

AN APPRAISAL OF WOMEN'S RIGHTS IN NIGERIA AND SOME OTHER JURISDICTIONS*

Abstract

Women's rights are human rights and human rights are of universal application. Nigeria is one of countries with not so encouraging human rights records. Women in Nigeria are subjected to various human rights abuses. Women's rights to life, freedom of expression and association, right to free movement, right to education, right to adequate health and right to dignity are frequently violated. Are these violations peculiar to Nigeria, or do women in other jurisdictions suffer human rights abuses? This paper analysed women's human rights abuses occasioned by harmful cultural practices in Nigeria and compared it with what happens to women in South Africa and India. The study also took a look at the constitutions of the three countries and some other laws and policies geared towards the protection of the human rights of women. The Research methodology was doctrinal. The paper found that most of the human rights abuses suffered by women in Nigeria are equally suffered by women in the two other jurisdictions. The paper also revealed that women in the three jurisdictions are subjected to harmful traditional practices. The paper made recommendations as to what Nigeria could learn from South Africa and India to improve on the protection of the human rights of women in Nigeria. As part of the recommendations, this paper calls for review of the Nigerian constitution by making chapter 2 justiciable, and the enactment of laws that protect women from gender-based violence.

Keywords: Human Rights Violations, Harmful Traditional Practices, Patriarchy

1. Introduction

Nigeria is one of the countries in the world with not so encouraging human rights records. No day goes by in Nigeria without gory tales of women going through one form of rights abuses or another. Cultural practices have continued to exacerbate discrimination experienced by women the world over and this is more compounded in countries where women's fundamental human rights are undermined by patriarchal tradition.¹ In Nigeria, the rights of women are rooted upon certain customs, traditions and religious beliefs,² and equality of sexes is alien to most of these native laws and customs. In Nigeria, most women do not enjoy their rights to education, adequate health care, freedom of movement and association, right to reproductive health care and adequate representation and voice in the political space. However, the violations of women's rights to be considered by this paper are those occasioned by harmful traditional practices (HTPs). HTPs are those practices that are based on cultural values and beliefs, but which are harmful to a specific group within the culture (typically women).³ Women in this paper include the girl child. This work will examine some of these HTPs that women are subjected to in Nigeria. These include obnoxious widowhood practices, Female Genital Mutilation, Son preference, and early/forced marriages. With a view to comparing women's human rights in Nigeria with South Africa and India, the paper will further look at some harmful practices that women in South Africa and India also go through. The study will then examine the legal framework for the protection of women against these rights abuses in the three jurisdictions.

The paper is divided into five parts. The first part introduces the topic and gives a background to the study with the definition of Harmful Traditional Practices. Part two examines some harmful cultural practices as violation of women's rights in Nigeria, while the third part looks at the harmful practices that violate women's rights in South Africa and India. In part four, the legal framework for the protection of women's rights in Nigeria, South Africa and India were examined. The last part concludes the paper and makes recommendations on how to protect women against human rights abuses in Nigeria by embracing some positive actions taken in the other two jurisdictions.

2. Harmful Cultural Practices as Violations of Women's Rights in Nigeria

In Nigeria, women are subjected to some harmful practices in the name of culture in gross violation of their rights. The human rights violations would be considered under the following sub-headings: widowhood practices, female genital mutilation, son preference and early marriage.

Widowhood Practices

In addition to the grief occasioned by the loss of their husbands, women who lose their husbands in Nigeria are meant to put up with the challenges brought about by harmful cultural practices.⁴ The culture of the ethnic group to which they belong, demands that they undergo certain rites and rituals. According to Uche Eweluka, the experiences of

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¹E Durojaye, 'Women, But not Human: Widowhood Practices and Human Rights Violations in Nigeria' (2013) 27 (2) *International Journal of Law and Policy and the Family* 176–196 at 176. Available at <<https://academic.oup.com/lawfam>> accessed 2 May 2020.

² C. Arinze-Umobi & OVC Ikpeze, *Gender Rights Law in Nigeria*, (Folmech Printing and Publishing Co. Ltd, Anambra State, 2008) p. 65.

³ United Nations, 2008, 'Harmful Traditional practices affecting the health of women and children', Fact Sheet #23 Available at <<http://www.ohchr.org/Documents/Publications/FactSheet23en.pdf>> accessed 30 May 2020.

⁴ E Durojaye, *supra* (n 1) at 177.

Nigerian Widows fall into two broad categories: disinheritance and deprivation of property and the mandatory observation of prescribed burial rites.⁵ Austin Ezejiofor posits that ‘the practice of widowhood in Nigeria is at least one clear way the institutionalisation of male dominance over women is manifested’.⁶ These widowhood practices expose widows to degradation, dispossession, physical and psychological harm and ultimately undermine their fundamental human rights. According to Durojaye, citing Sossou and Nyanzi et al, widowhood practices are not only tools to perpetuate gender inequality but are also barbaric, atrocious, unethical and a gross violation of women’s fundamental rights and freedom.⁷ The fact that widowhood practices are meted only on women who lose their husbands and never applied to men who lose their wives, violates the provisions of Article 1 of the Universal Declaration of Human Rights⁸ which states that ‘all human beings are born free and equal in dignity and in rights’⁹ It also violates the provisions of Article 20(a) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2003¹⁰ which provides that ‘State parties shall take appropriate legal measures to ensure that widows are not subjected to inhuman, humiliating or degrading treatment’. The human dignity which is at the core of all human rights treaties is violated by these widowhood practices. The 1999 Nigerian Constitution (as amended) provides for the right to dignity of human person.¹¹

