

**THE BATTLE FOR REPRODUCTIVE RIGHT IN NIGERIA: A STORY OF
MARGINALIZATION AND RESISTANCE**

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2019/LW/12340**

**FACULTY OF LAW, ALEX EKWUEME FEDERAL UNIVERSITY, NDUFU ALIKE
IKWO**

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**BEING A PROJECT SUBMITTED TO THE FACULTY OF LAW, ALEX EKWUEME
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APPROVAL

The Long Essay titled “The Battle for Reproductive Right in Nigeria: A Story of Marginalization and Resistance” has been assessed and approved by the Undergraduate Studies Community of the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo.

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CERTIFICATION

This is to certify that this long essay titled “The Battle for Reproductive Right in Nigeria: A Story of Marginalization and Resistance” has been assessed and approved by the Undergraduate Studies Community of the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo” as an original work carried out by Chukwuemeka Franklyn Chinonso, with registration number: 2019/LW/12340 in the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo, under the guidance and supervision of Dr. Kelechi Goodluck Onyegbule.

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DEDICATION

This research work is dedicated to God Almighty for his love, mercies and grace all throughout my undergraduate days and to my family, my loving parents for their support and encouragement throughout the period of my LL.B journey.

Finally, I dedicate this work to all researchers who have gone before me and those that will come after me

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List of Abbreviations

CEDAW –	Convention for the Elimination of All Discriminations against Women
NWLR –	Nigeria Weekly Law Report
SC –	Supreme Work
CA –	Court of Appeal
SCJ –	Supreme Court Judgment
FWLR –	Federation Weekly Law Report
Pt –	Part
P –	Page
All NLR –	All Nigeria Law Report
WLRN –	Western Law Report of Nigeria
ECSLR –	East Central State Law Report
WRNLR –	Western Region of Nigeria Law Report
NNLR –	Northern Nigeria Law Report

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Abstract

Over time, deprivation of women's reproductive rights has posed great affront to justice. This is because women's reproductive rights play pivotal roles in the socio-economic, cultural, and political life of a country. The struggle by women for equal treatments, gender equality of all forms, and enjoyment of other socio-economic rights have put women's rights in the spotlight. Some legislations both domestic and international have been impactful in the protection of women's reproductive rights against discrimination of any kind. It is self-evident that both men and women are created equal and they are endowed by their creator with inalienable rights that among these are life, liberty and the pursuit of happiness but in some cultural practices, political position and all sorts, women are discriminated on the sole ground that they are women. In Igbo cultural practice for instance, women are not allowed to succeed to the real property of their parents except the Oluikpe cultural practice is done among other forms of discriminations. This research work critically appraised protection of the reproductive rights of women in Nigeria. It used doctrinal research methodology and critically analyzed all legal and institutional frameworks for the protection of women's reproductive rights in Nigeria. It therefore discussed the extent a good number of legislations and institution for the protection of women's reproductive rights in Nigeria. However, there are still challenges on the enforcement of women's reproductive rights. In the course of this work, it was discovered that before now, women were not allowed to participate or contribute to pivotal issues concerning the society and were subjected to some undignified exercises like Female Genital Mutilations, not eligible to stand for political elections, amongst others. And therefore, recommend that there is need for inter-religious summit to be organized by the ministry of women affairs in conjunction with other women rights activists with a view to re-orienting religious leaders and members on the reproductive rights of women and the need to stop discrimination, oppression and degradation of women under the guise of religion.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

The control of women's reproductive and sexual capacities dates back in time. Over the years, customs and traditions dictated these capacities. Global awareness has increased in relation to the protection and promotion of reproductive rights, given the impact of the ICPD and the Beijing platforms¹. The two conferences projected the recognition and preservation of the rights of women, increasing awareness that such matters are now matters dispensation of justice, which justice can be seen through upholding human rights provisions already contained in extant national laws, as well as regional, and international human rights treaties. The ICPD points out that reproductive rights represent some human rights already recognized in national law, International Human Rights and other United Nations documents. These rights are hinged on the enforcement of individuals' rights to freely decide issues concerning child bearing.

In exercising these rights, they should take into consideration their needs and responsibilities at the same time keeping in consideration their future children. Reproductive rights are closely linked but not limited to health rights. It encompasses the right to reproductive healthcare, which includes the right to regular access to safe, high quality, reproductive healthcare services and the right to reproductive self-determination. This includes the right to plan one's family, freedom from interference in reproductive decision making and the right to be free from all forms of violence and discrimination, which affect the reproductive life of a woman. In addition to health,

¹ Ogugua Ikpeze 'Customary Perspective on Reproductive Health Rights'. *Journal of Health Law and Reproductive Rights (JHLRR)* [2013] 4(5) 57.

reproductive rights promote the autonomy, choice and freedom in matters of reproduction.² Reproductive health rights, therefore, imply the right of couples to decide freely and responsibly on the number, timing and spacing of their children and have the information, education and means to do so; attain the highest standards of reproductive health and make decisions about reproduction free of discrimination, coercion and violence. It guarantees reproductive health. Women's reproductive health is guaranteed largely by existing rights, which in turn are determined by the legal enforcement and protection of same.

In Nigeria, there is an existing body of laws, which indirectly protect these rights yet no specific framework has been adopted for the implementation, enforcement, and protection of these rights.³

Before this time, the enforcement and protection of women's reproductive rights had been the subject of continuous legislative and societal debate in many countries around the world. Reproductive rights refer to the rights of women to legal and safe abortion, right to quality healthcare, right to birth control, freedom from coerced sterilization and contraception, freedom from female genital mutilation, right to receive education about sexually transmitted disease and right to protection from sexual offences. It includes the right to plan one's family, freedom from interference in reproductive decision making.⁴

Every human being holds the principle that equality, freedom and justice are the natural craving of all irrespective of the person's sex, colour, age, race or language.⁵ The very reason behind

² Mercy Erhun "A Legal Framework for the Enhancement of Women's Reproductive Health as a Means of Attaining Sustainable Development in Nigeria", *Journal of Law, Policy and Globalization*, (2015) 40(1) 21-25.

³ Oluwakemi Amuda Anyaleye, *Women and Reproductive Health Rights in Nigeria*" Ontario Development Agency. <<http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html>> accessed 20th April, 2024.

⁴ N.I Aniekwu, *Reproductive Health Law; A Jurisprudential Analysis of Gender Specific Human Rights for the African Region*. 1st Edn (Ambik Press Nigeria, 2011) 18.

⁵ *Mojekwu v Mojekwu* (1997) 1 NWLR (pt 512) 283

this, is because man, is by nature a free agent who brooks no inhibitions, has desires for an equalitarian life and carries on with an innate sense of fairness, equity and justice, the protection and promotion of human rights is no doubt acknowledged universally as cardinal equality, justice and freedom as well as necessary components for ensuring peace on every clime⁶.

Every society should respect, protect and provide for human rights and if such society fails to respect the fact that people in the society should exercise some latitude of freedom, such society is calling for anarchy.⁷ And research has shown that those nations plagued with crisis, wars and humanitarian challenges are the ones where the principles of equity, justice and freedom have severely been compromised.

The rights of women in any given society are very critical to the survival and development of that society. This is predicated on the strategic position of women at both family level and the society level. They play pivotal roles in molding the society into shape, as such the society cannot afford to ignore them and neither should their rights be relegated to the underground.

Unfortunately, the rights of women have suffered severe setbacks over the centuries, generations and decades prior to the emergence of legal framework both domestic and international. This setback of women rights in Nigeria can be seen where the traditional norms and values of the people relegate the women folk to near non-human whose rights are not worthy of protection. In fact, in some customs in Nigeria, women are not to be seen or to be heard; while in other customs, women are only to be seen and never to be heard. In this case, the voices of women are subsumed under the voice of their husbands, fathers or brothers as the case may be. These cultural Practices of some places in Nigeria are solely anchored on the understanding and belief

⁶ J.A Dada, "Human Rights Protection in Nigeria: The Past, the Present and the Goals for Role Actors for the Future" *Journal of Law, Policy and Globalization*, (2013) 14(2) 10.

⁷ *Mojekwu v Ejikeme* (2005) 5 NWLR (pt 657) 400

that women are under the authority of men and should perpetually be. Women are seen and treated as inferior to men both in physical and mental capacity⁸. It is this mentality that brought about the discrimination of women in both families and societies at large.

It is against this back drop that the international covenant on the Economic Social and Cultural Rights (ICESCR) and the Covenant on the Elimination of all forms of Discrimination Against women (CEDAW) were born. In the light of this, the Nigerian state and its federating units have churned out a number of legislations on the protection of women's rights in Nigeria. The objective of these laws is to give meaning to the nation's international commitment and obligations for the protection of women's rights. These Nigerian legislations for the protection of women rights are effective and some institutions were also established. These institutions include but not limited to the following: the National Human Rights Commission, National Commission for Women, the federal Ministry for Women Affairs amongst others.

