

POLYGAMOUS MARRIAGE IN NIGERIA AND GHANA: A LEGAL PERSPECTIVE*

Abstract

The family is the basic unit in most social organizations. It may vary in form or nature across cultures but it performs basically the same fundamental functions. The institution of marriage which the family is built upon has its origin from God. Family is by far the most important primary group and the smallest social unit in society. This paper explores polygamous marriage in Nigeria and Ghana by examining the similarity or differences in both Jurisdictions. It was the findings of this paper amongst others that Polygamy has declined in the last decade but remains common in West Africa. Polygamy is also recognized and regulated by the civil law that allows a man to marry up to four women under certain conditions, including the financial capacity to support multiple wives and families. Legal restrictions on polygamy are rarely enforced. The legal concept of marriage has been expanded to include marriage between a man and a man and between a woman and a woman in some jurisdictions. Much importance is attached to the family and marriage in Nigeria society, such that laws are provided to guide them. Polygamous marriage in Nigeria and Ghana are the same. Customary law marriage operates as polygamous or monogamous marriage in both jurisdictions. The Marriage Act in Nigeria did not make provision for polygamous marriage; the Marriage Act in Ghana gives room for polygamous marriage to operate in that country. As long as our societies are marked by both poverty and patriarchy, it will continue. Whatever polygamy was about and is about, it remains the inalienable rights of adults to determine how to live. It is also less prevalent in societies where more adult women are literate. Polygamy is still prominent in these Nations, despite the problems associated with it.

Keywords: Polygamy, Polygyny, Marriage, Bride Price, Customary

1. Introduction

The family is the basic unit in most social organizations. It may vary in form or nature across cultures but it performs basically the same fundamental functions. The institution of marriage which the family is built upon has its origin from God. At creation, the family (union of man and woman) was made to be a stable institution which parents (father and mother) and children would live in peace and harmony and fulfill the purpose and injunctions of God. Family is by far the most important primary group and the smallest social unit in society. In *Chinuweze v Masi*¹ the Supreme Court define family as '...the man and his wife (under monogamous marriage or wives (if it is under customary law) and the children born to him by such wife or wives. Similarly, in another sense family is refers to as persons related by blood denoting descendants from a common ancestor. In Nigeria and other African societies this group is often refers to as the extended family which Green aptly defined as 'a group of closely related people, known by a common name and consisting usually of a man and his wives and children, his sons wives and children, his brothers and half-brothers and wives and children and probably other relations'² In contrast, the term 'family' may be given a much more restricted connotation. It may refer to a smaller group consisting of a household - the man, his wife or wives, the children and, probably, the dependents who live with him. According to Yusuf, married couples without children, though bound by the strongest personal ties do not constitute a family, for such ties, can conceivably exist among couples who are not married. According to him what gives the family its character 'are children', for only in such a family can that intimate, personal relationship be established, by which the family can perform its function of rearing, protecting and educating the children, transmitting to them the social values it has inherited and creating a special bound between all the members.³ This paper seeks to examine polygamous marriage in Nigeria and Ghana and tends to see the similarity or otherwise in both Jurisdiction.

2. Marriage

It is not possible to discuss Marriage without taking the family into consideration, however, it should be noted that family and marriage are not the same. Yusuf expresses this view when he asserted that 'family was not rooted in marriage, but that marriage was an institution arising out of the family.'⁴ Marriage as the root of the family and of society is not easy to define because of the diversities in the systems of marriage throughout the world. It is such that although marriage is known to have some common qualities, but varies from one culture-group to another. A social anthropologist, Yeats, defined 'marriage as a union between a man and a woman such that children born of the woman are recognized legitimate offspring of both parents.'⁵ Marriage can also be seen or defined as the agreement of two parties (a man and a woman) to marry and stay together for life, through which new rights, roles and new social relationship are formed not only between the spouses but also between the kinsmen of the spouses. Two systems of marriage are recognized in Nigeria, the monogamous and the polygamous marriage, the polygamous marriage also connotes customary law marriage and Islamic marriage both permits a man to marry more than one wife. These systems of marriage differ fundamentally in character and incidents. It is therefore important to keep this dualism in view in every consideration of family laws in Nigeria, in order to avoid any confusion, and in every case concerning family, the lawyers in Nigeria first has to determine the type of marriage involved before they can apply the appropriate law.

Marriage is thus a universal institution which is recognized and respected all over the world. As a social institution, marriage is founded on, and governed by social and religious norms of the society, consequently the sanctity of marriage is a well-accepted principle in the world. Two types of marriage are legally recognized in Nigeria, monogamous marriage under the marriage Act and customary law marriage which is polygamous in nature. However the concept of marriage as a union of persons of opposite sex has faced serious challenges in several countries, in some same sex marriage has been legalized while in others substantial legal attributes of marriage have been conferred on cohabiting couples.