Female Genital Mutilation/Cutting

Female Genital Mutilation (FGM) encompasses all procedures involving partial or total removal of external female genitalia ... for cultural, religious or other non-medical reasons.¹² More than 200 million girls and women alive today have been subjected to the practice according to data from 30 countries where population data exist,¹³ and it is estimated that 68 million girls will be cut between 2015 and 2030 in 25 countries where FGM is prevalent.¹⁴ Reasons adduced as to why FGM is practiced include social, cultural, and aesthetic reasons. FGM, which is deeply rooted in cultural beliefs, is widely recognised as a violation of human rights.¹⁵ FGM sustains gender norms and stereotypes that contravene human rights of women. It interferes with the natural functions of women’s bodies and violates their right to health, security, and physical integrity, the right to be free from torture and cruel, inhuman or degrading treatment, and the right to life when the procedure results in death. Since FGM is mostly performed on children, it is a gross violation of the rights of children as outlined in the Convention on the Rights of Children. It violates the rights of children to non-discrimination,¹⁶ their rights against mental and physical violence and maltreatment,¹⁷ their rights to highest attainable standard of health,¹⁸ and their rights to freedom from torture or other cruel, inhuman and degrading treatment or punishment.¹⁹ The 1979 Convention on the Elimination of all forms of Discrimination against Women (CEDAW) calls on State parties to abolish customs and practices which constitute discrimination against women,²⁰ and ‘modify social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes’.²¹

Son Preference

Despite efforts to promote gender, equality in all spheres of life, the male child is still preferred to the female child.²² Son preference is due to a complex interplay of economic and socio-cultural factors and perpetuates discrimination

⁵ UU Eweluka, ‘Post-Colonialism, Gender, Customary Injustices: Widows in African Societies’ (2002) 24 (2) *Human Rights Quarterly*, 425-484 at 433 Available at <<https://jstor.org/stable/20069610>> accessed 2 May 2020.

⁶ AO Ezejiofor, ‘Patriarchy, Marriage and the Right of Widows in Nigeria’ (2011) 12 (1) *Unizik Journal of Arts and Humanities*, 139 – 157 at 144 Available at <<http://dx.doi.org/10.4314/Ujah.v12i1.9>> Accessed 21 May 2020.

⁷ E Durojaye, *supra* (n 1).

⁸ General Assembly Resolution 217A.

⁹ See also Articles 2(1) and 26 of ICCPR and Article 2(1) of ICESCR on the rights of equality and non discrimination. See also Article 3 of both the ICCPR and the ICESCR.

¹⁰ This Protocol, otherwise known as the Maputo Protocol was ratified by Nigeria on 18 February 2005

¹¹ See Section 34(1)

¹² WHO, (1995), ‘Female Genital Mutilation - Report of a WHO Technical Working Group’. WHO Document: WHO/FPH/WHO 96.10 Geneva: WHO

¹³ United Nations Children’s Fund, ‘Female Genital Mutilation/Cutting: A Global Concern, (UNICEF, New York, 2016) Available at <<https://www.unicef.org>> accessed 30 September 2020.

¹⁴ United Nations Population Fund (UNFPA), ‘Female Genital Mutilation (FGM) frequently asked questions – July 2020. Available at <www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions> accessed 28 September 2020.

¹⁵ TC Okeke et al, ‘An Overview of Female Genital Mutilation in Nigeria’ (2012) 2 (1) *Ann Med Health Sci Res*, 70-73.

¹⁶ The Convention on the Rights of the Child, Article 2.

¹⁷ *Ibid*, Art. 19 (1).

¹⁸ *Ibid*, Art. 24 (1).

¹⁹ *Ibid*, Art. 37.

²⁰ CEDAW, Art. 2 (f).

²¹ CEDAW, Art. 5. Art. 24(3) of the CRC also requires States to take all effective and appropriate measures to abolish traditional practices prejudicial to the health of children.

²² DA Adekanle *et al*, ‘Predictors of request for antenatal sex determination among pregnant women in Oshogbo, Nigeria’ (2007) 16 (4) *Nigerian Journal of Medicine: Journal of the National Association of Resident Doctors of Nigeria*, 322-325

which is a clear violation of women's rights. Culture and Tradition is the main reason for sex preference in Nigeria. According to Ezebunwa E Nwokocha, 'male-child preference has remained one of the most lasting cultural values among the Igbo of South Eastern Nigeria'.²³ The issue of son preference is tied to Inheritance, since in most cultures in Nigeria; male children inherit their father's property.²⁴ Nigeria is a patriarchal society and Ine Nnadi posits that son preference is stronger in countries where patriarchy is firmly rooted,²⁵ the reason being that in a patriarchal system, men are presumed to have greater economic and social value than women. Son preference is fraught with human rights abuses of women. It goes to the core of gender discrimination where a particular gender is adjudged superior to the other and it offends major legal regimes touching on discrimination.²⁶ Son preference inflicts on the psychology of girls; a perpetual internalisation of the inferior status and low premium accorded them by society, and may affect their behaviour and mannerisms in the larger society.²⁷ It also violates their rights under the convention on the rights of the child.²⁸

The desire to have a male child results in prolonged child bearing, impacts negatively on the health of the woman, and violates her right to reproductive health and adequate health care. Son preference is a form of violence against women and violence inflicted on women is one of the most prevalent violations of human rights globally. It violates the right to the dignity of human person and freedom from discrimination which offends the provisions of Constitution of the Federal Republic of Nigeria.²⁹ The girl child is the first to be asked to drop out of school where parents are not financially capable of shouldering the responsibility of having all their children in school and this violates the right of the child to education as provided in the Convention on the Rights of the Child.³⁰ Various other rights of the child are violated by this tenacious holding unto the cultural practice of son preference.³¹