1.2 Statement of the Problem

Due to the fact that women have suffered serial deprivation at home, in work places and other spheres of life, the protection and promotion of the reproductive rights of women have been in the front burner for over a century. Women's rights have been infringed upon without regard for their humanity, their human essence has been practically eroded by the male counterparts. This infringement of their rights exists despite the numerous international human right enactments in the form of treaties, Covenants, Conventions, declaration and protocols as well as the domestic laws in Nigeria on the guarantee of women's rights, there still exists a yawning gap between the

⁸ P.Eliadis, L. Parha and S. Aurore, "*Equality for Women*": *A Hand Book for National Human Rights Institutions on Economic, Social Cultural Rights*. (PRY Publishers, 2008) 12.

normative presentations and what is actually obtainable in the real sense of it. It is in this therefore that, there is need to protect and preserve women's reproductive rights in Nigeria.

To this therefore, this study seeks to provide answers to the following questions:

- (a) What roles have the existing legal frameworks play in safeguarding women's right of production?
- (b) What is the extent of the protection of women's reproductive right in Nigeria?
- (c) What is the impact of international human rights on the protection of the rights of women in Nigeria?
- (d) what may be done to ensure adequate protection of women in Nigeria?

1.3 Aim and Objectives of the Study

The primary aim and objective of this long essay is to critically appraise the reproductive rights of women and the impacts Nigerian legislations have on the protection of women rights in Nigeria.

Other objectives are:

- (a) To critically discuss the roles, have the existing legal frameworks play in safeguarding women's right of production
- (b) To determine the extent of the protection of women's reproductive right in Nigeria.
- (c) To examine the impact of international human rights on the protection of the rights of women in Nigeria.
- (d) To recommend what may be done to ensure adequate protection of women in Nigeria.

1.4 Scope and Limitations of the Study

The area of coverage of this long essay is Nigeria and its legal frameworks towards the protection of women's reproductive right. This work will also look at the international conventions on the protection of women's rights adopted in Nigeria. The work will also discuss some factors against the protection of women's rights in Nigeria.

The task of researching and writing on this topic was educating, inspiring and yet demanding. The following are some of the major challenges that were encountered by the researcher;

- (a) Financial constraint: in addition to other challenges, the writer did not have the financial wherewithal to visit private institutions' library which were not affected by the strike to consult the relevant books.
- (b) Lack of materials: There are no much materials on this topic, and so, the researcher took much time researching for materials and searching for authorities.
- (c) Lack of frequent power supply was also another challenge the researcher encountered in the course of carrying out this study.
- (d) Time Limitation: Due to the strike action, the researcher could not handle the process of getting the information needed for this study to his satisfaction considering the fact that he also had class works and lectures to deal with.

1.5 Significance of the Study

The issue of women's rights is a very topical area of public interest. There is therefore no gain saying the fact that, a number of literatures has been churned out by various authors in related areas of the subject. However, the relevance of this work is premised on the fact that, of all the works done in this area of law, both within and outside Nigeria, none has been able to highlight

the impact which international human rights have had on the reproductive right of women in Nigeria.

So, this research work will be of most importance to women whose reproductive rights among other rights are trampled upon. This research work will also be of great help to policy makers as it will help them come up with better and effective policies for the protection of women's reproductive right.

This research work will be helpful to future researchers who would like to carry out further research in this area of law as the work will form a body of literature on the topic.

1.6 Research Methodology

In this work of research, the researcher adopted a doctrinal methodology of research. The researcher based his work on the analysis of primary and secondary materials relevant to the area of discourse. Some of the materials include but not limited to the following;

Statute, Relevant international and regional instruments, Cases laws, Relevant journals, Textbooks, Internet materials.

1.7 Chapter Analysis

This research work is divided into five distinct chapters. Chapter one introduced the work and laid a strenuous foundation as regards women reproductive rights in Nigeria. The same chapter also looked out the problem that necessitated the study and as well analyzed research questions, scope of the study among others.

Chapter two discussed some key concepts to the topic of the research and reviewed the position of some scholars and explained in clear terms the gap in knowledge the work intends to fill.

Chapter three discussed the existing legal and institutional frameworks in relation to the topic under discourse. Such legal and institutional frameworks respectively include the Constitutional of Nigeria, Violence against Persons Prohibition Act 2015, among others.

Chapter four looked at some key issues in the topic of the study such as enforcement of reproductive rights in Nigeria among others, while chapter five concluded the work.

CHAPTER TWO

LITERATURE REVIEW

2.1 Conceptual Framework

Under Conceptual framework, key terms in the topic of discourse are defined and made clear for ease of understanding. These key terms are discussed under the subheadings below.

2.1.1 Rights of Women

According to Charlotte Bunch and Samantha Frost⁹, the concept of human rights of women simply evokes a clear sense and vision of viable strategies for change of orientation. They posit that certain factors and prejudices have joined forces to exclude women from the orthodox definition of human rights as are contained in the universal declaration of Human Rights¹⁰. These prejudices include tradition, socio-economic and political interest which has reduced women to sub-humans. They are of the view that the dichotomy created by international human rights law in which rights are categorized as public and private have dealt a despicable blow on the protection of the rights of women. This is due to the fact that only rights deemed as “Public” receive government scrutiny and enforcement while the other rights classify as private which mostly touch on the rights of women are not subject to protection by state actors. This could be seen in domestic violence and confinement which practically goes unnoticed and therefore unenforced. They are of the view that the several conferences sponsored by the United Nations in the eighties helped to raise the needed awareness about women’s human rights and to shape the women’s rights.

⁹ C. Bunch and S. Frost, “*Women’s Rights: An Introduction*” *Rutledge International Encyclopedia of Women. Global Women’s Issues and Knowledge* (PTY Publishers, 2000) 4.

¹⁰ Article 2, United Nations Declaration Human Rights 1948.

They concluded that by the definition of human right by the Universal Declaration of Human Rights as universal, inalienable and indivisible, the provisions of the declaration apply to all including women.

Therefore, women's human rights should be given the pride of place it deserves across the globe. They also argue that, the indivisibility of human rights presuppose that all rights are interdependent and that no right is superior to each other, noting that political stability is achieved when the social, economic and cultural rights are guaranteed and protected. The authors failed to bring to fore the fact that, in Nigeria, some legislative steps have been taken by the authorities to specifically guarantee the rights of women as well as corresponding punishment for any infringement on those rights.

Dada¹¹ gave a concise and condensed run down of the rights of women as set out in the numerous international conventions. She submitted that the Nigerian constitution from where all the other laws in the country derive their validity, clearly expresses some of the political, social, economic and cultural rights declared by the international covenants preceding it. Whereas some of the rights particularly the political and civil right contained in chapter four of the constitution are justiciable and enforceable, socio-economic and cultural rights stipulated in chapter two of the constitution are made non-justiciable by virtue of section 6(6)(c) of the constitution. She also argued that, this leaves much to be struggled for the protection of the rights of women in the country. He also pointed out that notwithstanding the statutory nominations for the guarantee of women's right in Nigeria, it has been very difficult to enforce women's right against discrimination especially in the area of right to work, right to property and succession rights, oppressive widowhood practices in some parts of the country especially in south eastern part of

¹¹ F.O Dada, "The Justiciability and Enforceability of Women's Rights in Nigeria, *Global Journal on Human-Social Science*. (2014) 14(5) 48-56.

the country. Women are mostly victims of sexual offence, issues of custody of children in divorce proceedings between couples and reproductive and health issues particularly the issue of female general mutilation.¹²

United Nations Declaration of Human Rights in 1948 encouraged the resolve to protect women's rights and therefore most importantly provoked other women's rights-oriented conference geared towards raising awareness for the furtherance and protection of women's right. As respectful as human rights which are provided for in chapter four of the constitution, certain traditional, cultural and societal factors have inhibited the enjoyment by women of these rights. Some of these factors include indecent widowhood practices and female genital mutilation in the face of these trade-cultural and religious inhibitions against the rights of women.¹³

2.1.2 Proprietary Rights of Women

In explaining the proprietary rights of women alongside with the Bending Declaration, Folarin and Udoh¹⁴ posited that Nigeria being a largely patriarchal society; women face a lot of challenges in terms of access to or ownership of landed property. This mostly occurs when women are bereaved of their husbands. The authors stated that efforts have been made at the international and regional levels to eradicate this discrimination against women though a number of human rights instruments. But despite these legal instruments both international and domestic laws terminating discrimination against women, cultural practices and beliefs, poverty, ignorance all combine to put in the works of women liberation in this regard.

¹² M.M Gil, and Bandone, *Human Rights Protection Mechanisms in Africa* (European Publishers, 2013) 44

¹³ M Rao, *Law Relating to Women and Children* 2nd Ed. (Easter Books Co.,1997) 34.