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¹ (1998) 1WLR.Pt.97

² E.I Nwogugu, Family, Law in Nigeria, 3rd ed Hebn Publishers Plc 2014, pg 3

³ Yusuf, B. (1995). Impact of Islam and culture on marriage age in Hausa society. Proceedings of Seminar on 'Problems of Early Marriage in Nigeria'. Organized by Women in Nigeria (WIN), Kaduna Branch, Kaduna

⁴ ibid

⁵ Yeats, A. P. (1991). 'Child and the Family', *Journal of Guidance and Counselling in Nigeria*. 1(2), September.

3. Polygamous Marriage

A polygamous marriage means a voluntary union of life of one man with several wives.⁶ Polygamous marriage give room to a man to have as many wives as he could and it could take the form of either the polygamy (that is, one man marrying two or more wives, which is the most common one in Nigeria and Ghana, or of polyandry (that is one woman marrying two or more men). There are three forms of polygamous marriages these are POLYGyny which is refers to a man being married to more than one woman, POLYANDRY signifies a woman married to more than one man and lastly, 'GROUP MARRIAGE' meaning several husbands are married to several wives for instance 'a combination of polyandry and polygyny. Here the husbands are common husbands and wives are common wives. Children are regarded as the children of the entire married group as a whole. Polygyny is more popular than polyandry but not as universal as monogamy. It was a common practice in ancient civilizations. At present it may be present in primitive tribes like Crow Indians, Baigas, Gonds of India, Ghana and Nigeria⁷ Marriage under the Customary Laws of the West, North, Mid-West and Eastern States are potentially polygamous and there is no limit to the number of women that a man can marry, in 2006, 46 percent of women aged 49 were in polygynous union. Polygamy in particular constitutes one of the distinctive features of the African marriage and while its frequency may be declining, it is still widely practiced.

Thus, while wealth may be a decisive factor for a man in securing multiple wives in many polygamous cultures, few may have sufficient resources to effectively support multiple conjugal units. As a result, the husband's resources may be thinly spread among his wives and children such that wealth per capita may not follow the same pattern as household wealth. This is substantiated by qualitative studies that indicate fewer assets for women in polygamous marriages compared to their counterparts in monogamous marriages. The resource stress may lead to overcrowding and poor living conditions which could potentially increase the vulnerability of children in polygamous families to diseases and perhaps death. In Ghana, for the risk of diarrhea was found to be 43 percent higher among children in polygamous households compared with their monogamous counterparts. The lack of resources can also limit access to modern health care particularly with the cash-and-carry system introduced in much of sub-Saharan Africa as part of the World Bank/IMF sponsored Structural Adjustment Program of the 1980s. It is important to note that customary marriage in Ghana and Nigeria are polygamous with no limit to the number of wives a man can have. In order to contract a valid customary marriage which is usually polygamous in nature in Nigeria and Ghana, the following conditions must be fulfilled:

Age

The parties must be of marriageable age. In the past it may be difficult to say exactly what a marriageable age would be, but nowadays in Nigeria, it is expected that the man would be at least 21 years of age while the girl would be at least 18 years of age. This does not however prevent people of younger age particularly the girls from getting married before that age of 18, provided the consent of their parents are obtained. Most of the customary law in Nigeria do not specify any age for the solemnization of customary law marriage. But where a girl under sixteen years marries under customary law, the consummation of that marriage does not constitute the sexual offence of having unlawful carnal knowledge of her under the Criminal Code Act. Section 6 of the Criminal Code Act defines unlawful carnal knowledge to exclude sexual relations between husband and wife. Section 3(1) of the Age of Marriage Act 2004 of Nigeria provides that 'a marriage between or in respect of persons either of whom is under the age of sixteen shall be void.'⁸ Section 4(1) states that it is an offence punishable with six months imprisonment or a fine of two hundred naira then, for any person to ask, receive or obtain any benefit of any kind for himself or for any other person on account of a marriage which is void under the law.⁹ Under Maliki Law, a woman would have capacity to marry at the age of 15 years, but 13 years has been held to be valid in the Northern States of Nigeria. However in Ghana More than one in every five girls in Ghana is married before the age of 18 and 5% are married before their 15th birthday. Under the laws of Ghana, the relevant laws are the Marriages Act 1884-1985 and the Children's Act 1998. The Children's Act 1998 provides in section 13(2) that a person of 18 years and above may legally enter into marriage. This is because the laws of Ghana recognize a person who attains 18 years as an adult, devolving unto him or her the right to vote