Child Marriage

Harmful cultural practices and gender discrimination are part of the drivers of child marriage.³² The Child Rights Act defines a child as a person who has not attained the age of 18 years,³³ and by virtue of this definition, any marriage that has any of the parties below 18 years of age is considered to be child marriage. Nigeria has the highest number of child brides in West Africa and the third highest number in the world.³⁴ According to a 2017 report by UNICEF, 43% of Nigerian girls are married off before their 18th birthday, while 17% are married before they turn 15.³⁵ Early marriage robs a girl of her childhood innocence and turns her into an 'adult' prematurely.³⁶ It forces her into motherhood before she is physically and mentally mature.³⁷ Child marriage has devastating physical, health and social consequences for the girl child. It has negative impacts on her health, educational attainment and empowerment.³⁸ Child marriage is just a form of sexual exploitation and forced labour when the veil of wedding is

cited in A Olaogun et al, 'Preference for the male child and desired family size in Nigeria' (2009) 3 (4) *African Journal of Midwifery and Women's Health*, 193-197 at 193. Available at <<https://www.magonlinelibrary.com>> accessed 21 October 2020.

²³ EE Nwokocha, 'Male-child syndrome and the Agony of Motherhood among the Igbo of Nigeria' (2007) 33 (1) *International Journal of Sociology of the Family*, 217-234 at 219. Available at <<https://www.jstor.org>> accessed 21 October 2020.

²⁴ I Nnadi 'Son Preference – A Violation of Women's Human Rights: A Case Study of Igbo Custom in Nigeria' (2013) 6 (1) *Journal of Politics and Law*, 134-141 Available at <<http://pdfs.semanticschorg/>> accessed 4 April 2020.

²⁵ *Ibid*, at 137.

²⁶ See Articles 1, 2, and 5 of CEDAW and Section 42 of the Constitution of the Federal Republic of Nigeria.

²⁷ I Nnadi *supra* (n 24) at 136.

²⁸ See Articles 2, 6, 12, 19, 24, 27, and 28 of the Convention on the Rights of the Child.

²⁹ The Constitution of the Federal Republic of Nigeria, Section 42.

³⁰ Convention on the Rights of the Child, Article 28.

³¹ See *Ibid* Article 2, Article 6, Article 19, and Article 27.

³² CO Nwonwu and I Oyakhiromen, 'Nigeria and Child Marriage: Legal Issues, Complications, Implications, Prospects and Solutions' (2014) 29 *Journal of Law Policy and Globalization*, 120-126 at 120 Available at <www.iiste.org> accessed 28 October 2020.

³³ See also S. 12(1) of the Electoral Act which states that a person must be 18 years to be allowed to register as a voter.

³⁴ UNFPA & UNICEF, 'Child Marriage in West and Central Africa: At a Glance', September 2018. Available at <www.unicef.org> accessed 28 October 2020.

³⁵ UNICEF, 'Ending Child Marriage, Progress and Prospects (2017) UNICEF Child Marriage Report; See also Girls not Brides, 'Child Marriage around the World: Nigeria', 2014 Available at <<http://girlsnotbrides.org/child-marriage/nigeria/>> accessed 27 October 2020.

³⁶ I Nnadi, 'Early Marriage: A Gender Based Violence and a Violation of Women's Human Rights in Nigeria' (2014) 7 (3) *Journal of Politics and Law*, at 36. Available at <www.ccsnet.org/jpl> accessed 26 October 2020.

³⁷ MJ Robles, 'Child Marriage and the Failure of International Law: A Comparison of American, Indian and Canadian Domestic Policies' (2018) 18 (1) *International and Comparative Law Review*, 105-125 at 115. Available at <www.content.sciendo.com> accessed 26 October 2020.

³⁸ JJ Edmeades et al, 'Economic impacts of child marriage: A Review of the Literature' (2015) 13 (2) *The Review of Faith and International Affairs*, 64-73 Available at <<https://www.tanfonline.com/loirfia20>> accessed 5 November 2020.

lifted.³⁹ Most of these child brides are mere sex slaves to their husbands and domestic servants to their husbands' families. Child marriage causes terrible harm to the girls including risks to their health from premature sexual intercourse and child bearing, the loss of their freedom and the curtailment of their self development.⁴⁰ A child going through the rigours of pregnancy and child-bearing when she is physiologically immature is exposed to life threatening illnesses such as Vesico-Vaginal Fistula (VVF) and Rectum Vaginal Fistula (RVF). Child marriage exposes children to various forms of violence including rape and battery. Child marriage violates the human rights of the girl child by denying her access to education, good health and freedom.⁴¹ Child marriage exposes children to various forms of violence and it has been argued that violence against women is the most pervasive human rights violation. Ine Nnadi refers to it as one of the most ubiquitous violations of women's human rights,⁴² and that 'gender-based violence not only violates human rights, but also hampers productivity, reduces human capital and undermines economic growth.'⁴³

3. Harmful Cultural Practices and Women's Rights in South Africa and India

The choice of South Africa and India is due to the fact that they, like Nigeria, were colonies of Great Britain and have the same legal system. Like Nigeria, women in South Africa and India are subjected to harmful cultural practices.

3.1. South Africa

Women's rights are widely violated and abused in Africa, partly because of numerous gender-based cultural and traditional practices, and South Africa is not an exception.⁴⁴ Women in South Africa are discriminated against and still face obnoxious practices and alarming proportion of violence. High rates of gender based violence makes being a woman in South Africa more dangerous than being in some of the world's war-torn areas.⁴⁵ Rape incidence in South Africa has been adjudged the highest in the world as Diana Russel claims that one in two South Africans are raped in their life time.⁴⁶ The actual data on rape cases in South Africa cannot be determined since, in the words of Jewkes and Abrahams, where one case of rape is reported, there are nine unreported ones.⁴⁷ This section of the work looks at harmful cultural practices in South Africa and how they violate the human rights of women. The cultural practices to be examined here are the practice of *Ukuthwala*, virginity testing, and polygamy.