¹⁴ S.F. Folarin and O.D Udoh, "Bending Declaration and Women's Rights in Nigeria P.3 Sourced from <www.ePrints.covenant.university.edu.ng>. accessed on 20th April, 2024.

According to Olagbegi-Oloba¹⁵ women in the third world countries suffer series of discrimination especially in the sphere of reproductive rights land ownership. Regardless of the clear and unambiguous provisions of inter-national instruments on human rights as well as domestic laws such as the Nigerian constitution which forbids discrimination under any guise¹⁶.

African tradition places restriction on women in virtually all aspects of life, especially in the area of inheritance and land ownership. This treatment is human and marginalizing and runs against the laws of the land, rendering the constitution worthless. Women right of access to land ownership in Nigeria depends on number of factors to wit: whether the persons involved reside in the rural or urban areas; Whether they are singles or married, that is to say, whether they are female children claiming their late father's property or widows claiming their deceased husband's land; If married, whether the marriage is one under the Act or customary law, and the customs and traditions prevalent in the affected areas.

Under Islamic law, daughters and wives can inherit and own landed property of a deceased husband or father, unlike what is obtainable in other customary practices. This discrimination melted on the women by customary law runs contrary to the prescriptions of the international Convention on the Elimination of all forms of Discrimination against Women (CEDAW), which provides for equal rights for women and men without discrepancy as to sex or gender¹⁷. Whereas Nigerian legislations, judicial authorities and international covenants and treaties land to

¹⁵ B. Olagbesi-Oloba; "Women's Rights to Land Ownership in Nigeria: A Critical Examination" (UNILAG Press, 2014) 1-13.

¹⁶ Sections 42 and 43 of the 1999 CFRN as amended.

¹⁷ Article 15 of CEDAW, 1979

guarantee women's rights to access land either through inheritance or however, customary practices dictate otherwise.¹⁸

2.1.3 Reproductive Right of Women

Reproductive health rights, therefore, imply the right of couples to voluntarily make decision concerning the children to born and the arrangement that follows it. Their education and among other things. Attain the highest standards of reproductive health and make decisions about reproduction free of discrimination, coercion and violence.¹⁹ Reproductive rights guarantee reproductive health. Women's reproductive health is guaranteed largely by existing rights, which in turn are determined by the legal enforcement and protection of same. Reproductive rights recognizes that a woman should be able to defend her right over her body and personal choices concerning her body – reproductive options are an integral part of this right. It may thus be inferred that the definition of reproductive rights arrived at by the Beijing Platform Action has been derived from broadly established rights. Reproductive rights are concerned with reproduction, as stipulated in National Laws, and other documents such as reports from International Human Rights Institutions; and must therefore be respected and enforced by State parties.²⁰

The protection of reproductive rights has evolved such that some countries now have laws and state policies addressing the abuse of such rights and providing remedies where necessary.

Sexual right is a fundamental human right which accords women the freedom to decide and make choices regarding their sexuality and sexual needs as well as their sexual and reproductive

¹⁸ S.F. Folarin and O.D Udoh, "Bending Declaration and Women's Rights in Nigeria P.3 Sourced from <www.ePrints.covenant.university.edu.ng>. accessed on 20th April, 2024.

¹⁹ Nkolika Ijeoma Aniekwu. *Reproductive Health Law; A Jurisprudential Analysis of Gender Specific Human Rights for the African Region*. (Ambik Press, 2011) 19.

²⁰ Ogugua Ikpeze *Customary Perspective on Reproductive Health Rights. Journal of Health Law and Reproductive Rights*. (2014) 4(5) 57.

rights, devoid of inducement, hostility and discrimination of any kind²¹. Polygamy which is the practice of a man marrying more than one wife, simultaneously infringes on the sexual rights of women. If attempts to viciously regulate the behavior and life of women, restrict their sexual rights and thereby impugn their reproductive rights. National laws should take a cue from the prescriptions of international human right treaties such as Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) for the protection and promotion of women's reproductive and sexual health rights and its associated rights which include; right to life security of the person amongst others.

2.2 Theoretical Foundation

Some theories in relation to the topic under discourse are discussed below:

2.2.1 Sociological Theory

According to Pound, "Law is social engineering which means equalizing between the competing interests in society," in which applied science is used for resolving individual and social problems.

Social Engineering is balancing the in consisting individual's interest and the state with the help of law. With the help of law as a body of knowledge, a large part of social engineering is carried on. Law is used to solve contradicting needs and dilemma in society. He mentioned that everybody has their own individual interest and considered it supreme over all other interests. The objective of the law is to create a balance between the interests of the people. Law is used as a veritable instrument to bring changes in the environment and ensure that society confirms to the technological advancement. Roscoe Pound in his interest theory mentioned the three kinds of

²¹ O. Olomola, "An Appraisal of Polygamy and Reproductive Rights of Women in Nigeria, *Journal of Law and Conflict Resolution*, (2013) 5(1) 6-15.

interest. To avoid the overlapping of interests, he put boundaries and divides the kinds of interests.²² These interests include; interest of an individual, interest of members of the society and those of the entire society.²³

In line with sociological theory and especially Roscoe Pound's postulation of law being a veritable instrument for societal changes, the Constitution of Nigeria 1999 (as amended) and other laws are veritable instruments in ensuring that women are given equal treatments in the society and their reproductive rights highly observed, promoted and protected. It is only when these things are done that individual, public and social interests can be said to have been upheld.

2.2.2 Positivist Theory

This theory of law professes that law is as made by the sovereign or his agent. The agent in this perspective is the parliament which is primarily empowered to make laws or a delegated legislator with delegated powers to make delegated legislations or judges who in the course of deciding cases may establish case law or judicial precedents. In other words, law is law as made by the law maker and it remains the law until it is reformed by amendment or abolished. The existence of law is one thing, its merit or demerit is another. A law which is made by the people to guide their actions is the main law, though people may dislike it.²⁴ John Austin believes that positive law is a command set by a political superior for a political inferior and which the inferior has to obey or suffer sanction. That law is a command made by a sovereign for an inferior and which the inferior has a duty to obey or suffer penalty.

²² A Sachdeva & C Gupta, *A Simple Study of Political Science Theory*. (Ajanta Publishers, 1980) 18.

²³ T. Njoku, *Jurisprudence in Law* (UNILAG Press, 2023) 12.

²⁴ John Austin, *The Province of Jurisprudence Determined*. (HLA Hart Publishers, 1832) 184.

The postulation of the positivist theorists is that man-made laws such as the 1999 Constitution as amended, Violence against Persons Prohibition Act 2015 among others have made provisions for the protection of the rights of every woman against any form of ill treatment.

In view of the positivist theory, laws are made to ensure fair play, protect rights of women and make the society safe of living.

2.2.3 Utilitarian Theory

The utilitarian theory of law was started by Jeremy Bentham. He propounded that life is full of pain and pleasure and that legislation as a veritable instrument should be used as a tool of social engineering or means to increase societal happiness and minimize sufferings of the people in the society.²⁵

Every law should be enacted to secure or ensure the happiness of the people in the society. The aim of law should be to maximize happiness of people in the society.

Every person in the view of utilitarian theorists should be allowed freedom to pursue his or her own happiness, advantage, and actualize himself, and to seek self fulfilment without interference by the state. This is a support of a free market economy.

All existing laws and consequently the institutions established by such laws should be reformed to ensure protection of women's rights and stamp out any form of discrimination against women, and when this is done, the greatest happiness possible for the populace would be secured. A law could be seen as good or bad after assessing or evaluating its utility to individuals and society at large.

²⁵ B, Appadorai. *The Substance of politics*. (Oxford University Press, 2003) 23.

To ensure the efficacy of any existing legal framework, every law should seek to promote security, equality, and liberty, when these things are promoted, democracy can be fostered.²⁶

2.3 Review of Related Literature

Women's rights generally have been seriously trampled upon in Nigeria and other countries of the world. This deprivation of women's rights as part of human rights, comes with its concomitant prior to some legal instruments in Nigeria and internationally protecting the rights of women in order to prevent prevention of justice and equity because equality is equity.

Women in some customary practices are not allowed to own certain properties, inherit real properties, occupy elective positions amongst other things, so many judicial authorities have come to show that such custom that discriminate women on ground of their gender is repugnant not only to natural justice but also to equity and good conscious.

The emergence of some legislations in Nigeria such as the constitution which is the supreme law of the land and violence against personal (prohibition) Act of 2015 amongst others have ameliorated the discrimination melted on women. Hence the need to appraise the protection of women's right in Nigeria. Many scholars have researched in this area of law but fail to recognize Nigerian legislations that effectively protect and presence the rights women and this is what this long essay seeks to look how these Nigerian legislations have been impactful in the protection of women's rights. Human rights exist before modern societies. This is because human rights are as old as man and creation. Kayode Eso JSC (as then was) once said that human rights are rights which have always existed even before orderliness prescribed rules for the manner, they are to be sought²⁷. They are therefore, antecedent to the political society itself. It has a long-conquered

²⁶ J.K Jegede, The Rule of Law in Military Government- An Appraisal. *Nigeria Law and Practice Journals*. (1999) 3 (2) 12.

