of the male primogeniture custom. By subjecting a widow's possessory right to good behavior, it sought a balance between preserving this custom and curbing its hardship on widows. Twenty-seven years later it clarified this decision in *Nzekwu v Nzekwu.*[69]

In the aforementioned case, the deceased had died intestate, leaving a wife, Mrs. Christiana Nzekwu, and two female children. Mrs. Nzekwu's in-laws sold the disputed house and the purchaser gave it out to the tenants. The Court of Appeal held that a widow has the right to remain in the matrimonial home even if she is childless. She also has the right to use her matrimonial property as long as her rights do not negate the rights of her late husband's family.

On appeal the Supreme Court, ruled that a widow has the right to reside in the matrimonial home, to be given a farm land for cultivation, and to be supported by her husband's family. However, it upheld the lower court's validation of male primogeniture custom and affirmed that a widow's matrimonial property rights are relative.

This judgment further shows us the unwillingness of the Supreme Court to directly confront the male primogeniture custom by analyzing its foundational value to contemporary situations. Aware that invoking the bill of rights would imply a striking down of this custom, it resorted to the repugnancy test.

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[68] Ibid at 356-357.

[69] (1989) NWLR (pt 104) 373.

Remarkably, *Craig JSC* and *Nnaemeka-Agu JSC,* dissented in the *Nzekwu* case on two grounds. First, they held that Mrs. Nzekwu had failed to prove that the disputed property was partitioned to her late husband. Second, they held that her conduct, just like Mrs. Nezianya's conduct, was a denial of the family's title, which amounted to bad behavior. Their reasoning ignores the reality that greedy brothers-in-law could appropriate widow's matrimonial properties on the ground that they had abused their possessory rights.

The Supreme Court's balancing act was bound to lead to inconsistencies, given that the primogeniture custom does not manifest only in matrimonial property disputes. This was the case in *Ejiamike v Ejiamike.*[70] Here, the plaintiff claimed that the defendants were jointly managing the property of their late father in disregard of his right as the family head (*Okpala).* Conversely, the defendants claimed that the custom of male primogeniture relied on by the plaintiff was repugnant natural justice, equity and good conscience. The trial judge rejected this claim, holding that the onus is on the defendants to establish that the custom relied on by the plaintiff failed the repugnancy test.[71]

Some twenty-two years later, an opportunity to correct this decision and strike down the custom of primogeniture arose in *Okonkwo v Okagbue.*[72] In this case, Mr. Nnayelugo Okonkwo of Ogbotu village died in 1931, survived by five sons, including the plaintiff. He was also survived by two sisters who were the first and the second defendants. These childless women had separated from their husbands and returned to their family home at Ogbotu.

70 (1972) ECSNLR 130 (High Court).

71 Ibid.

72 (1994) 9 NWLR (pt 368) 301.

About 30 years after Okonkwo's death, the sisters, acting under the Onitsha customary law, married the third defendants for their deceased brother with the consent of some of the family members and the village elders. The third defendant give birth to six sons, all in Okonkwo's name. the plaintiff and his brothers refused to acknowledge these children.

Amazingly, both the High Court and the Court of Appeal upheld the custom of marriage to a deceased person. On appeal, the Supreme Court declared that the disputed custom not only failed the repugnancy test, but it also contradicted public policy.

In *Mojekwu v Mojekwu,*[73] the court did not seem to mind that its attitude infringed the constitution's anti-discrimination clause. The appellant, Mr. Iwuchukwu, sued Mrs. Mgbafor Mokekwu who, following her death, was substituted by her daughter, the respondent. Mr. Iwuchukwu claimed right of occupancy over a property at 61 Venn Road, Onitsha. He claimed that under the *oli-ekpe* (primogeniture) custom of Nnewi, the brother of a man without a male child inherits his estate, even where the deceased had female children.

The High Court dismissed the suit. Notably, the parties did not request the invalidation of the *oli-ekpe* custom, nor did the trial court address it. In dismissing Mr. Iwuchukwu's appeal the Court of Appeal, on its own, invalidated the *oli-ekpe* as repugnant to natural justice, equity and good conscience.[74]

The first issue on appeal was the propriety of the Court of Appeal's unsolicited invalidation of the *oli-ekpe* custom. The Supreme Court held in that in the circumstances, the invalidation was wrong. It based its reasoning on the need for judicial declarations to be founded on the claims of

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[73] (1997) 7 NWLR (pt 512) 283. Following the substitution of the deceased respondent on appeal to the Supreme Court, the case became *Mojekwu v Iwuchukwu* (2004) 11NWLR (pt 883) 196.

[74] Per Tobi JCA 304-305.

the parties. Tis finding on pleadings, a well-known judicial principle,[75] is significant for women's access to justice. Women who cannot afford lawyers, or whose lawyers are incompetent, are adversely affected by a strict adherence to the rules of pleadings.