Consent

Quite apart from the consent of the parties intending to be married, the consent of their parent is a sine qua non to the solemnization of a valid marriage. The consent must be freely given and without any compulsion. In Nigeria Customary Law marriage, two consents are relevant which include:-

Consent of the Parties: The consent of spouses is an important issue in customary law marriage of Nigeria. The spouses should be in agreement before the marriage. Section 361 of the Criminal Code provides that:

Any person who, with the intent to marry or carnally know a female person of any age, or to cause her to be married, or carnally known by any other person, takes her away, or detains her against her will, is guilty of a felony and is liable to imprisonment for seven years.¹⁰

Parent Consent: Parent consent is mandatory under Customary Law of marriage in Nigeria. To some extent customary law marriage is a transaction between two families, for instance, without the consent of the families of the spouses marriage cannot take place. For a girl, parental consent is compulsory under the customary law even where she has attained maturity, while on the other hand, an adult male may contract a valid marriage without the consent of his parents. Consent from the parents of both the bride groom and the bride Consent from both the bride groom and the bride is also very important in Ghana. In *Osamawonyi v Osamawonyi*¹¹ the Supreme court upholding the decision of the court of first instance, held that the consent of the bride to be was a condition precedent to a marriage under Benin customary law.

⁶ Yusuf, B. (1995). 'Impact of Islam and Culture on Marriage Age in Hausa society', Proceedings of seminar on Problems of Early Marriage in Nigeria. Organized by Women in Nigeria (WIN), Kaduna Branch, Kaduna.

⁷ www.sociology.org.com/marriage-family-kingship, accessed on 4th April 2004

⁸ Nigeria Customary Law of Marriage, Section 3(1)

⁹ Ibid Section 4(1)

¹⁰ Nigeria Customary Law of Marriage (Criminal Code Act) Section 361

¹¹ (1972) 10 SC 1 NMLR 25

4. Registration of Marriage

The institution of marriage has customary, religious and legal dimensions. In Ghana, we have three different laws governing marriage. The Customary Marriage and Divorce Registration Law, 1985 (PNDCL 112) amended by PNDCL 263; the Marriage Ordinance, 1884 (Cap 127); and the Marriage of Mohammedan's Ordinance, 1884 (Cap 129).¹² Polygamy is illegal in Ghana, although laws against this lifestyle are not heavily enforced against those who choose to live it. Polygamous marriages are illegal under civil law. They are arguably considered to be legal under customary law. Men in polygamous marriages can more easily transfer the costs of childbearing and rearing to women. The religions that consist in Ghana currently are 12 percent Muslim, 38 percent traditionalist, 41 percent Christian, and the rest (about 9 percent) other. There were points of conflict in terms of marriage where the Islamic and traditional beliefs support polygamy while Christian beliefs support monogamy against polygamy. Nevertheless, religious tolerance in Ghana is very high. With that, polygamy has existed all over Africa because it represents aspects of their religion and culture. Polygamous unions have been more present in Africa like no other continent around the globe¹³. Customary marriage is the most common form of marriage practiced in Ghana like most African countries. The marriage can either be monogamous or polygamous depending on the man's decision. Therefore, with this type of union, there is no limit to how many wives you can marry. The marriages that fall under this category are usually registered under the PNDCL 112. However, in Nigeria polygamous marriage which is customary is not registered in our law it is only being recognized as a way of life or in some culture believed to be right. Nigeria is one of the most populated countries in Sub-Saharan Africa with a population of over 100 million and an annual growth rate of 2.96 percent. Contemporary Nigerian society is still influenced by traditional beliefs and ways of life, for instance, lineage and clan relations are still valued. At the same time, factors such as Globalization, increase in investment in education, improvement in the transportation systems and the oil boom strongly impact the society.¹⁴

5. Traditional Ceremony and Payment of Bride Price

A traditional ceremony according to the customary requirements of the bride's family is very important in both jurisdictions under polygamous marriage. Payment of bride price or dowry as agreed upon by both families and Presence of key relatives such as uncles at the ceremony to act as witnesses to the adherence of all customary requirements is very important.¹⁵

6. Reasons for Polygamous Marriage

African traditional societies viewed monogamy as the natural form of marriage. A monogamous married man in most of the African communities could not stand and speak in front of seated polygamous married men, they were regarded as weak men and thus, could not stand up for his responsibilities in the society. This is one of the reasons which led to most of the African men to be polygamous in order for them to fit into the social classes. Among the reasons for this practice are:

War

In the olden days when there is war the older men stays at home to look after the children and the women while the young men go to war, some of this young men may not return home after the war, the older men then in turn marry the women .