²⁷ *Saude v Abdullahi* (1989) 4NWLR (Pt 116) 389

history dating back to ancient religious, philosophers and societies. It has been said that the idea of political and civil rights as it is known today emanated from the writings John Stuart Mills, who advocated for liberal freedom in his book on liberty²⁸.

According to Dada²⁹, it has been very difficult to enforce women's rights against discrimination especially in the area of reproductive rights, right to work, right to property and succession rights, oppressive widowhood practices in some parts of the country especially in south eastern part of the country.

According to Sheriff and Udoh³⁰, efforts have been made at the international and regional levels to eradicate this discrimination against women, cultural practices and beliefs, poverty, ignorance all combine to put in the works of women liberation in this regard.

2.4 Summary of Review/Gap in Knowledge

Many scholars have worked on women rights and its protection in Nigeria but they failed to critically examine women's reproductive rights and the existing legal and institutional framework which protect and preserve women's reproductive rights in Nigeria. This is the gap in knowledge that prompted this research work in order to critically analyze women's rights and the roles the existing legal and institutional frameworks play in protecting women's reproductive rights in Nigeria.

²⁸ J.S Mill, *On Liberty* (John Wipirtar and Son, 2000) 12.

²⁹ F.O Dada, The Justiciability and Enforceability of Women's Rights in Nigeria, *Global Journal on Human and Social Science*. Vol.14 (2014) 14(1) 48-56.

³⁰ S.F Folarin and O.D Udoh, Bending Declaration and Women's Rights in Nigeria, p.3 sourced from <www.eprints.covenant.university.edu.ng> accessed on 25th April, 2024.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORKS FOR THE PROTECTION OF WOMEN'S REPRODUCTIVE RIGHT

3.1 Legal Framework

Under this heading, essential laws targeted at protecting women's reproductive rights are discussed. These laws include the following:

3.1.1 Constitution of Federal Republic of Nigeria 1999 as amended

Chapter 4 of the 1999 Constitution (as amended) provides for the protection of human rights generally. It, however, does not voice out gender-specific protection (in this case women's reproductive rights). Nevertheless, some of the rights protected under the Constitution can also be extended to include the protection of reproductive rights. Section 14 (2) provides that the security and welfare of the people shall be the primary purpose of government. This is in consonance with the scope of reproductive health, which includes "a state of complete physical, mental and social well-being". Thus, catering to the reproductive well-being of individuals is imbedded in their security and welfare. Furthermore, although unenforceable, section 17 under the social objectives and directives policies, stipulates that the government is obligated to direct its policies towards ensuring adequate medical and health facilities for all. This also resonates with the scope of reproductive health and rights covering access to acceptable, affordable and safe methods of regulating fertility and right to access appropriate medical services. It further provides that children, young persons and the aged shall be protected against exploitation and against moral or material neglect. The section goes on to encourage the evolution and promotion of family life. In sub-section 3 we see the provision that the working conditions should be just and humane and there should be adequate facilities for leisure, social, religious and cultural life.

This provision, if properly harnessed, will cater to the reproductive health and rights needs of working-class mothers. Similarly, section 33 of the Constitution provides that: “Every person has a right to life and no one shall be deprived intentionally of his life, save in execution of a court sentence in respect of a criminal offence of which he has been found guilty in Nigeria”.

The rights to good healthcare, amenities, safe motherhood, etc., are all essential for protecting the right to life. Access to information and education on preventable diseases that can shorten the life span of women and children is essential in protecting this right to life.

Thus, governments all over the world are tasked with the responsibility of protecting the right to life by taking positive steps to provide adequate health facilities, especially for women and children.³¹

Section 34 of the Constitution provides that no person shall be subjected to torture or inhuman or degrading treatment; no person shall be held in slavery or servitude and be required to perform forced or compulsory labour. Torture has been defined to include mental harassment and physical brutalization while inhumane treatment characterizes any act without feelings for the sufferings of the other. Thus, stigmatization of women living with HIV & AIDS, the practice of ostracizing young girls with VVF in rural areas all amount to breach of their rights to dignity of the human person, which is in fact an infringement of their reproductive health rights. Section 35 provides for the right to personal liberty and that no person should be deprived of their personal liberty under any circumstances.

The liberty of persons living with HIV & AIDS should not be interfered with; even if it is for the purpose of treatment, there should be consent before quarantining such persons. Though it can be argued that in cases where it becomes necessary to protect the greater population from

³¹ C.C Okafor, *Reproductive Rights of Women in Nigeria*. (OAU Press, 2010) 32.

contracting communicable diseases, nonetheless this can be facilitated through counselling and information. The infected person is entitled to proper guidance and counselling in order to understand the necessity for the isolation. There should be respect for the infected person's right to integrity and respect for their personal space, and no one should be tested without being informed of the intention to do so – testing should be voluntarily submitted to.

All these are essential in the protection of reproductive health rights. Section 37 provides for the right to private and family life. This provision covers the protection of the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communication. As noted earlier in this work, reproductive health implies that people should be able to have satisfying, safe, and free sexual life that is not impeded by custom or gender. Reproductive health rights, therefore, imply that couples can decide freely and responsibly on the number, timing, and spacing of their children and have the information, education and means to do so, attain the highest standards of reproductive health and make decisions about reproduction free of discrimination, coercion, and violence.³² This right allows a woman to procure information discreetly on her reproductive life, enhance her sexual life without fear of her private sexual activities being posted online or put in the public domain without her consent, as a means to shame her.

These rights provided for under the constitution have over the years, yielded immense result in the protection of women's rights in Nigeria. Of a particular concern are those relating to the right to peaceful assembly, association as well as the right to freedom against discrimination. This has helped women to escape some cultural discriminations such as restriction on the reproductive and inheritance rights of women.

³² Ogugua Ikpeze, "Customary Perspective on Reproductive Health Rights". *Journal of Health Law and Reproductive Rights*. (2014) 4(5) 57.

3.1.2 International Convention on the Elimination of all forms of Discrimination against Women (CEDAW) 1979

This Convention was signed by Nigeria in 1985 and ratified without reservations; yet it has not been domesticated as required by Section 12 of the Constitution. Thus, it does not form part of our municipal laws. This is unfortunate, considering that the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) is a gender specific instrument. The Convention is the only international instrument that takes the understanding of human rights from being gender neutral or gender blind to being women focused, recognizing the specific and differential needs of women on the basis of biology and gender or social construction. The Convention brings about a convergence between an international treaty with women's law leading to equality and justice for women.

It demands not only the prohibition of discrimination against women but also places positive obligations on the State for the fulfilment of women's right to equality.

The Convention is an international human rights document that establishes the Principle of equality of rights between men and women and amongst women inter se³³. The convention establishes an independent expert body, the committee on the elimination of all forms of discrimination against women made up of twenty-three individuals to monitor the implementation of the convention. The General Assembly further adopted an optional protocol to the convention. This protocol permits the committee to receive and consider communications from women or group of women who allege that they are victims of gender discrimination within the jurisdiction of state parties to the protocol.

³³ O. Nwankwo, "Convention the Elimination of all Forms of Discrimination Against Women, (Peculiar Instincts, 2004) 6.

The state parties agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.

The Convention imposes on the state parties the obligation of giving all women equality with men before the law³⁴. The rights relating to marriage and the family must be ensured by the state's parties on the basis of equality of men and women³⁵. State parties undertake to send a report to the committee on the Elimination of Discrimination within one year of enjoy of force of the convention and thereafter, every four years or as the committee request. The committee is competent to receive and consider petitions from individual women or groups of women. They must have exhausted all their domestic remedies. Unless it can be established why consent was not received by the committee, petitions cannot be submitted on behalf of individual or group of individuals³⁶. Under the optional protocol, the committee can conduct confidential enquiries into grave or systematic violations of the convention on the elimination of all forms of discrimination against women³⁷.

Once domesticated, the terms of the convention shall be transposed into administrate and social policies and practice in order to realize a profound eradication of discrimination. Courts in many countries refer to the convention in domestic litigation to remedy discrimination against women in matter such as nationality, inheritance violence against women or sexual harassment at work.

³⁴ Article 15(1) and (2)

³⁵ Article 16

³⁶ Article 2 of CEDAW,

³⁷ ARTICLE 8

3.1.3 Protocol to African Charter on Human and Peoples Rights on the Rights of Women 2003

The adoption of the African charter on Human and People's Rights certainly enhanced the protection of human rights in the African content. Although, the ACHPR guarantee the human rights of all persons, male and female, but the rights of women were still far from effectively protected. It was on this same that the Women in Law and Development in Africa (WILDAF) during a meeting held at come, to go in March 2006, advocated for the enactment of a specific protocol to the ACHPR to take care of the rights of women in Africa. Consequently, the African Commission on Human and People's Rights was charged by the OAU (now AU) Assembly to come up with the requisite protocol precisely during its 31st ordinary session in June, 1995 held in Addis Ababa³⁸.