Given the Supreme Court's attitude in issues such as in *Mojekwu's* case it is difficult to imagine a custom more discriminatory than the *oli-ekpe.* As if its justification for condemning the invalidation of this custom is not unfortunate enough, the Court went ono to make the following astonishing statement:

> "the (lower court) was no doubt concerned about the perceived discrimination directed against women by the said Nnewi oli-ekpe custom and that is quite understandable. But the language used made the pronouncement so general and far-reaching that it seems to cavil at, and is capable of causing strong feelings against al customs which fail to recognize a role for women – for instance, the custom and tradition of some communities which do not permit women to be natural rulers or family heads. The import is that those communities stand to be condemned without a hearing for such fundamental custom and tradition they practice by the system by which they run their native communities. It would appear for these reasons that the underlying crusade in that pronouncement went too far to stir up a real hornet's nest even if it had been made upon an issue joined by the parties, or properly raised and argued."[76]

The Court's reasoning belittled the supremacy of the Constitution, which imposes a duty on the courts to strike down any law that contradicts the Bill of Rights.[77] This conservative attitude towards women's property rights may be contrasted with the attitude of the Court of Appeal.

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75 *Atoyebi v Odudu* (1990) 6 NWLR (pt 157) 384; *Ude v Chimbo* (1998) 12 NWLR (pt 577) 169; *Oyekanmi v NEPA* (2000) 15 NWLR (pt 690) 414.

76 Ibid.

77 Sections 1(1) and Section 3 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

The Court of Appeal in *Mojekwu v Ejikeme*[78] held that the *Nrachi* custom which enabled a daughter to remain unmarried in order to raise male children to succeed her father, to be repugnant. This is because, children born to a woman who had undergone this ceremony are denied the paternity of their natural father. The court also held that it offended the provisions of *section 39(2) of the 1979 Constitution*, which prohibited discrimination on the grounds of circumstance of birth. Unlike the Supreme Court, it did not hesitate to invoke the Constitution and it repeat same in similar cases.[79]

With respect to the division of matrimonial property upon dissolution of marriage, both courts fail to invoke the Bill of Rights to remedy discrimination against women. Thus can be clearly seen in the case of *Onwuchekwa v Onwuchekwa.*[80] In this case, the woman claimed a share of her matrimonial property on the ground that she contributed to the purchase of the land on which the disputed building was erected, as well as to the erection of the building. The Court of Appeal held that she must show sufficient proof of her direct financial contribution in other to entitle her to her share of the property.

The April judgment of *Aniekwe v Nweke*[81] did not also address the fundamental issues. The Courts upheld the plaintiff's claim and even condemned the discriminatory custom but issues of right of property was not properly addressed. Attempts were made in the other April judgement of *Ukeje v Ukeje*[82], to use the Constitution against the male primogeniture custom. Although the *Ukeje's* case was not on matrimonial property.

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78 (2000) 17 NWLR (pt 1117) 484.

79 *Asika v Atuaya* [2008] 17 NWLR (pt 1117) 484; *Uke v Iro* [2001] 11NWLR 196; *Ihejiobi v Ihejiobi* [2013] LPELR-21957 (CA) 23.

80 [1991] 5 NWLR (pt 194) 739.

81 [2014] 11 NWLR (pt 1412) 383.

82 [2014] 11 NWLR (pt 1418) 384-414.

Thus, the April judgements are missed opportunities for the Supreme Court to address the question of how some aspects of customary law no longer suit modern conditions. In the *Nweke's* case, it failed to address the unsuitability of the primogeniture custom to women's independent income and contribution to matrimonial property. This would have provided a platform for invoking the Bill of Rights.

CHAPTER FOUR

CHALLENGES AND PROSPECTS OF WOMEN RIGHTS IN NIGERIA

4.1 Impediments to Women inheritance and Matrimonial property rights.

There several factors militating against women rights in general. These factors include, culture, illiteracy amongst others. However, the cultural factor stands out amongst them all. The male preference syndrome is the bone of contention. The male superiority has deeply eaten into the fabrics of the cultures of most customary societies. It is a time honored custom and the courts except for recent judgements,[1] have granted it judicial recognition in a plethora of cases.[2]

The birth of a son into any family calls for a big celebration and jubilation. The great premium placed on a male child is often indescribable. In Igbo land particularly, male children are preferred to female. The first male child called the "*Diokpala*" succeeds and rule his father's immediate family even if he has an elder sister. No woman can step in as the head of the family.[3]

Therefore, the woman is already bound by virtue of the customary law of which she is born into. Even though this custom is discriminatory. These cultures appear too rigid and very resistant to change. In Igbo land, it is the kinsmen that handle and determine how inheritance is shared based on a conventional practice which has been accepted by all for centuries. A woman cannot as much as be in their midst while this is going on.