Practice of *Ukuthwala*

Ukuthwala is the act of taking a marriage partner in unconventional ways, seemingly forceful ways, practiced among indigenous African Communities in South Africa.⁴⁸ It involves the kidnapping of a girl or young woman by a man and his friends or peers with the intention of compelling the girl or young woman's family to endorse marriage negotiations.⁴⁹ Traditionally, *ukuthwala* did not involve culturally offensive behavior such as rape, violence or criminal abduction. The abducted future bride is placed under the careful supervision of the women folk of the groom-to-be family whilst the suitor was required to pay the *lobolo*⁵⁰ to be agreed upon. The main aim of *ukuthwala* is to force the girl's family to enter into negotiations for the conclusion of a customary marriage.⁵¹ Whereas the practice was originally intended to culminate in the marriage of an abducted girl, it is now carried out by vagrant and loitering men who just want to satisfy their lust. According to Van der Watt and Ovens, *ukuthwala* has digressed from

³⁹ E Warner, 'Behind the Wedding Veil: Child Marriage as a Form of Trafficking in Girls' (2004) 12 (2) *American University Journal of Gender, Social Policy and the Law*, 233-271 at 266. Available at <<http://www.digitalcommons.wcl.american.edu/jgspL/vol12/iss2/1>> accessed 26 October 2020.

⁴⁰ *Ibid.*

⁴¹ CO Nwonwu & I Oyakhiromen, *supra* (n 32) at 125

⁴² I Nnadi *supra* (n 36) at p 48

⁴³ *Ibid* at p. 53

⁴⁴ JC Mubangizi, 'An Assessment of the Constitutional, Legislative and Judicial Measures against Harmful Cultural Practices that Violate Sexual and Reproductive Rights of Women in South Africa' (2015) 16 (3) Article 11 *Journal of International Women's Studies*, 158-173 Available at <<http://vc.bridgew.edu/jiws/vol16/iss3/11>> Accessed 22 May 2021.

⁴⁵ OXFAM South Africa, 'Women's Rights and Gender Justice'. Retrieved from <www.oxfam.org.za> and accessed 12 March 2020.

⁴⁶ D Russel, 'The war Against Women's Bodies', *Weekly Mail* 6-12 September 1991, p. 12 cited in P Andrews, 'The Stepchild of National Liberation: Women and Rights in the New South Africa' (2001) *New York Law School*, 325-358 at 333 Available at <digitalcommons.nyls.edu/fac_articles_chapters/1298> <<https://core.ac.uk>> accessed 27 April 2021.

⁴⁷ R Jewkes & N Abrahams, 'The epidemiology of rape and sexual coercion in South Africa: an overview' (2002) 55 (7) *Social Science and Medicine* 1231-1244 Available at <<https://researchgate.net/publication/11092334>> accessed 5 May 2021.

⁴⁸ South African Law Commission Report, October 2015.

⁴⁹ M Van der Watt M and M Ovens 'Contextualising the Practice of Ukuthwala in South Africa' (2012) 13 (1) *Child Abuse Research: A South African Journal*, 11-26 at 15 Available at <<https://researchgate.net/publication/264240472>> Accessed 21 May 2021.

⁵⁰ *Lobolo* is the property in cash or in kind which a prospective husband or the head of his family undertakes to give to the head of the prospective wife's family in consideration of a customary marriage (fn. RCMA 1998: 1)

⁵¹ L Mwambene and J Sloth-Nielson, 'Benign accommodation? Ukuthwala, 'forced marriage' and the South African Children's Act' (2011) 11 (1) *Journal of Family Law and Practice*, 1-22 Available at <<https://researchgate.net/publication/317474152>> accessed 6 July 2021.

a traditional practice to a merely criminal act.⁵² The Commission for Gender Equality (CGE) labels it as 'an unlawful practice disguised as a custom'.⁵³ The practice of *ukuthwala* violates the South African constitutional provisions of right to basic education, the right to equality, security of the person, and the right to dignity. It also violates the provisions of CEDAW which calls upon state parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.⁵⁴ Maluleke observed that *ukuthwala* impacts negatively on the health and education of the girl child and also on the community by stifling development and recycling poverty.⁵⁵

Virginity Testing

Virginity Testing is a traditional practice that happens in many places in South Africa, but predominantly among the Zulu people. Virginity testing is one of the harmful practices often used to justify gender based violence as a form of protection or control of women.⁵⁶ It is believed that virginity testing preserves African moral values, and curbs promiscuity. This reveals the patriarchal values underlining the practice which seeks to control women's sexuality and sexual choices.⁵⁷ Both the UN Committee on the Rights of the Child and the African Committee of Experts on the Rights and Welfare of the child have recommended that South Africa ban 'virginity testing' because it is a harmful practice. Virginity testing is discriminatory as it typically and unjustly targets girl children. Dr. Dlakavu wondered why women should be subjected to such outdated patriarchal practices and why a woman's sense of worth should be determined by whether or not she is a virgin.⁵⁸ Virginity testing violates a woman's right to equality,⁵⁹ the right to dignity,⁶⁰ the right to bodily integrity,⁶¹ and the right to privacy.⁶²