The Commission working in collaboration with expert groups, international observers, eminent jurists and non-governmental organizations produced the January, 1998 in April, 1998 the Commission during its 23rd session, appointed Julienne ended linelenga, a Congolese lawyer, as the first special reportteur on women's rights in Africa and charged her to ensure traditional practices. The daft was further looked into by a women's rights group called "The equally now" who brought the document to international standard and successfully lobbied the African union to adopt the instrument.

The protocol which is made up of a preamble and thirty-two (32) articles, is a supplement to the ACHPR. The protocol provides a broad spectrum of protection for the human rights of women in Africa, including their reproductive and sexual rights. The charter guarantees a number of rights

³⁸ M. Wandia, *"Rights of Women in Africa: Launch of a Partition to the African Union"* (Pamabazuka Publication, 2004) 162.

for women which shall be highlighted here under. In the preamble, the charter express concern that despite all the human rights instrument adopted both at the universal and regional levels, women still suffer varying degrees of discrimination and other harmful practices, thus, providing a plausible justification for the enactment of the protocol to ensure the protection and promotion of women's rights in Africa. State parties were therefore, mandated to subdue all forms of discriminations against women through legislative, institutional and other means³⁹.

The right every woman to life, integrity and security⁴⁰ of her person is guarantee as well as the prohibition of all exploitation, in human, cruel and degrading treatment and punishment against her⁴¹. State parties are obliged to take all legislative and other measures to eliminate all harmful practices which adversely impact on the human rights of women⁴². States are enjoyed to adopt legislative and other measures to ensure that all men and women enjoy equal rights and privileges in marriage and that no person is given out in marriage without his/her free constant, legislative measures are to be adopted to ensure that both parties to t marriage enjoy equal rights in case of separation, divorce and annulment, like men, women are to be given equal access to justice and protection before the law⁴³. States are to adopt affirmative action and legislative measures to ensure the promotion of participative governance and equal participation of women in the politics of their country, and sustainable development.⁴⁴

Women are to be protected and their right respected during armed conflicts in accordance with international humanitarian law⁴⁵ amongst other rights including that women shall have right to

³⁹ Article 2

⁴⁰ Article 3

⁴¹ Article 4

⁴² Article 3

⁴³ Article 6,7 and 8

⁴⁴ Article 9 & 19

⁴⁵ Article 11,

the equitable inheritance of her husband's property and to live in the matrimonial home if she wishes⁴⁶.

Another very important provision is that state parties are to ensure the implementation of the provisions of the protocol and to submit periodic report on such implementation⁴⁷. This goes a long way to ensure that the provisions of the charter are fully implemented by the state's parties.

3.1.4 Violence Against Persons Prohibition Act (VAPP) 2015

This VAPP Act prohibits all forms of violence against persons in public and private life and provides maximum protection and remedies for victims as well as punishment for offenders. Section 1 defines rape as: the intentional penetration of the vagina, anus or mouth of another person with any other part of his or her body or anything else without consent or consent is obtained by force or by means of intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act or the use of any substance or additive capable of taking away the will of such person. The Act provides a punitive measure of life imprisonment (various other imprisonments) for anyone found guilty of this offence under the Act. It further provides for an offence known as spousal battery, which is the intentional and unlawful use of force or violence on a person, unlawfully touching, beating or striking of another person against his or her will with the intention of causing bodily harm. Once the guilt is established, the offence is punishable with three years' imprisonment or fine of N200,000. The Act further prohibits the offence of forceful ejection from home; deprivation of liberty (psychological violence), forced financial dependence or economic abuse; forced isolation; and

⁴⁶ Article 21

⁴⁷ Article 26

emotional, psychological and verbal violence.⁴⁸ Furthermore, the Act prohibits harmful traditional practices. All traditional behaviour, attitudes or practices, which negatively affect the fundamental rights of women, girls, or any person and includes harmful widowhood practices, denial of inheritance or succession rights, female genital mutilation, forced marriage, forced isolation are regarded as offences punishable with four years' imprisonment or N500,000.00 fine or both.

3.1.5 Labour Act Cap 198, Laws of the Federation of Nigeria 2004

Section 54 (1) of the Act, in protecting rights of women, provides that in any private industrial or commercial or any agricultural undertaking or in any branch thereof, a woman:

- (i) Must be entitled leave within 6 weeks preceding the time to give birth.
- (ii) Must not be allowed to do official works during the time frame.
- (iii) In the event the absence of work is in respect to any of the above, and been continuously employed for a timeframe of six months or more immediately prior to her absence, shall be paid not less than 50 per cent of the wages she would have earned if she had not been absent.
- (iv) In the event the woman is still nursing her baby, she must be allowed half an hour twice a day during her working hours for that purpose.

Section 54 (2) further provides that subsection (1) and (2) shall have effect notwithstanding any law relating to the fixing and payment of minimum wage. These provisions all the way to subsection (5) are relevant to women's reproductive rights by balancing the interest of the pregnant woman, motherhood and child survival as against the interest of the employers. This also resonates with the right of the woman to safe motherhood. The provisions of subsections (2)

⁴⁸ Section 14 of VAPP Act 2015

and (3) entitle the woman to at least 12 weeks maternity leave. In more recent practice, however, few women take the leave as ordered by the provisions. Instead, they take the 12 weeks post-natal leave. The practice is now given official approval by virtue of a written policy emanating from Ministry of Establishments of Labour and Productivity.

Arguably, there are two mutually reinforcing reasons for this development in practice. The position of the law appears to have been advised on medical knowledge about both pregnancy-advised and pregnancy-induced slow-down of the woman as she approaches delivery. However, it appears that in recent times, there are strong, differing views within medical circles of how much slow-down is required by pregnant women generally and by individual pregnant women so that the adoption of a protective legislative mandate is necessitated. Consequently, as many women get the clean bill of health from their doctors to carry on with work, they feel less inclined to use the six weeks leave prior. They feel more inclined/compelled to accumulate the 12 weeks for post-natal maternity leave because they regard the legally reserved six weeks as highly inadequate. The recent child survival campaigns, which advocate exclusive breastfeeding for the child for six months reinforce the position that the six weeks post-natal maternity leave legally reserved is inadequate and incapable of providing legislative support to the campaign. However, it is unfortunate that many women employed by private business do not enjoy these rights. These provisions also protect a woman from job termination where she takes ill during the pregnancy and has to take a leave of absence from work. It is worthy to note that section 54(5) provides that the child referred to in the section includes both legitimate and illegitimate – thus an employer cannot deprive a woman of maternity leave solely on the ground that she is unmarried and is going to be a single mother. This type of discrimination of children born out of wedlock comes within the purview of what is forbidden under the Constitution of Nigeria, that

no person should be discriminated against solely on grounds of the circumstances surrounding his birth. In spite of this we have internal legislations that still foster discrimination, for instance the Police Act provides that an unmarried woman who becomes pregnant shall be discharged from the force and shall not be re-listed save with the approval of the Inspector General. Not only is this clearly discriminatory, it is a clear violation of a woman's right to freedom of thought and conscience as well as a violation her right to private family life.

3.2 Institutional Frameworks

Under this heading, several institutions both governmental and non-governmental that play pivotal roles in enforcing women rights are discussed.

3.2.1 National Human Rights Commission

The National Human Rights Commission is a federal government institution established under *section 1* of the National Human Rights Commission Amendment Act, 2010. The commission was established to ensure the promotion and protection of human rights as guaranteed by municipal laws especially the constitution, regional and international human rights instruments which Nigeria is a state party, in collaboration with local and international human rights organization⁴⁹. The commission is to monitor investigate cases of violation of human rights and recommend to the president on the appropriate line of action as well as help persons whose human rights have been violated to get redressed. The commission is to help every tier of government in the formulation of policies that will ensure the protection of human rights

⁴⁹ Sec. 5(a)(g)

enlighten the public on human rights issues through seminars conferences and workshops and to participate in international activities on the promotion and protection of human rights⁵⁰.

The commission is empowered to receive complaint on violation of human rights, investigate same and issue appropriate decision according to the circumstances of each case, ensure that existing or proposed laws do not conflict with human rights provisions; act as conciliator between disputing partner and refer matters of human rights violation to Attorney General of the Federation for prosecution⁵¹.