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1 *Aniekwe v Nweke* [2014] 11 (pt 1412) 383; *Ukeje v Ukeje* [2014] 11 (pt 1412) 383

2 *Arase v Arase; Lawal Osula v Lawal Osula; Agidigbi v Agidigbi.*

3 Nwogugu E I "*Family Law in Nigeria"* (1974) Heinemann educational books p lxxxi p 401.

The Nigerian Constitutions has even been alleged to have a male gendered language.[4] Yinka[5] posited that the words enshrined in the 1999 Constitution (as amended) were written with elements of relegating the status of women and preventing them from realizing their potentials. This argument is illustrated by the phrase "he" which occurs in the 1999 Constitution (as amended) 235 times whilst word woman is used 2 times.[6] Section 26(2)(a) of the 1999 Constitution (as amended) permits any foreign woman who is married to a Nigerian male citizen to be registered as a citizen of Nigeria. However, the Constitution is silent on whether any foreign man who is or has been married to a female citizen of Nigeria is eligible to acquire Nigerian citizenship.

Furthermore, Section 29(4)(b) of the 1999 Constitution (as amended) states that; "*any woman who is married shall be deemed to be of full age."* The issue here is that a married woman may not have attained the age of maturity. In many parts of Nigeria, it is customary to marry before the age of 18 years. It should also be noted that Section 277 of the Child Rights Act 2003 defines a child as *"as a person who has not attained the age of eighteen."* It is therefore a legal presumption that any woman who is married in Nigeria has attained the age of 18 years, unless the contrary is proved.

This controversial position came to light in the events of April 2010. Where a Senator Ahmed Yerima married a 13-year-old Egyptian girl. Upon the payment of $100,000 as dowry. Despite mass protests by human rights groups over this child marriage, the Attorney General of the

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4 Yinka Olomojobi "*Human Rights on Gender, Sex and the Law in Nigeria"* (2015) p 34.

5 Ibid.

6 Sections 26(2)(a) and 29(4)(b). Also, a brief paper within the framework of the sub theme "*Gender and Fundamental Human Rights: is discrimination Law doing the job it is supposed to do?"* as part of the general theme of the International Association of Law Schools (IALS) Conference on *"Gender law and labor markets in the New World Economy"* held in Milan, Italy, from, May 20-22, 2010.

Federation, at that time; Bello Adoke SAN declined to take legal action against Yerima. All of these showes how much influence culture has on the system in Nigeria and its effect on women rights in Nigeria.

The nonchalant attitude of the Attorney General, is perhaps due to the religious factor. The issue of religion is another major impediment to the rights of women in Nigeria. Under Islamic law, there are some restrictions on whether a woman can testify or not. In the context, the nature of the subject matter in dispute greatly determines whether a woman can testify or not.

For example, in a case of Hudud (punishment for serious crimes), Islamic scholars are of the view that their testimony is unacceptable, even if they testify alongside male witnesses. As regarding issues bothering on financial documents, two men or one man and two women is the requirement. If the matter touches on matters such as divorce, marriage, *raju* (restitution of conjugal rights), opinions of scholars are divided. While some scholars said their testimony is acceptable, others said it is not acceptable.[7]

In another respect, affairs which ordinarily, men do not have information about, for instance crying of a baby at birth, it is only the testimony of women that is accepted. On the numbers of women needed, scholars are divided.[8] In the same vein, testimony of a woman is equal to that of a man and can even invalidate that of a man. An example of this is in a situation where a man accuses his wife of unchastity.

There exist also, as a major impediment to women rights in Nigeria, legal barriers. This are unfavorable legal structures by virtue of enacted laws which are to the disadvantage of women.

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7 Imam Abu Hannifa said that their testimony is acceptable, but Imam Malik said it is not acceptable.

8 In the view of Shafi, four female witnesses are needed. Hannafi and Hanbali observed that one female witness is accepted.

Nigeria is a federating unit, and by this arrangement, matters of legislative powers could either fall under exclusive or concurrent lists.[9] Any item not listed in the exclusive or concurrent list is considered residual matters.[10] In this regard, issue of marriages under Islamic law and customary law are outside the exclusive list.[11] The implication of this is that each federating state can in this regard, legislate on that matter, and by extension, there would always be conflicting laws by each of the federating states in that regard, depending on the circumstances of each of the federating state.

> The Police Act[12] says of women: "A woman who is desirous of marrying must first apply in writing to the commissioner of Police for the State Police Command in which she is serving requesting permission to marry and giving the name, address and a occupation of the person she intends to marry. Permission will be granted for the marriage if the intended husband is of good character and the woman police officer has served in the force for a period of not less than three years."

Police Regulation 127, even goes a step further. It provides that:

> "An unmarried woman police officer who becomes pregnant, shall be discharged from the force, and shall not be re-enlisted except with approval of the Inspector General".