Farming

The main professions in the southern provinces are 'farming, crafts and fishing' and due to oil boom in the Niger Delta, an increasing number of professionals work in the mining industry .The Northern region is populated with ' Hausa', Fulani, Kanuri and many minority groups and the main professions are farming and pastoralism. Moreover, Nigeria is home to over 250 ethnic groups and languages. Therefore, it is a country rich in culture, customs and traditions .The traditional patriarchal system dominates the Nigerian society and gender symmetry is present in many forms such as defined sex roles and sex segregation.

Economic Reasons

In most cases in African societies, people and persons who were economically stable would marry more than one wife. The poor ones would go for a monogamous marriage for economic stability. It was regarded as a symbol realizing economic success. Children, especially the boys in a family, could provide cheap labor and a source of family protection. Cheap labor also ensured that the family realized higher income generations. The family's socio-economic stability was then achieved or realized. Our forefathers married three, four and up to five wives for economic reasons, because the women work on the farms of their husbands and ironically, the wealth of the man is measured by the number of his wives, children and the extent of children he has the better for the man, because it increases the number of the work force and the acquisition of more farms for his products. These days, the economics consideration which prompted our fathers to marry more wives no longer exists or rather, the basic consideration has shifted from wives and children labor on the farms to economic or monetary power based on individual health and educational attainment which determines the job and earning of such individual in the labor market. Hence there has been a drift from the villages and farms to the cities and to white-collar jobs, which makes it the more difficult to feed the teeming population on cheap foods. The number of rural dwellers is on the decrease, while the urban areas are becoming over populated, hence the difficulty in obtaining living accommodation and cheap foods. These social changes have equally affected the willingness, ability or even the need to have plurality of wives.

Barrenness

Children are often believed to usher in joy to the family. The desire for children is hence, one of the main reasons as to why people marry and some get married. In cases where a wife does not bear children, a man brings the second or third wife in search of children. The problem might be that the man himself is not in a position to father children but often the women are blamed.

¹² <https://yen.com.ghanafacts> and life hacks accessed on 1st April 2019.

¹³ Laws and religious in Ghana

¹⁴ DHS Nigeria 2008, available at <www.measuresdhs.com> accessed on 6th April 2019

¹⁵ : <https://yen.com.gh/110523-customary-marriage-ghanalaws-registration.html#110523>, accessed on 13th August 2023.

Avoiding Adultery

According to WorldCat,¹⁶ 99 percent of polygamous married men use this reason as justification for their undertakings.

Wife Inheritance

Wife inheritance is also another cultural characteristic that allows men to inherit the wife when the husband dies.

Procreation

It serves the needs for extensive procreation and symbol of wealth which was highly cherished in traditional Yoruba society. The patrilineal lineage system dominates in Nigeria and males have more social advantages than females. The members of the patrilineal lineage have common ancestors through their father's lineage and are associated with a higher rate of polygyny than in the matrilineal system which is common in Ghana. In a patrilineal community men are considered as the lineage successors and men are granted their role as the head of the household. Such gender dynamics signifies an imbalance of power between men and women in the private and public domain.¹⁷ This patrilineal system has influenced the changes in the formal and informal polygynous marriages in Nigeria. The main religions which dominate Nigeria are Christianity and Islam. There is a regional distribution of religion with the majority of Muslims in the North and Christians in the Southern provinces. The educational distribution in the two regions are different for young girls; for example, only 4 percent of girls have secondary education in the northern region and 'more than two thirds of 15–19 year old girls in Northern Nigeria are unable to read a sentence compared to less than 10% in the South' Furthermore, the marriage customs and fertility patterns differ in those regions. Early marriage for women is associated with polygynous marriage and not surprisingly, the highest rate of polygynous marriage is found in the northern region of Nigeria.