The commission is empowered to investigate matter of human rights violation, make decisions on it and award damages and compensation where it deemed fit, and to compel anybody or authority by summon or warrant to appear before it to answer questions of human rights violations⁵² the commission is no doubt an active player in the field of human rights protection and promotion in Nigeria. Since its inception in 1995, the commission has been engaged in the area of public enlightenment and training on human rights, investigation of complaints, conflict resolution and peace building among others⁵³. In wake of the Boko haram insurgency leading to establishment of internally displaced persons (IDPs) camp in the North East and North Central Zones of the Country, there were widespread cases of human right abuse. The commission rose to the occasion by launching the IDP monitoring project in conjunction with. The United Nations High Commission for Refugees (UNHCR). This protect was aimed at ensuring that the fundamental right of IDPs is protected as guaranteed under the law. The Commission investigated the Baga Massacre in Bornu State in which it lambasted the federal government for

⁵⁰ Section 5(b)(c), (d), (f), (h), n.

⁵¹ Section 5(51) (k) (p) and (q)

⁵²Section 6(11) and (2)

⁵³ <www.nigeria.right.gov.ng> accessed 30 June, 2020

the exclusive use of force and the massive abuse of human rights in the affected area⁵⁴. The forgoing activities of the commission clearly reveals that the commission has been up and doing to ensure the fulfillment of its mandate of promotion and protection of human rights in Nigeria.

3.2.2 Ministry of Women Affairs

This ministry is a substantive ministry under the federal civil service of Nigeria. The ministry is headed by a minister who is appointed on the recommendation of the president and concurring approval of the Nigeria senate. The ministry is charged with the responsibility of promoting equal rights for women and the development of the women folk in Nigeria⁵⁵. The ministry is also mandated to engage in stimulating actions to promote social civil, economic and political participation of women in the policy. The monitoring and coordination of women's programmes as well as the promotion of financial, technical and moral support for women non-government as well as the provision of financial, technical and more support for women non-governmental organization is of cardinal aspect of the ministry's mandate.

The ministry is to assist women through the National Council for women societies (NCWS), national centre for women development (NCWD) and other parastatals in the ministry in the realization of women's rights.⁵⁶

Essentially, the ministry is to ensure that the rights of women across the country is protected and that the socio-economic and political wellbeing of the womenfolk is guaranteed and not jeopardized by any rule, practice, usage or law, be it nation or conventionally. To the protection and social wellbeing of children, the physically challenged and social disadvantage. To enable

⁵⁴ NHRC Report on Baga Massacre sourced from <<http://ioww.premiumtimeng.com>> accessed on 10th October, 2024.

⁵⁵ Federal Ministry of Women Affairs, Federal Republic of Nigeria sourced from <http://www.womenaffair.gov.ng>.

⁵⁶ *ibid*

women become self-reliant and economically independent, the ministry of Women Affairs has set up a wide range of skills acquisition programmes and entrepreneurship scheme to engage the women. This includes the ministry's cottage industry projects such as vegetable oil production, pottery.

3.2.3 Legal Aid Council of Nigeria

The Legal Aid Council of Nigeria was established by section 1 of the Legal Aid Act, 2011, a body with perpetual succession and a common seal capable of giving and being sued⁵⁷. It is made up of the chairman and members, the director general, the chief executive officer of the council and other supporting⁵⁸. The council was established to provide legal aid and other services in criminal defense, legal advice, and civil litigation and defence⁵⁹. These services are rendered on the basis of merit of the case and the indigence of the affected personal in order words, the primary mandate of the council is to assist persons who do not have the financial muscle to fight the legal battle in court particularly in criminal prosecution or civil litigation and representation.⁶⁰

The Council is to provide legal assistance to person who has suffered denial or breach of any right privilege⁶¹. The legal aid to be provided shall consist of the legal services usually provided by a private legal practitioner which include preliminary legal processes before litigation commences legal services before the court during litigation and such other legal services that are incidental thereto. A person cannot be entitled the legal services of the council unless he/her shows to the satisfaction of the director general that he /she has legitimate legal charms which

⁵⁷ Section 1(2), legal Aid Act 2011

⁵⁸ Section 1(4)

⁵⁹ Section 8(1)

⁶⁰ Section 8(2)(3)

⁶¹ Section 8(4)

require the legal services of the council⁶². The council is also mandated to provide community legal services which comprises of public enlightenment on law generally, how the Nigerian legal services works and a range of other legal issues. The community legal service also entails taking steps to prevent, settle or resolve legal dispute; enforcement of decisions arising from such disputes; provision of financial aid where possible; and provision of legal aid with respect to claims against individuals, private organization and public authorities⁶³. The category of persons entitled to legal aid by the council are those whose monthly income does not exceed the national minimum wage⁶⁴. The Council may however, provide legal services to person whose income exceeds the national minimums wage if the Board of the Legal Aid Council approves, provided also that the expenses for such legal services shall be borne on contributory basis between the council and the beneficiary⁶⁵. It is without doubt that most of the women who suffer untold oppression, degradation and deprivation are rural indigent women who do not have the financial where withal to take good care of themselves not to talk of fighting a legal battle to enforce their rights women. It is on this note that the services of the council become even more germane to protect the rights of helpless women who may just, be languishing in ignorance and poverty.

The legal Aid Council of Nigeria has since its establishment in 1976 engaged in sundry legal activities in fulfillment of its mandate. Principal among this is the rendering of pro bono legal services to indignity members of the society especially in criminal matters including legal representative in court⁶⁶. Most of the cases handled by the council emanate from prisons awaiting trial list. Sequel to the unbearable congestion of prisons across the country, the council

⁶² Section 8(5) and (6)

⁶³ Section 8(7),

⁶⁴ Section 10(1)

⁶⁵ Section 10(3)

⁶⁶ Legal Aid Council, Prison Decongestion and Matter Arising sourced from <<http://www.guardian.ng/news-analysis>> accessed on 25th August, 2024.

in conjunction with the office of the attorney general of the federation launched the prisons decongestion projection in 2007. The project saw to the engagement of private legal practitioners to render legal services to accused persons who were awaiting trial across the nation. This was to ensure a speedy trial and disposal of the cases so as to decongest the prisons as much as possible. This project however, yielded minimal result due to dearth of fund. It is therefore advocated that the federal government should adequately fund the legal Aid Council to enable it realize its mandate.

3.2.4 National Commission for Women

This institution was established by section of the National Commission for Women Act⁶⁷ as a body corporate with perpetual succession capable of suing and being sued in its corporate name⁶⁸. The cardinal responsibility of the commission is the promotion of the general welfare of women in the country⁶⁹. In furtherance of this mandate, the commission is expected to stimulate and motivate rural women to have a better living standard as well as the sensitization of members of the public on the peculiar problems of women in our society, to mobilize women to improve their lot and to enable them seek leadership role in the society, raise consciousness on the rights, socio-political and economic opportunities and obligations of the women as well as encouraging the womenfolk to be self-reliant through self-development in different aspects of life, entrepreneurship and enriched family life⁷⁰. The Commission is to facilitate the development and welfare of children in accordance with the provisions of the International Convention on the Rights of the Child and the National Policy on the Rights of the Civil⁷¹.

⁶⁷ Cap N23 LFN, 2004

⁶⁸ Section 1(2), National Commission for Women Act

⁶⁹ Section 2(2)(a)

⁷⁰ Section 2(b)

⁷¹ Section 2(c),

The commission is also empowered to work towards the participation of women in national development, support and encourage the activities of non-governmental organization and other women organization, create for the education and inculcation of moral values on women and children, and social practices that dehumanize or discriminate women⁷². The commission was setup in response to several calls for the protection of women's interest through government instrumentality. Although the commission is constrained by the usual bureaucratic bottlenecks associated with government establishments, it has nonetheless made remarkable in roads since its establishment. One would however have expected that the commission will be more assertive of the rights of women, in Nigeria, projecting their interest to a more visible and audible proportion for a proper advancement of the rights of women, especially the rural women. In *Uzoukwu v Ezeonu*,⁷³ it was through the effort of the commission that the woman got judgment over her deceased husband's brothers.

3.2.5 Women's Right Advocacy Groups

Since the wake of women's right struggle, a lot of women's right advocacy groups have sprung up with different names, aims and objectives. Whereas some are based in Nigeria, others are not. Principal among these women rights advocacy group is the international federation of women lawyers (FIDA), just to mention but a few. These women rights group which operates as non-governmental organization have as their primary objectives the protection of women's rights,⁷⁴ the promotion of women's right awareness campaign, socio-political and economic and empowerment of women and the elimination of illiteracy among women to Nigeria. Some of

⁷² Section 2(d) to (j)

⁷³ (1991) 6 NWLR (pt.290) 708

⁷⁴ Founded in 1997 to fight for gender equality and women rights for all sourced from <www.fids.org.ng> accessed 31 July 2024.

these groups include: international federation of women lawyer (FIDA) among others. The efforts of the NGO were seen in the case of *Upaha v State*,⁷⁵ wherein the intervention of the NGO saved her from the infringement of plaintiff's right to dignity.