This is discriminatory, as it tends to restrict the right of women to freely enter into labor market of their choice.[13]

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9 While the former falls under the purview of the National Assembly, the latter under the State Assemblies.

10 From this, the states may legislate on residual matters. From this stand point of view, the Child Rights Act of 2003 is only applicable to the Federal Capital Territory (Abuja). To this extent, different age definition may apply on who a child is, and by extension the legal definition of a woman.

11 Item 61, part 1, Second Schedule to the 1999 Constitution of the Federal Republic of Nigeria. Also, Section 4(2) and (7) of the same Constitution.

12 Police Regulation 124. (2004).

13 The Federal High Court sitting in Lagos, had however declared Regulation 124 as illegal for inconsistency with Section 42 of the Nigerian Constitution, and also Article 2 of the African Charter on Human and Peoples' Rights. They prohibit discrimination on the basis of sex. It was case filed by the Women Empowerment and Legal initiative, challenging the constitutionality of the regulation.

The Penal code in *Section 55* provides that:

> "Nothing is an offence which does not amount to the infliction of grievous hurt upon a person and which is done by a husband for the purpose of correcting his wife, such a husband and wife being subject to any customary law in which the correction is recognized as lawful".

This provision allows, as permitted in some customary rules and traditions, husbands to inflict physical punishment on their wives. Even worse, is the fact that a husband cannot commit an offence of rape on his wife.[14] This is irrespective of any resistance made by the wife or the extent of the use of force employed by the husband.

Hale[15] remarked that the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband which she cannot retract. Another commentator,[16]observed in support of this view that:

> "….because it is implicit in every marriage contract (whether under Marriage Act or Customary Law is an agreement by the couple to accept all the necessary implications and consequences to the marriage, central of which is unrestrained access to his wife as long as they are married cannot be displaced by the wife's wish and she cannot withdraw her implicit consent as at when she chooses to do so."[17]

From the above quotation, a wife is duty bound to submit herself at all times whenever her husband requested her for sex. This is immaterial of her mood, health, or bodily conditions at that time. This is however absurd and strange because a marriage contract is supposed to be

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14 Hale, IPC, quoted in Smith and Hogan, Criminal Law, (1983).

15 Ibid.

16 Beasts of Burden: "*A study of women's Legal status and Reproductive Health Rights in Nigeria",* a publication of the Women Rights Project Civil Liberties Organization, April 5th, 1988, p 84.

17 Ibid.

deeply rooted on mutual understanding and reciprocal rights of the couple, and not on one sided affair. In fact, it does not tally with sound reasoning and common sense.

It was *Lord Denning,*[18] in discussing the rights and duties of spouses under a marriage contract, that opined that:

> "To decide by agreement, to give and take and by imposition of the will of one over the other, each is entitled to equal voice in the ordering of the affairs which are their common concern. Neither has a casting vote."[19]

Women tend to have less access to educations, justice, and opportunities for employment than men. The stigma of discrimination on women is mainly present in institutions such as marriage, inheritance, politics, reproductive health and real property. Discrimination is widely a customary tradition in Nigeria.

4.2 The Enforcement of Legislative enactments.

Legislative enactments are instruments of regulating societies. It is imperative that enactments which are gender friendly are brought into existence in other to enable growth and development in society. The Constitution takes the front row in the list of legislative enactments. Enshrined in the Constitution are fundamental provisions on human rights.[20]

The provisions of section 42 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which frowns and completely advocates against discrimination must be enforced by the courts to the latter. Section 42(2) precisely, provides that:

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18 *Dunn v Dunn* (1948) 2 ALL ER 282.

19 Ibid.

20 Chapter 4 Constitution of the Federal Republic of Nigeria 1999 (as amended)

> "No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth."[21]

Therefore, the courts have a duty to play in this fight against discrimination. The recent "April judgements,"[22] is a step in the right direction. With cases like *Aniekwe v Nweke*[23]; *Ukeje v Ukeje,*[24] women will now begin to build trust for the system of justice in Nigeria again. These cases are sparkles of hope for the Nigerian woman for her freedom from discrimination in every sphere of life.

There are other pro-active policies and legislations promulgated by State governments which the Courts are encouraged to enforced in the administration of justice especially with regards to women inheritance and other women rights matters.

Enugu State of Nigeria 2001, No. 3 on the Prohibition of Infringement of a Widow's and Widower's Fundamental Rights Law. The dehumanizing customary practices such as the requirements for a bereaved widow to drink the water used to clean her deceased husband's corpse; in order to prove that she is not responsible for her husband's death is one of the many customs which have been barred by Enugu State.

The Edo State Criminal Code (Amendment) Law 2000 cap. 48 on the Prohibition of Trafficking and Sexual Exploitation of Women and Girls. This legislation punishes any person for sponsoring a girl or a woman or any person, the purpose of enabling a woman or girl to become a prostitute. The legislation also punishes any woman or girl who deliberately offers herself for the act of prostitution or carries out any immoral act within or outside Nigeria.