Polygamy

Polygamy, which is defined as the practice of having more than one spouse, is a socially as well as culturally accepted phenomenon in many African Countries. Polygamy means the plurality of spouses but in reality, it means plurality of wives. Polygamy has long been perceived to be in conflict with the ideals of gender equality; it inherently subordinates women, violates the dignity of women, and is emotionally damaging and economically oppressive.⁶³ The belief that a man is free to have more than one wife reinforces the subjugation of women, and makes them vulnerable to sexually transmitted diseases and HIV/AIDs.⁶⁴ Despite the fact that most human rights instruments mandate State Parties to eliminate harmful cultural practices in order to ensure equality in marriage,⁶⁵ and South African Constitution guarantees equal rights,⁶⁶ polygamy is recognised in South Africa.⁶⁷

3.2. India

There are particular forms of violence against women in India which are defended on the basis of tradition, culture, religion or superstition by some community members.⁶⁸ These are known as harmful traditional practices and they constitute a violation of human rights of women. HTPs are a product of social norms which aim to uphold cultural ideas about gender roles and social relations.⁶⁹ Violence against women draws sustenance from prevailing ideologies which seek to propagate the status quo in the name of age old customs and traditions, religions and caste identities.⁷⁰

⁵² M Van der Watt & Michell Ovens, *supra* (n 49).

⁵³ Commission for Gender Equality 2010: 42) cited in M Van der Watt & M Owens, *supra* (n 86) at 13.

⁵⁴ CEDAW, Article 16(1)(a).

⁵⁵ J Maluleke, (2009) 'Ukuthwala: Let's protect our children' *Justice Today* Volume 5, p. 16. Department of Justice and Constitutional Development.

⁵⁶ K Farise, 'Ban harmful virginity testing' Mail & Guardian 12 December 2019 <<https://mg.co.za>> accessed 24 May 2021

⁵⁷ *Ibid.*

⁵⁸ Soul City Institute, 'What is the Truth about Virginity Testing' Retrieved from <www.soulcity.org.za/news-events/>

⁵⁹ The Constitution of Republic of South African Constitution, Section 9.

⁶⁰ *Ibid*, Section 10,

⁶¹ *Ibid*, Section 12(2).

⁶² *Ibid*, Section 14.

⁶³ L. Mwambene, 'What is the Future of Polygyny (Polygamy) in Africa?' (2017) 20 (1) *Potchefstroom Electronic Law Journal PELJ* Available at <<https://researchgate.net/publication/321053920>>, accessed 15 August 2021.

⁶⁴ EM Baloyi, 'Critical reflections on polygamy in the African Christian Context' (2013) 41 (2) *Missionalia (Online)*, 164-181 Available at <<http://scielo.org.za>> accessed 18 July 2021.

⁶⁵ For instance, Article 5(a) of CEDAW provides that "States Parties shall take all appropriate measures: To modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women" South Africa ratified CEDAW (1979) in 1995

⁶⁶ The Constitution of the Republic of South Africa 108 of 1996, section 9.

⁶⁷ The Recognition of Customary Marriages Act 120 of 1998, Sections 2(3) & (4) and 7(6).

⁶⁸ OHCHR, Fact Sheet No. 23, *Harmful Traditional Practices Affecting the Health of Women and Children* Available at <<http://www.ohchr.org/Document/Publications/FactSheet23en.pdf>> accessed 3 June 2021.

⁶⁹ *Ibid.*

⁷⁰ I Agnihotri and V Mazumdar, 'Changing Terms of Political Discourse: Women's Movement in India 1970s-1990s' (1995) 30 (29) *Economic and Political Weekly*, 1869-1878 Available at <<https://jstor.org/stable/4403023>> accessed 6 July 2021.

Here, we will examine some of the harmful traditional practices which include include the dowry system, the practice of *sati*, child marriage, and honour killings.

Dowry System

Dowry in India refers to the durable goods, cash, and real or movable property that the bride's family gives to the groom, his parents and his relatives as a condition of the marriage.⁷¹ The dowry system can put great financial burden on the bride's family.⁷² In some cases, the dowry system leads to crime against women, ranging from emotional abuse and injury, to death.⁷³ Dowry Crimes can come in the way of Fraud,⁷⁴ Cruelty,⁷⁵ and Domestic Violence.⁷⁶ India, with its large population, reports the highest number of dowry related deaths in the world according to Indian National Bureau.⁷⁷ Dowry system violates women's right to life when it results in death.

Practice of *Sati*

In India, especially among the upper Caste Hindus, widowhood meant subjection to various orthodoxies and exploitation throughout their lives. One such practice associated with widowhood is the system of *sati*. The term *sati* means the Hindu practice of burning a widow or burying the widow alive with the corpse of her husband. It was supposed to be a voluntary act of the widow but it has been argued that *sati* is not as voluntary as is meant to be. Most widows opt to go through the *sati* system to escape the barbarity that they might be subjected to as a widow if they were alive.⁷⁸ Widows are subjected to sexual exploitation and other inhumane practices. This paper submits that *sati* is just the act of murdering widows in the name of traditional rituals. It is ritual suicide or murder and it is a violation of women's right to life.

Child Marriage

In many parts of Africa and Asia, marriage is entrenched in tradition and culture. Dominant notions of morality and honour are important factors encouraging the practice of child marriage.⁷⁹ In India, the age of marriage for a girl is 18 years, but about half of all girls marry before the age of 18.⁸⁰ Reasons behind child marriages include control of the girls' sexuality. Some authors have also argued that poverty forces parents to hide under culture to marry out their underage girls. Melanne Vermeer observed that child marriages of girls are a way out of desperate economic conditions and way to reduce the expenses of a poor family.⁸¹ Child marriage violates children's rights and places them at high risk of violence, exploitation and abuse.⁸² It ends childhood and it negatively influences children's rights to education, health and protection.⁸³

Honour Killings

In a typical patriarchal society, men's role is to maintain familial and community 'honour' by controlling the behaviour of their daughters, wives and mothers.⁸⁴ A woman has no control over her own self. All decisions regarding her body must be made by the male members of her family, the upholders of her honour. A woman's sexual behavior and public presence are tied to the honour of the household (and sometimes the clan or the caste

⁷¹ R Jethmalani & PK Dey, 'Dowry deaths and Access to Justice in R Jethmalani (ed), *Kali's Yug: Empowerment, Law and Dowry Deaths*, (New Delhi: Har-Anand, 1995) pp 36-78 at 38.