3.2.6 International Federation of Women Lawyers (FIDA)

FIDA is a Spanish acronym for federation international de Abogades which is translated in English as international federation of women lawyers. As the name implies, it is international association of female lawyers which was founded in Mexico in 1944 by a group of female lawyers who had from Cuba, Puerto Rico, El Salvador, USA and Mexico, FIDA which is a non-governmental organization was subsequently established in Nigeria in 1964 by Mrs. (Lady) Aduka Alakija. FIDA currently has its federation⁷⁶.

FIDA has a its objectives the promotion and the enhancement of the welfare of women and children to bring about a happy home and a virile society, to advise all levels of government in matters relating to the neglect of women and children. FIDA also strives to ensure friendly international relations on the pedestal of egalitarianism and mutual respect for all peoples irrespective of gender; to ensure the promotion of the aim's principles of the United Nations in their social and legal aspects. Its vision is to see to a Nigeria society where the rights of women and children are guaranteed and protected in an equitable and just atmosphere.

Over the years that FIDA has existed, it has lived up its vision and objectives. FIDA has a platform known as the women protection mandate through which it provides legal services to female politicians to assist them in challenging election results which robbed women of their electoral victories, especially where irregularities were mate clearly manifest. FIDA has helped women to challenge cases in courts in which their rights were trampled. In Kano, FIDA assisted

⁷⁵ (2003) 6 NWLR (pt 816) 65

⁷⁶ <www.FIDA.org.ng> accessed on the 26th July, 2024.

women in perfecting their title to land thereby protecting their rights to own landed property in Nigeria. In Ebonyi State, FIDA engages in free legal representation for indigent women, advocacy and policy campaigns.

FIDA has also of relented in promoting legislation that advances the protection of the rights of women and children in Nigeria. For instance, FIFA was instrumental to the simplifying of the child Rights Act in collaboration with the legal aid council and the federal ministry of women affairs.

FIDA also made tremendous in road in the promotion and protection of the rights of women in Nigeria. This was achieved through massive advocacy, strenuous legal battle in court, empowerment programmes, and massive rights guardedness campaign. FIDA has been helpful in protecting Women rights, it has played the following roles: it provides legal services to female politicians to assist them in challenging election results which robbed women of their electoral victories, especially where irregularities were mate clearly manifest. FIDA has helped women to challenge cases in courts in which their rights were trampled. In Kano, FIDA assisted women in perfecting their title to land thereby protecting their rights to own landed property in Nigeria. In Ebonyi State, FIDA engages in free legal representation for indigent women, advocacy and policy campaigns.

3.2.7 The Judiciary

The recognition of the rights of the people in Nigeria is best seen in the enforcement of fundamental rights as stipulated in the constitution, and in fully giving the people the leverage to enjoy and exercise these rights to the extent that fosters peace, unity and orderliness in the society.

This is a veritable role the court being the last hope of a common man play in the maintenance of law and order in the society. Life itself would be worthless if there is no judiciary for the fair dispensation of justice.

Preservation of rights of women in Nigerian courts has always taken the central stage as is reflected on number of cases where the apex court in Nigeria frowned on those cultural practices that deny women of their fundamental rights as clearly stipulated in the constitution.

CHAPTER FOUR

ENFORCEMENT OF REPRODUCTIVE RIGHTS OF WOMEN IN NIGERIA

4.1 Tradition and Cultural Practices

Nigeria is a multi-ethnic and multi-tribal nation with diverse traditional and cultural beliefs and practices. These traditions and cultures are old as the people, have become part of the norms and daily routine of the people. They have become accustomed to the norms and values emanating from them. The traditional and cultures of the people have become native laws which bind the corporate affairs. A violation of these established traditions and customs of the people are viewed as sacrilege which met with stiff penalties from the traditional and most cases, from an outcastor in accordance with the belied of the people.

This is the atmosphere in which women's rights are jeopardized under some customs, women are treated as lesser entities and are therefore, deprived of certain basic rights. For instance, a married woman has no right of inheritance of her late husband's property, unless such property was willed to her in a valid will amongst other discriminatory acts against women.

Despite the abolition of these barbaric practices, some cultures still uphold barbaric cultures practices against widow. Among the Mbaise people of Imo State for instance, when a man dies, the widow is guaranteed. She cannot go out to market or farm for food for the family. Such is the predicament of a widow under Igbo cultures and so, it is a serious challenge to the protection and promotion of women's reproductive rights.

4.2 Patriarchal Nature of the Nigerian Society

Nigeria, like many other societies, has long been influenced by patriarchal norms and structures that perpetuate gender inequality. Nigerian society is deeply influenced by cultural norms and beliefs such as son preference over daughters, men being the family heads and custodians of

cultures, women relegating their natal identities to marital identities (that is, women ending up married and answering their husbands' names instead of their fathers' names), cultural abhorrence of celibacy, women's cultural perception as weaker vessels, and cultural and religious perceptions of girl-child education, reinforce gender stereotypes and unequal power dynamics.⁷⁷

The patriarchal nature of Nigerian culture often assigns specific roles and responsibilities to men and women, perpetuating gender biases in political spheres. Cultural expectations place women in subservient positions, relegating them to support roles rather than active participants in politics. These cultural factors contribute to a societal perception that women are unfit for leadership positions, further hindering their political progress.

This means that overcoming cultural and societal norms, combating gender-based violence and intimidation, and promoting gender equality in education are essential steps in creating an enabling environment for women's participation in cardinal activities of the country.

4.3 Statutory Impediment

Women's rights are human rights which are worthy of protection. It is this understanding that has motivated sundry women groups, individuals and association to work towards the guarantee and protection of women's right. This has taken the form of agitations, intellectual engagement, physical confrontation, media fights and other means of attracting the requisite attention in order to get the desired result.⁷⁸

These feats have no doubt drastically changed the forms of women in all fields of endeavor. Thus, women especially the educated women, are beginning take their pride of place in the different sectors of the economy across the globe. However, despite the barrage of attention

⁷⁷ K, Bhasin. *Understanding Patriarchy*. (Hyderabad Publishers, 2006) 3.

⁷⁸ K, Bhasin. *Understanding Patriarchy*. (Hyderabad Publishers, 2006) 20.

women's rights have attracted, the sundry legal provisions that have been put in place in that regard, and the successes recorded thus, much still leave to be desired in the protection of women's rights in Nigeria. These challenges include legal constraint trado-cultural practices, religions belief, social and economic factor amongst others.

The extant laws of the land still bear discrimination, oppression and degradation against women in Nigeria. The existence of these provisions of the law has made nonsense of the hue and cry over the protection and promotion of women's rights in this part of the world. Under the criminal code for instance⁷⁹, any person who unlawfully and indecently assaults man is guilty of a felony and liable to three (3) years imprisonment. However, by section 360 of the Criminal Code, an unlawful and indecent assault on a woman is a misdemeanor which makes the offender liable to two (2) years imprisonment. This is a clear case of discrimination and inequality where in the men are placed as superior beings to the women, thereby necessitating the imposition of higher punishment for the assault of a man and a lesser punishment for the assault of a women. This statutory provision speaks volume of the discrimination and in equality that exists against the women folk.

By *Section 55* of the penal Code, a husband does not commit any offence if he beats up his wife rules other physical violent measures against her for the purpose of correcting her. This provision appears as absurd and obnoxious as it sounds. It simply implies that women by law are placed below the men. Under the police regulation female personnel of the Nigerian police force requires the written permission of the police authorities to marry, and such marriage cannot be earlier than three (3) years after her recruitment in the police force⁸⁰.

⁷⁹ *Section 353, Criminal Code Act Cap C38 LFN 2010*

⁸⁰ Regulation 124, of the Nigerian Police Regulation 1968.

By virtue of the regulation, a female police officer who becomes pregnant when she is yet to marry shall be dismissed from the force⁸¹. This provision amongst other is discriminatory against women and makes it difficult to protect women's rights in work places.

4.4 Religious Belief

Karl Marx, A German Philosopher once stated that "religious is the opium of the people."⁸² He meant that religion is a phenomenon that gives the people temporary and illusory happiness, taking their mind away from their immediate suffering and oppression. This is borne out of the fact that religion was a potent instrument of oppression and discrimination. Today, religion is used to subtly discriminate and subjugate the womenfolk by the men. Citing religious books, the women are told that they have no say as pertains to their own body, rather it is the men that should determine why and what happens to the women, especially in matrimony⁸³.

This portion of the bible is usually cited when women are to be subjected to one form of inequality or the other or when the women want to raise eyebrow as to any inequitable actions taken against them by the men. More often than not, the women are forced to swallow such bitter oppressive pills out of respect for their religion. This effectively hinders the protection of women's rights at that level. The story is not different under Islamic religion. For instance, in Islam, the evidence or testimony of a woman is rated very low, sometimes equated with that of a child or a minor.

Under the Sharia Law, the punishment for a woman who commits adultery is death by stoning, while her male counterpart is either ignored all together or simply made to take an oath of

⁸¹ Regulation 127.