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21 Ibid.

22 *Aniekwe v Nweke; Ukeje v Ukeje*

23 Ibid.

24 [2014] 11 NWLR (pt 1418) 383.

It would be noted that the inspiration behind this legislation would be for the protection of the human dignity of the Edo girl child. It only desired that a similar legislation would be made empowering the Edo man with the discretion as to the bequeathal of his estate, especially the Igiogbe (the Bini man's principal house).

Some first sons, to whom this property is entitled are underserving of them. Sometimes as a result of their wayward living. The Courts has judicially noticed this primogeniture rule. One will only expect that, in the light legislations like the aforementioned, a similar legislation upholding the right of the Edo girl to inherit will also be enacted as well as enforced.

The Zamfara State Sharia Penal Code Law of 2000, Vol. 1, No 4. Sections 207-239 protects women and girls from all forms of cruelty and degrading treatment, sexual exploitation and trafficking, forced labor and economic exploitation. This legislation is similar to Bauchi State Hawking by Children (Prohibition) Act 1985, Cap. 58.

*Ebonyi State Law (2000) on the Abolition of Harmful Traditional Practices against Women and Children and the Edo State Female Genital Mutilation Prohibition Law 2000, the Cross River State Girl Child Marriages and Female Circumcision (Prohibition Law) 2000.*These laws abrogate the age long traditional female genital surgery, which is a crucial symptom of the violation of reproductive rights of women.

Although most of these laws are not expressly on inheritance matters, they cover other areas of women rights. These laws enacted by State need to be enforced for effectiveness. Other States are also encouraged to enact more gender friendly laws, which could not just provide for women rights but resist any attempt at its infringement.

4.3 The Role of International Treaties.

A Treaty is an agreement formally signed, ratified, or adhered to between two nation or sovereigns; an international agreement concluded between two or more States in written form and governed by international law.[25] A State can enter different kinds of treaty. For instance, a human right treaty, upon which the States signatory to the treaty agree to be bound be the provisions of the treaty.

In Nigeria, *Section 12(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)* provides that:

> "No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly."

This therefore means that being signatory to a treaty in Nigeria, does not automatically make such a treaty enforceable in Nigeria. For a treaty to be enforceable in Nigeria, it must have been domesticated.[26]

The international community plays a vital role in the fight against discriminatory practices against women. There are different international treaties and protocols that deal on matters of Human rights and women rights specifically. The International Covenant on Civil and Political Rights (ICCPR) 1966, and The International Covenant on Economic Social and Cultural Rights. (ICESCR) 1966 provides that each State party to the Protocol must undertake to respect within its territory and subject to its jurisdiction the rights in the Covenant and recognize without distinction of any kind, such as to race, color, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status.

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25 Black's law dictionary 2004 p. 4681.

26 Section 12(1) Constitution of the Federal Republic of Nigeria 1999(as amended).

These international treaties prescribe that "rights" are accessible to all regardless of sex. Conventions guaranteeing the equal rights of women with men are found in a number of United Nations Human Rights Treaties.[27] In 1989, the United Nations Human Rights Committee's General Comment,[28] in respect to the ICCPR, defined "discrimination" in the covenant as:

> "any distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms…"[29]

The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) is another treaty signed and ratified by Nigeria on June 13, 1985. CEDAW is clear in its language in eliminating discrimination against women. *Article 2* states that:

> "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end undertake:
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> (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle.
> (b) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination."[30]

Nigeria has agreed to enforce the principles of gender equality in these Covenants for which they are signatory. However, despite the clear and concise language of the Convention, much remains

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27 Article 3 of the International Covenant on Civil and Political Rights and Economic, Social and Cultural Rights; Article 2(1) of the Convention of the Rights of the Child. In addition, the International Labour Organization Conventions.

28 General Comment No 18, para 7.

29 Ibid.

30 Article 2 of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW).

to be achieved in eradicating discrimination against women. Thanks to customs and religious traditions which have been patronized by men as a justification for discrimination against women.

Article 18 of the United Nations, Vienna Declaration and Programme of Action (1993) is another vital international instrument. The declaration was adopted by the agreement of State governments in attendance at the World Conference on Human Rights on 25th June 1993 in Vienna, Austria. Article 18 states that:

> "the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels and the eradication of all forms of discrimination on the grounds of sex are priority objectives of the international community."[31]

This document makes it clear that the human rights of both women and the girl-child constitutes elements of human rights. However, it should be noted that the Declaration, did not attempt to define or determine the factors constituting the human rights of women and the girl-child.

Nigeria, has also ratified the Optional Protocol to the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) on November 22, 2004. The Protocol allows the CEAW Committee to deliberate on petitions from individuals or groups who have not attained justice in their national jurisdictions. Upon the filing of a complaint the Committee has the discretion to adopt interim measures to protect the complainant from gender based discrimination.