⁷² S Anderson, 'The Economics of Dowry and Bride price' (2007) 21 (4) *The Journal of Economic Perspectives*, 151-174 Available at <<https://aeaweb.org>> last accessed 16 August 2021.

⁷³ A Rao and SS Correya, *Leading Cases on Dowry* (New Delhi: New Delhi: Human Rights Law Network, 2011).

⁷⁴ An Indian man who stays abroad can come home to India, pick a bride and collect the dowry, abandons the bride and moves back to his base.

⁷⁵ A Nangia, 'The Tragedy of Bride Burning in India: How should the Law Address It?' (1997) 22 (3) *Brooklyn Journal of International Law*, 637-693 at 682. Available at <<https://brooklynworks.brooklaw.edu/>> Accessed 30 July 2021.

⁷⁶ B Ghosh, 'How Does the Legal Framework Protect Victims of Dowry and Domestic Violence in India? A Critical Review' *Aggression and Violent Behaviour*, 409-416 Available at <<https://sciencedirect.com/science/article/abs/pii/S135917891300027X>> accessed 16 August 2021.

⁷⁷ Rising number of dowry deaths in India: NCRB 7 April 2013.

⁷⁸ G Mishra, 'Roop Kanwar—Last Known Case of Sati in India and Its Relevance Today' 7 August 2020 Available at <<https://feminisminindia.com/2020/08/07/roop-kanwar-last-known-case-sati-india-relevance-today>> accessed 05 June 2021.

⁷⁹ Forward UK <<http://www.forwarduk.org.uk/key-issues/child-marriage>> accessed 9 June 2021.

⁸⁰ MC Nguyen & Q Wood, 'Global and Regional Trends in Child Marriage' (2015) 13 (3) *The Review of Faith & International Affairs*, 6-11 Available at <<https://www.tandfonline.com/loi/rfia20>> Accessed 9 June 2021.

⁸¹ 'Targeting Girls in the Name of Tradition: Child Marriage by Melanne Vermeer, Ambassador-at-Large for Global Women's Issues, US Department of State (July 15 2010).

⁸² UNICEF, 'End Child Marriage', Available at <<https://unicef.org/india/what-we-do/end-child-marriage>> accessed 9 June 2021.

⁸³ *Ibid.*

⁸⁴ T D'Lima et al, 'For the sake of Family and Tradition: Honour Killings in India and Pakistan'(2020) 5 (1) *ANTYAJAA: Indian Journal of Women and Social Science*, 22-39 at 24 Available at <<https://journals.sagepub.com/pdf/10.1177/2455632719880852>> accessed 10 June 2021.

group).⁸⁵ Honour killings are one of such types of gender-based violence supported by rigid patriarchal norms.⁸⁶ Honour killings refer to the murder of a member of a family or a social group by other members, due to the belief of the perpetrators that the victim has brought 'dishonour' upon the family or community. Honour killings are directed mostly against women. When it is perceived that a woman has violated the 'honour' of her family, the only way to redeem the 'honour' is by destroying the body of the woman who caused the 'dishonour'. This system thus directly lays the groundwork for justifying honour crimes and killings.⁸⁷ In India, women are not considered individuals with lives and choices of their own but seen as torchbearers of family 'honour'.⁸⁸ Honour killings are horrifically brutal. They involve torture and physical abuse and violate basic fundamental rights of the victims amongst which are the right to equality before the law,⁸⁹ the right to protection of life and personal liberty,⁹⁰ the right non-discrimination on grounds of religion, race, caste, and sex.⁹¹

4. Legal Framework for the Protection of Women's Rights in Nigeria, South Africa and India

In countries with plural legal systems, where national legislation interplays with customary and religious law, legal interpretation and implementation face enhanced complexities that may create serious barriers to the realisation of women's rights. Plural legal systems refer to the presence of more than one source of law in a country's legal system, and in the case of Nigeria, South Africa and India, English common law, statutory law, customary law, and some form of religious law. Legal pluralism may allow for the justification of harmful practices on grounds of culture, religion or tradition based on sources of law that may compromise the realisation of human rights.⁹² Nigeria, South Africa and India are signatories to most international and regional human rights instruments and conventions that provide for the protection of women against rights abuses. The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁹³ states that discrimination against women is an offence against human dignity.⁹⁴ CEDAW calls on States to 'abolish existing laws, customs and regulations and practices which are discriminatory against women and to establish adequate legal protection for equal rights of men and women'.⁹⁵ CEDAW is the foremost international treaty on gender equality. As J.M. Nasir puts it, CEDAW is 'essentially an international bill of rights for women and a framework for women's participation in the development process ... (which) spells out internationally accepted principles and standards for achieving equality between women and men'.⁹⁶

The African Charter on Human and Peoples' Rights (ACHPR)⁹⁷ contains four main provisions protecting women against discrimination. The most relevant provision of the Charter to the present study is Article 18(3) which provides that 'The State shall ensure the elimination of discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions'. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa otherwise known as the Maputo Protocol⁹⁸ was adopted with the sole aim of upholding the rights of women and girls in Africa. The whole gamut of the provisions of Article 2 through Article 25 prohibits all forms of harmful, violent and prejudicial practices against women.