⁸² F.P Hoskein, Towards a Definition of Women's Rights, *Human Rights Quarterly Report Journal*. (1981) 3(2) 19.

⁸³ Section 69 Of Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria, 2004. "The wife has no power of her own body, but the husband.

innocence⁸⁴. One wonders why women are subjected to such ordeal while their male co-offenders are treated with kid gloves. These discriminatory practices are most unfortunate. They certainly run counter to the provisions against the protection of the right of women.

4.5 Poverty and Ignorance

Ignorance and poverty are a violation of numerous basic rights of women, this is because poverty has prevented some women from enforcing their rights due to lack of funds. Some don't even know of some rights guaranteed by the constitution and other laws, hence, cannot enforce what they are not aware of.

This expresses the moral intuition that, in a world today, only those who are rich in resources and the accumulation of human knowledge are afford the services of legal practitioners and as well enforce their rights. For Women rights to be protected and preserved, everyone ought to be guaranteed the basic means for sustaining life and those denied these are victims of a fundamental injustice.

The importance of advancement across sectors is not equally distributed and the margin between rich and poor is increasing all day.

An unprecedented rise in human population has overburdened ecological and social systems. The foundations of global security are threatened. Poverty leads to ignorance and ignorance is a danger for everything humanity undertakes. Hence by simple but logical deduction, poverty is dangerous for nature. Human rights are inherent in all people. Everyone has the right to live in dignity and to participate fully in society. Poverty denies people these rights.

⁸⁴ Hadith and Sir 17:4192

Specifically, poverty affects economic and social rights, those rights that relate to the workplace, social security, and access to housing, food, water, health care and education⁸⁵. In our society today, most women end up being house wives and so, could not afford the resources to hire the services of a lawyer.

⁸⁵ A.R Adenrele, Challenges of Human Rights Abuses in Nigerian Democratic Governance. *Journal of Social Economics Research*. (2010) 2(1) 87.

CHAPTER FIVE

CONCLUSION

5.1 Summary of Findings

Women play great roles in societal emancipation and advancement, and so, protecting rights of women is giving the society the greatest incentives to thrive. They are humans and that makes the protection and promotion of the rights of women a cardinal objective of every government, people and society. For over a century now, the guarantee and protection of the rights of women have been of national and international concern. The deprivation, subjugation, and discrimination suffered by women in social, economic traditional and other spheres of life, have attracted sufficient international attention.

This is evident in the several international conventions convoked at the instance of various international organizations to discuss the liberation of women, gender equality, gender justice and the gender rights of women in a free and egalitarian society. These international gatherings have churned out weighty International Human Rights Instruments in the form of Treaties, Covenant, Conventions, Declarations and Protection. Following the standard set by these international human rights enactments, various nations including Nigeria have enacted municipal laws that guarantee the rights of women. There is therefore, no gainsaying the fact that, international human rights have had enormous impacts on the rights of the Nigeria women in critical areas of life.

In introducing this work, attempt was made at drawing attention to the cardinal place of human rights which consists of justice, fairness, equity and egalitarianism. The Journey to women liberation and guarantee of women's rights were traced to the point where the rights of women began to gain momentum and to acquire international coloration. The various Treaties,

Conventions, Declarations and Protocols which provide for the rights of women were also treated. This work also brought to fore the effort of the Nigerian government in enacting several laws geared towards protecting and guaranteeing the rights of women and the impacts which international human rights instruments have had on the Nigerian women through municipal legislation.

Attention was also paid to the challenges inhibiting the protection of women's rights in Nigeria, some of these challenges include: legal constrains, Trado-Cultural Practices, amongst others.

The following are my findings:

1. There are several cultural practices that are discriminatory of women
2. There are myriads of legal frameworks that totally frown against infringement of women rights, these legal frameworks include the constitution, Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)
3. Presently, women rights are highly regarded and provided for under the law of the land and some institutions unlike before.
4. The Journey to women liberation and guarantee of women's rights were traced to the point where the rights of women began to gain momentum and to acquire international coloration. The various Treaties, Conventions, Declarations and Protocols which provide for the rights of women were also treated.
5. Before now, women were not allowed to participate or contribute to pivotal issues concerning the society and were subjected to some undignified exercises like Female Genital Mutilations, not eligible to stand for political elections, amongst others, but now, it has been abolished due to the emergence of some laws.

5.2 Recommendations

From the foregoing, it is beyond doubt that women's rights protection in Nigeria has gained considerable action following the immense impact of the internationalization of human rights. This position notwithstanding, the protection of women's rights in Nigeria has been greatly challenged as seen above. To cure these challenges therefore, the following recommendations are proffered:

- (i) There is need to review some of the extant laws that will bear marks of discrimination and oppression against women in Nigeria. It is suggested that FIDA ministry of women affairs, and the National Commission for women in collaboration with other non-state actors should close ranks with a view to fashioning out modalities on how to get legislative actions on laws that run against she rights of women in Nigeria.
- (ii) The federal government through the ministry of women affairs should setup a National monitoring and taskforce term against harmful traditional practices perpetrated against women. The taskforce is to work with security agencies for the purpose of arrest and prosecution of person who contravene the various laws on the prohibition of harmful and barbaric practices against women. The monitoring and task force should be replicated at the state and local government levels to ensure maximum result towards the protection of women against harmful traditional practices in Nigeria.
- (iii) There is need for inter-religious summit to be organized by the ministry of women affairs in conjunction with other women rights activists with a view to re-orienting religious leaders and members on the rights of women and the need to stop discrimination, oppression and degradation of women under the guise of religion.

- (iv) There is need for the Independent National Electoral Commission (INEC) to come up with an electoral policy to the effect that political parties should feature a stipulated percentage of women in elective positions. INEC in collaboration with the ministry of women affairs, FIDA and other stakeholders can achieve this by sponsoring a bill to this effect at the National Assembly in order to create room for the more women participation in politics and governance in Nigeria.
- (v) The Ministry of Women Affairs, National Human Rights Commission, FIDA and other stakeholders should initiate more rights awareness campaign, especially to educate the women on their rights and how to protect and enforce their rights.

5.3 Contributions to Knowledge

Many scholars have worked on women rights and its protection in Nigeria but they failed to critically examine women's reproductive rights and the existing legal and institutional framework which protect and preserve women's reproductive rights in Nigeria. This is the contribution in knowledge that this research work will provide in order to critically analyze women's rights and the roles the existing legal and institutional frameworks play in protecting women's reproductive rights in Nigeria.

5.4 Areas of Further Studies

In order to preserve the reproductive right of women in Nigeria against discriminations and violation, the following areas of further research will be imperative:

- (a) Critical appraisal of the punishments for the violation of women's reproduction right under Nigeria laws.
- (b) An overview of the position law vis-a-viz cultural practices melted against women in Nigeria.

(c) A critical examination of the role of FIDA and other organizations against gender-based discriminations.

5.5 Conclusion

The roles women play in society remolding are immense. Therefore, the protection of women's rights is very important to the growth of any nation. When the rights of women are guaranteed and protected, it fosters equity, equality, justice and fairness in the policy. This is because women are engine room of society's growth and advancement. It is therefore to the advantage of the country to ensure that women are not subjected to in human, degrading, and oppressive treatment. It is this understanding that has triggered the international community to gather at various for a to Churn out international covenants, treaties, Declarations and protocols which make far-reaching provisions on the rights of women and the protection of same. The realization of these international human rights of these international human rights instruments did not come by sudden flight; they were as a result of dogged fight, resilience, consistency and commitment on the part women rights activities, feminists and other form believers in national justice, equity and good conscience.

There is no gainsaying the fact that, the international human rights and women's rights have had tremendous, impact on the Nigerian women. This is evident in the various municipal laws enacted both of the federal and state levels, to guarantee, promote and protect the rights of women. A cross the federation. This is especially so in the area of prohibition of barbaric traditional practices against women. That women are more aware of their rights at present is a product of the massive international awareness campaign that has been launched through various media. Not only are Nigerian women conscious of their human and national rights, they are daily been equipped with the modalities for the protection of their right. The springing up of various

feminists and women rights activists groups are borne out of the robust aura generated by the international awareness on the rights of women across the world.

Giving the obligations thrust on Nigeria by the provisions of the international human rights instruments on the rights of women, legislative approach has been adopted in stemming indiscriminate and barbaric trampling of the rights of women. It is true that a perfect rights protection for women may not have been achieved , however, Nigerian women are surely better off at work places than ever before. This is as a result of the favorable labour legislation guaranteeing and protecting the rights of women in work places.

Some factors still hamper the protection of women's rights in Nigeria. These factors are multi-sectoral as have been highlighted in this work. However, it is believed that these challenges can be overcome if sincere attention would be paid to the recommendations made here in. It is expected that these recommendations shall ensure effective protection of the rights of women in order to adequately harness the benefit of the provisions of the international human rights instruments.

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