It is however doubtful whether the intervening Committee is practicable, especially when the Supreme Court of Nigeria has passed a verdict on the issue. The intervening Committee will allow amount to re-opening a case that is res judicata or undermining the doctrine of territorial and political sovereignty of a State.

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[31] Article 18 of the United Nations, Vienna Declaration and Programme of Action (1993).

The African Charter on Human and Peoples' Rights. (also known as the Banjul Charter)[32]is a regional agreement on the protection of human rights in Nigeria. This instrument aims at protecting the rights of individuals on the African Continent. *Article 2* of the Charter enshrines the non-discriminatory clause. Most important is *Article 18(3) of the Charter*, which recognizes that:

> "The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions."

Another relevant statute is the *Maputo Protocol.*[33] This Protocol was adopted by the African Union on the 11th of July, 2003 at its second summit in Maputo Mozambique. On 25th November 2005, after ratification by the requisite 15 member nations of the African Union, the Protocol entered into force. The Protocol which focuses on the enforcement and protection of women's rights, it provides that it is the duty of the State to endure that women are afforded with equal opportunities with men.

The Maputo Protocol, guaranteed women's right on the continent. The arrival of this Protocol was as a result of the concerns for the plight of the African woman. This can be clearly seen from the introductory note on the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa:

> "to date, no African instrument relating to human rights proclaimed or stated in a precise way what the fundamental rights of women in Africa are. There is thus a vacuum in the African

[32] African Charter on Human and Peoples' Rights 1986.

[33] The African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003).

> Charter as regard[sic] real taking care of women[sic] current pre-occupations in Africa."[34]

More so *Article 1(f)* provides:

> "Discrimination against women means any distinction, exclusion or restriction of any differential treatment based on sex whose objectives or effects compromise or destroy the recognition, enjoyment or exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life."

Furthermore, *Article 2 of the Charter* states that:

> "Every individual shall be entitled to the enjoyment of the right and freedom recognized and guaranteed in the present charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political, or any other opinion, national or social origin, fortune, birth or other status."

Notwithstanding, the strong and broad languages of the Protocols (*"all spheres of life")*, it is obvious that African States systematically oppress women. Therefore, it appears that the Protocol is more rhetoric than a proactive stance guaranteeing women's rights.

4.4 The Role of Government in enhancing Women's rights.

The deplorable conditions of many women in many cultural milieus affect the enjoyment of women's rights generally. In order to address the issue of mass poverty and promote human welfare among women, policies that has impact on the well-being of people must be deliberately put in place by government. Women in cultural milieus in Nigeria also have the right to development as provided in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983[35] and thus require development.

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[34] Drafting Process of the Draft Protocol on the Rights of Women in Africa, Item 8 (e) DOC/OS/ (XXVII)/ 159B at 1.

[35] Cap A9 Laws of the Federation of Nigeria 2004.

According to Justice Oputa:[36]

> "The right to development has aptly been described by jurists as the most important human right of the Third World. It is a right comprising and even transcending all other rights- be they civil, political, social or economic. Development does not end with the generation and distribution of resources. It involves much more than that"[37]

Development has been defined as the unfolding of people's individual and social imagination, in defining goals, inventing means and ways to approach them, learning to identify and satisfy social legitimate needs.[38] The government can play the role of organizing enlightenment campaigns, educating women of their rights, adequate provision of basic social amenities and infrastructure, which will aid in improving women's standard of living in rural areas.

More so, the government can also empower women economically by providing credit facilities and access to and control of land, ensure full realization of the human rights of all women and their protection against exploitation and violence; particularly domestic violence. The government can also via statutory measures enhance the rights of women. As already mentioned in this chapter, some states have taken bold giant steps in enact women friendly laws, however, the government could a step further is ensuring the practicality of these laws and unwanted interference with the judicial proceedings.

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36 C. Oputa: *"Women and Children as Disempowered Groups,"* in A U Kalu and Y Osibanjo (eds.): *Women and Children under Nigerian Law,* (Abuja, Federal Ministry of Justice, 1990) p 12.

37 Ibid.

38 J F Rweyemamu, "*Third World Options: Power, Security and the Hope for another Development* (Dar Es Salaam, Tanzania Publishing House, 1992) p 203.

CHAPTER FIVE

POSSIBLE RESPONSE STRATEGIES.

5.1 Summary of Findings

Women inheritance and Matrimonial Property rights in Eastern Nigeria is the focus of this paper. Chapter one of this work focuses on a bed eye view into the history of women inheritance agitation tracing it back to pre-independent eras and to the pre-colonial era. The scope of study was limited to the Eastern Nigeria with an unbiased analysis of the concepts of inheritance and Matrimonial Property rights in the region. Conceptual clarification of terms was at the tail end of this chapter.