The Constitution of the Federal Republic of Nigeria (1999) in its sections 33 to 44 grants inherent fundamental human rights such as the right to life,⁹⁹ and personal dignity.¹⁰⁰ Other laws and policies that protect the rights of women in

⁸⁵ DG Madelbaum, *Women's Seclusion and Men's Honor: Sex roles in North India, Bangladesh and Pakistan* (Tucson, AZ: University of Arizona, 1988) cited in T D'Lima *et al, supra* (n 269) at 24

⁸⁶ T D'Lima *et al, supra* (n 84) at 23

⁸⁷ R Mayeda and V Kumar, 'A Review of the Literature on honor-based violence' (2016) 10 (5) *Sociology Compass*, 353-363 Available at <<https://researchgate.net/publication/301905267>> accessed 10 June 2021.

⁸⁸ The New Indian Express – Crying Shame: The Honour Killings that shocked India in 2018.

⁸⁹ The Indian Constitution, Section 14.

⁹⁰ *Ibid*, Section 21.

⁹¹ *Ibid*, Section 15(1).

⁹² C Himonga, 'Implementing the Rights of the Child in African Legal Systems: *The Mthembu Journey in Search of Justice*' (2001) 9 (2) *The International Journal of Children's Rights*, 89-12 at 90 Available at <<https://researchgate.net/publication/240679401>> last accessed 13 August 2021.

⁹³ Adopted by the United Nations, General Assembly Resolution 34/180 of 18 December 1979 and entered into force on 3 September 1981.

⁹⁴ CEDAW, Article 1.

⁹⁵ CEDAW, Article 2. See also United Nations Human Rights Office of the High Commissioner, 'Women's Rights are Human Rights, (New York and Geneva, 2014). Available at <<https://www.ohchr.org>> accessed 1 September 2020.

⁹⁶ JM Nasir, 'CEDAW and the Women Under Sharia' *Current Jos Law Journal CJLJ* Vol 5 No. 5 20-33 at 22.

⁹⁷ The African Charter on Human and Peoples' Rights, otherwise known as the Banjul Charter was adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) and entered into force 21 October 1986. Available at <<https://achpr.org>> accessed 24 February 2021.

⁹⁸ The Protocol otherwise known as the Maputo Protocol was adopted on 11 July 2003 and came into force on 25 November 2005. The Protocol was ratified by Nigeria on 18 February 2005

⁹⁹ The Constitution of the Federal Republic of Nigeria (1999) as amended S 33.

Nigeria include the Nigerian Criminal Code and the Nigerian Penal Code, The Administration of Criminal Justice Act (ACJA), the National Gender Policy, and the Violence Against Persons (Prohibition) (VAPP) Act. The VAPP Act was passed into law in a bid to eliminate violence in private and public life; prohibit all forms of violence, including physical, sexual, psychological, domestic, harmful traditional practices, discrimination against persons and to provide maximum protection and effective remedies for victims and punishment for offenders.¹⁰¹ The VAPP Act provides protections against a wide range of types of violence against women including Prohibition of Female Genital Mutilation/Female Circumcision¹⁰² and harmful traditional practices.¹⁰³

South Africa is lauded for having some of the most progressive laws and policies intended to advance women's rights and gender equality. Chapter 2 of the South African Constitution is entitled 'Bill of Rights' and enumerates the civil, political, economic, social and cultural human rights of the people of South Africa. Women are obviously protected by the full range of rights guaranteed under the Bill of Rights which include the rights to life, dignity, privacy and others. However, there are sections that provide specific protection for women, notable among which is Section 9 which deals with equality. Section 8 of the Act prohibits discrimination on grounds of cultural, traditional and religious practices which negate the principle of equality.¹⁰⁴ Section 10 provides for right to human dignity while section 12 protects women and other citizens against violence and freedom from cruel, inhuman and degrading treatment. In addition to the Constitution of the Republic of South Africa, there are several other laws that specifically target the protection of the rights of women. These include the Domestic Violence Act (DVA),¹⁰⁵ the Recognition of Customary Marriages Act,¹⁰⁶ and the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA).¹⁰⁷ The DVA recognises domestic violence as a serious crime against society. The Recognition of Customary Marriages Act¹⁰⁸ (RCMA) enables marriages performed under African Customary law to be recognised as legal marriages.

The Constitution of India guarantees the right to equality for women. It embodies the general principles of equality before the law¹⁰⁹ and prohibits unreasonable discrimination between persons. Article 15(1) prohibits discrimination on many grounds including on grounds of sex. Of great relevance to this work is the provision of Article 51A (e) which states that it is the duty of the citizens to renounce practices that are derogatory to the dignity of women. Women's rights in India are equally protected under several legislations and those that have to do with HTPs include: The Dowry Prohibition Act, 1961; The Commission of Sati (Prevention) Act 1987; The Protection of Women from Domestic Violence Act 2005; and The Prohibition of Child Marriage Act. The Dowry Prohibition Act became necessary because of specific forms of violence linked to a failure to meet dowry demands. The Commission of Sati (Prevention) Act 1987, No. 3 of 1988 seeks to prevent *sati*,¹¹⁰ the voluntary or forced burning or burying alive of a widow. The Prohibition of Child Marriage Act has a threefold purpose: prevention of child marriages, protection of children involved, and prosecution of offenders.¹¹¹

5. Conclusion and Recommendations

Nigeria, India, and South Africa were all at some points, colonies of Great Britain. The legal systems in the three countries comprise therefore received English Law, Customary and Religious Laws. This study revealed that Nigeria, India and South Africa have deeply rooted cultural practices that affect the human rights of women. Widowhood practices in both Nigeria and India violate women's right to dignity and integrity. Virginity testing of girls in South Africa amounts to unfair discrimination as boys, who are involved in breaking of the virginity of these girls are never identified. The Constitutions of Nigeria, India, and South Africa provide for both Civil and Political Rights and Socio-economic and cultural rights of their citizens which, include women. The difference is that while in South Africa, there is no distinction between civil and political rights and the socio-economic and cultural rights, but a 'Bill of Rights' which is justiciable,¹¹² the Nigerian and Indian Constitutions separated the two groups of rights into what they classified as Fundamental Rights and Fundamental Objectives. The reason for this separation lies in the ability

¹⁰⁰ See Section 35 of the Constitution which provides for the personal dignity of individuals including women.