Chapter two houses the issues of discriminatory practices against women with focus on the effect of Section 42 of Constitution of the Federal Republic of Nigeria 1999 (as amended). The same chapter dealt with daughters right to intestate inheritance. Emphasis were made on recent Supreme court cases on the point. The chapter was concluded with an analysis of the inheritance rights of widows under native law.

Chapter three dealt primarily with Matrimonial Property rights. The concepts of marriage, family and marital property was also discussed. Matrimonial Property rights under native law marriage was also discussed. The paper in this chapter also analyzed the propertiary rights of women under the Matrimonial Causes Act. At the tail end of this chapter is a brief analysis of the judicial attitude of courts towards Matrimonial Property rights in Eastern Nigeria.

The impediments to women rights in Nigeria initiated the fourth chapter, that is Chapter 4. The chapter also contained legislative enactments on women inheritance rights. The same chapter contains the role of government and international treaties in enforcing women rights.

The current concepts of women inheritance and Matrimonial Property rights is diatribe to modern day reality. Women play active role in society and must be entitled to benefiting from the estate of their husband from which in most occasions they co-labored. More so, the concept of discrimination against women on grounds of sex, is in breach of constitutional rights as well as international treaties of human rights.

Thus in summary, the findings from this paper is that Women of Eastern Nigeria and indeed women in generally, have rights to full enjoyment of property. Whether as wives, widows or as daughters. The Igbo custom of male primogeniture does not hold sway in the light of modern day legislations. Therefore the walls of patriarchy and make succession to the disadvantage of daughters and wives must be completely discouraged. What is good for the goose is also good for the gender!

5.2 Recommendation.

For there to be cultural changes in the emancipation of the right of the women, the legal profession must have to live up to its billings. Men and Women of the legal profession are looked up to in every society as the hope of the common man, therefore the Bar and Bench have a multi-dimensioned role to play in this crusade. The judges should not think twice in striking down obnoxious discriminatory cultural practices.

We recommend that Supreme Court decisions in *Ukeje v Ukeje*[39]; *OnyeborAniekwe and Chinweze v Mrs Maria Nweke*[40]; *Nzekwu v Nzekwu*[41] be mandatorily incorporated into the

[39] (2015) EJSC (Vol 3) 147 SC.

[40] (2014) 9 NWLR (pt 1412) 393-422

constitutions of every Igbo association such as *Ohaneze Ndigbo,* town unions, council of chiefs and elders, age grades, etc. this measure if taken will serve as a remainder to the Igbos of the importance of those apex court landmark judgements, failure to comply with the decisions will amount to contempt. Those decisions will no longer be hearsay as it has been enshrined into their constitutions.

The right of a female child to inheritance should be domesticated that is passed into law by the Houses of Assembly of the South Eastern States of Nigeria and the penalty be made fourteen (14) years imprisonment without the option of fine for convicts. Thus, every man should be encouraged to write his Will, so as to state how their wives and children should benefit from their property.

The cultural setting of the Igbo ancestors is circumstantially different from the setting of the Igbo modern world. So it is appropriate that certain modifications be made that will suit modern trends. It is important that some obnoxious cultural beliefs which though tightly held and highly revered over the years, but which do not meet up with the 21st century realities be modified or completely expunged.

Massive education is also very importantly recommended. It is truism that general education of Nigerian women is desirous. The relevance of this, is the fact that, general awareness of their rights would be created. Ignorance is a strong weapon of mass destruction. Most Nigerian women subject themselves to many important issues that affect them negatively as a result of ignorance. To prevent this trend from happening again, it is suggested that moral, religious and western education of the women folk in Nigeria be effectively encouraged and enforced.

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[41] (1989) 3 SCNJ p 167.

It is not only the women folk that needs correct information, every member of the society does. Radio and television broadcast need be carried out frequently to sensitize the people on the need for upholding the proprietary rights of women. This will ensure that everybody in the south eastern Nigeria is aware of the decisions. This will also enable everyone to know the consequences of contempt of court.

There is need for re-orientation of men. Nigerian men should realize that their women are partners in progress not slaves they bought with their money. Men should cooperate in enforcing and upholding the legal rights of women by ensuring that all customs and traditions which regard women as second class citizens should be vigorously condemned.

It was *Folake Solanke (SAN)*[42] that opined that:

> 'In the pursuit of women's legal rights, women cannot go it alone. Without compromising our objectives or being apologetic, men must be involved in our quest for equality and full integration in the development process. Men dominate the legislative houses and the decision making process. Male cooperation is a sine qua non for the ongoing crusade'.[43]

Religious bodies such as Federation of Catholic Lawyers, Christian Lawyers Association of Nigeria (CLASFON), Christian Association of Nigeria (CAN) Eastern chapters, Pentecostal Fellowship of Nigeria Eastern chapters, as well as organization such as The International Federation of Women Lawyers (FIDA), the International Women Society, National Centre for Women Development, Women Consortium of Nigeria (WOCON), Women's Right Advancement and Protection Alternative (WRAPA) amongst others, must take the challenge as

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42 Folake Solanke, in a paper presentation titled *"The Status of Women"* at the 47th Biennial Convention of Zonna International, and quoted in Beats of Burden, A study of Women's legal status and Reproductive health rights in Nigeria: A publication of the Women's Right Project and Civil Liberties Organization, 1998. P 139.

43 Ibid.

agents of socialization to sensitize the Igbo people of the injustice in denying females and widows their constitutional right to inheritance. People usually obey their clergies, so the religious bodies have a duty to sensitize their followers.

There is need for synergy between women organizations. There are many women organization at both local and international levels.[44] They cut across both religious, political, cultural and professional lines. But this should not be a basis of their differences and disunity, rather the protection and sanctity of the rights of women folk should be their focus and priority. If this done, victory would surely be theirs.

There must be deliberate review of obnoxious laws. All the laws which hampered the protection of the legal rights of women should be reviewed with a view ensuring that they are better catered for through the instrumentality of the law. Thus, our representatives at both state and National Assemblies should be pro-active by ensuring bills are sponsored at various levels of legislative activities. In addition, obnoxious laws should be amended in line with international best practices.[45]

Customary in general, should be unequivocally subjected to the bill of rights. It is significant that judgements in general rarely use the bill of rights to evaluate the validity of customs. Nigeria's failure to subject customary law to the bill of rights explains why judges prefer to use repugnancy test in handling matters of custom.

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[44] They include Women in Nigeria (WIN); Federation of Muslim Women's Association (FOMWAN), International Federation of Women Lawyers (FIDA), Medical Women Association, National Council of Women, Ministry of Women Affairs, Gender and Development Network, Africa Harvest Mission, International Reproductive Rights Research Group, Country Women Association of Nigeria, etc.

[45] Such as is found in the Constitution, Penal and Criminal Code.

Unfortunately, they use it without a discernible judicial philosophy, resulting in an insufficient and incoherent protection of women's proprietary rights. Pending constitutional reforms, the judges should read in the rights to equality, property and human dignity into matrimonial property disputes.

The Matrimonial Causes Act should be amended to turn the legal status of couples into a community of property and profit and loss. Presently, the Act merely requires the court to compel couples to make 'a settlement of property….as the court considers just and equitable in the circumstances of the case.'[46] Although the Matrimonial Causes Act does not apply to customary marriages, the high frequency of double marriage will positively impact on women's matrimonial property rights.

Section 17 of the Evidence Act 2011 should be amended to remove the requirement of judicial notice of customs based on a single decision. Judicial notice is incompatible with customary law's flexibility. Because of judicial notice it took the Supreme Court 51 years to overturn *Nezianya v Okagbue* and stop subjecting widow's matrimonial property rights to good behavior.

It is recommended that apart from granting a daughter the right to inherit the real estate of her late father, a woman should also be given the right to succeed her deceased father as head of family in a situation where the daughter is the eldest child among the surviving children. There is nothing wrong in it.

Finally, sanctions and penalties need to be attached to breach of the propertiary rights of women. If the local communities are aware of the penalties attached to depriving a women of either her husband's property or her father's the strength of such customary practice will be wittled down.

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[46] Section 72(1) Matrimonial Causes Act.

It would then give room for an all inclusive society where everyone can freely enjoy their right to peaceable enjoyment of property.

5.3 Conclusion.

All thorough this work, we have taken time in the discourse the challenges women face in matters of inheritance and matrimonial proprietary rights. We have also discussed the way forward for the emancipation of the women folk from the claws of barbaric and demeaning cultural practices of disinheritance which contravenes every law on human rights and reduces the women to second class citizens.

It was observed in this work, that one of the reasons for such cultural practices was the male superiority syndrome which is deeply rooted in most culture in Nigeria especially in the Eastern region. Despite the provisions of *Section 42(1) and section 42(2) of the Constitution*[47] which prescribe that no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his/her birth, women disinheritance still thrives in some communities in Nigeria.

Married women who sometimes contribute to the purchase and development of her husband's real estate are being denied of opportunity of benefiting tangibly under customary law. Unfortunately, most women are reluctant, financially handicapped or too timid to be able to decidedly litigate these customary violation unless with the assistance of NGOs.

Much as it conceded that these discriminatory customary practices or laws have long been deeply entrenched or embedded in our system and such would definitely constitute an uphill task to demolish or uproot, it is however, believed and hoped that the recommendations proffered in this

[47] Constitution of the Federal Republic of Nigeria 1999 (as amended).

paper will go a long way to make our customary law to wear a new face and accord with international standard practices towards women proprietary rights.

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