¹⁰¹ The Violence Against Persons (Prohibition) (VAPP) Act, 2015, The long title.

¹⁰² The VAPP Act, Article 6.

¹⁰³ The VAPP Act, Article 20.

¹⁰⁴ Specifically, section 8(b), (c) and (d) of the Equality Act

¹⁰⁵ Act No. 116 of 1998.

¹⁰⁶ Act No. 120 of 1998.

¹⁰⁷ Act No. 4 of 2000.

¹⁰⁸ Act No. 120 of 1998. The RCMA was signed by President Nelson Mandela on 20 November 1998 but took effect on 15 November 2000.

¹⁰⁹ The Constitution of India, Article 14.

¹¹⁰ Sati was a historical Hindu Practice, in which a widow sacrifices herself by sitting atop her deceased husband's funeral pyre to be burnt along with the corpse of the husband.

¹¹¹ Vageshwari Deswal, 'Legal Status of Child Marriages in India', *Times of India*, January 25, 2019.

¹¹² U Edih and B Ganayana, 'Justiciable or Non-justiciable Rights: A Debate on Socio-Economic and Political Rights in Nigeria' (2020) 8 (4) *Global Journal of Politics and Law Research*, 78-85 Available at <<https://ejournals.org/wp-content/uploads/Justiciable-or-Non-justiciable-Rights.pdf>> accessed 13 July 2021

of citizens to seek redress in court if any of these rights is violated. Chapter II in the Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN) is the equivalent of Socio-economic Rights (SERs) adopted in South Africa under its Bill of Rights.¹¹³ In South Africa, while the courts can adjudicate on both Civil and Political Rights and Socio-economic and Cultural Rights, by the provisions of section 6 (6) (c) of the CFRN, and Article 37 of the Constitution of India (as on 9th September 2020), the courts are ousted from adjudicating on socio-economic and cultural rights. The import of this is that *stricto sensu*, in India and Nigeria, women and girls whose rights to education and adequate health care have been violated due to harmful cultural and religious practices cannot seek redress in Court. As A.T. Shehu puts it, socio-economic rights have not only been constitutionalised in South Africa, they have been duly enforced.¹¹⁴

However, Indian courts have employed a much more pragmatic approach to implementing economic and social rights.¹¹⁵ India invoked judicial activism in the interpretation and application of socio-economic and political rights in her jurisdiction.¹¹⁶ The Indian Supreme Court in the case of *Mohini Jain v State of Karnataka*¹¹⁷ held that although the right to education as such has not been guaranteed as a fundamental right under the Indian Constitution, it is clear from the preamble of the Constitution that the framers of the Constitution intended the State to provide education for its citizens. This paper therefore recommends the following:

- a. Socio-economic rights, which form the bane of the human rights violations of women, should be constitutionally guaranteed in Nigeria as in South Africa. Nigeria could work towards unifying fundamental rights contained in Chapter IV of the Constitution and the Fundamental Objectives and Directive Principles of State Policy in Chapter II. Alternatively the ouster clause, which makes chapter II non-justiciable, should be expunged.
- b. Like South Africa, Nigeria should create a Constitutional Court which will make adjudication on Constitutional matters swifter and more independent.
- c. Courts in Nigeria should exhibit more judicial activism in ensuring justiciability of socio-economic rights as have been demonstrated by the Indian Supreme Court. The experience of Indian judiciary suggests that CPRs and SERs can be linked.
- d. Nigeria should emulate India and South Africa and enact a law that would curb violence against women.
- e. In India, court judgments necessitate constitutional amendments and these are done with ease. Nigeria should make its constitution amenable to easy amendments.

¹¹³ OF Olayinka, 'Implementing the Socio-economic and Cultural Rights in Nigeria and South Africa: Justiciability of Economic Rights' (2019) 27 (4) *African Journal of International and Comparative Law*, 564-587 Available at <<https://researchgate.net/publication/336964907>> accessed 13 July 2021. See sections 7-39 of the Constitution of the Republic of South Africa Act 108, 1996.

¹¹⁴ AT Shehu, 'The Enforcement of Social and Economic Rights in Africa: The Nigerian Experience' (2013) 2 (1) *Afe Babalola University Journal of Sustainable Development Law and Policy*, 101-120 at p. 101 Available at <<https://www.ajol.info>> accessed 15 July 2021. See also D Landau, 'The Reality of Social Rights Enforcement', (2012) 53:1 *Harvard International Law Journal*, 189-247 Available at <<https://harvardilj.org>> accessed 15 July 2021.

¹¹⁵ I Imam and W Egbewole, 'Comparative Exposition of Judicial Interventionism in the Enforcement of the Healthcare Right in Nigeria and India' (2020) 53 (1) *Comparative and International Law Journal of Southern Africa*.

¹¹⁶ U Edih & B Ganayana, *supra* (n 112) at 85.

¹¹⁷ 1992 AIR 1858 Retrieved from <<https://escr-net.org/caselaw/2009/mohini-jain-v-state-of-karnataka-1992-1ir-1858>> accessed 21 July 2021.