7. Polygamous Marriage under Islamic Law

Islam allows a man to have up to four wives, given that he treats all his wives equally and that he gains his wives' consent. (surat 4 v3) Under the Muslim law the number of wives a man could married is limited to four. Nigeria practices the Maliki Law, under which a woman has capacity to marry at the age of 15 years. Under Maliki Law, a woman would have capacity to marry at the age of 15 years, but 13 years has been held to be valid in the Northern States of Nigeria. According to the Maliki Law, it behoves a believer to marry when he feels the wish for it, be it to satisfy his carnal desires or because he wishes to have children; provided that he can afford the dower (dowry) and the up-keep of a wife. Thus a believer who cannot afford to maintain a wife or who is unable to fulfill the duties of matrimony should not marry. A believer can marry up to a maximum of FOUR women, but if he fear that he cannot deal justly with them, then he should marry only one, in order to prevent him from doing injustice (Surat 4 v. 3). The husband shall give to the women, their dower (dowry or obligatory bridal money) with a good heart, but if on their own good pleasure remit any part of it to the man, he should take and enjoy it without fear of any harm, because Allah has made it lawful & (Surat 4 v 4). Generally, there is no limit to the number of wives a husband could take under the polygamous system, this invariably depends on his affluence.¹⁸

The DHS survey shows regional differences in the practice of polygyny in Nigeria, with '43 percent in North East, 42 percent in North West, and 37 percent in North Central. The DHS report for Nigeria shows that, polygynous marriages are more prevalent in the rural rather than urban areas. However, despite the trends of decline for polygyny, it is still practice at a high rate in Nigeria. Yet changes in perceptions of marriage choices in the society do not mean that the traditional way of life is no longer valued. Thus the new generations are faced with the contradiction between the traditional and the newly evolving way of life. Such a contradiction can be observed in their perception on polygynous and monogamous marriage. For example, individuals consider sexuality, the presence of romantic love and monogamy as 'markers of being urban and educated'. However, they may enter polygyny throughout the course of their life. This shows that although there are changes in how marriage is viewed both at the individual and collective levels; the traditional ways of life, which values kinship ties and the importance of reproduction, remain dominant in Nigeria.¹⁹

8. Registration of Customary Marriage n Ghana

According to the Customary Marriage and Divorce(Registration) Law, 1985(PNDCL 112) the registration of a customary marriage and divorce can be done at any time after the proclamation of the marriage as required by customary laws unless a certain time prescribe by the Secretary for Justice is passed after which the failure to register the union is considered an offence – there is no declared jail term or penalty for late registration under the law or its amendment in 1991 which means it may attract a minor fine at the most. This step has however not been carried out by many Ghanaian that got married by customary law as the number of marriage officers in the district assemblies have not been registered as registrars of deeds and thus cannot register the marriages. The following is a step by step guide on how to register customary marriage in Ghana:

1. Either or both parties in the marriage are required to apply in writing to the Registrar of Marriages in the district in which the marriage took place to be registered in the register of marriages.
2. The application is done in a legal form prescribed under the law and can be found at the registrars offices. These are found in all district assemblies across the country. In the application you are required to provide the full names of both parties to the marriage along with their places of residence at the time of the marriage.
3. The essential conditions necessary for the marriage to be valid under the concerned ethnicity must have been met to satisfaction.
4. This statutory declaration is required to be supported by both party's parents and any persons standing in their place. This part is exempt if not such relation is alive at the time of the registration. It is this part that necessitates the presence of the extended families from either side at the ceremony of the performance of marriage rites. Customary marriage in Ghana: Laws and registration.²⁰

¹⁶ <https://www.worldcat.org/title/marriage-family-and-relationshipsacross-cultural-encyclopedia>, accessed on 6th may 2019

¹⁷ *ibid*

¹⁸ E I Nwogugu, *Familly Law in Nigeria*,2006,pg xxxi

¹⁹ *ibid*

²⁰ <https://yen.com.gh/110523-customary-marriage-ghanalaws-registration.html#110523>

In Nigeria and Ghana polygamous marriage is being practiced. However in both jurisdictions the marriage can either be polygamous or monogamous depending on the decision of the man. The marriage act in Nigeria did not allow polygamous marriage to operate, it only exist between parties or where it has been accepted according to custom or religion of the people. However, the marriage act of Ghana gives room for polygamous marriage, Part two of the act is for the Mohammedians or Islamic marriage and both are put in the marriage act and they are polygamous in nature. Polygyny is a common marriage choice in Sub-Saharan Africa and its decline in Nigeria and in other countries in Sub-Saharan Africa is not only due to westernization. A key factor which directly impacts polygynous marriage in this region is the economic crisis. This shows that the decline in polygyny is due to the global economic downturn but not development and the spread of western values. Whereas there is provision for registration of customary law marriage in Ghana, customary law marriages is not registered in the marriage act but have been accepted as way of life in Nigeria. The overall incidence of polygyny in Ghana remained virtually unchanged between the 1960 and 1970 censuses; indeed, it rose in each educational category over the decade.

Polygamy in Nigeria is a customary-law institution. Therefore the character and incidents of that system are governed by customary law. There is no single uniform system of customary law prevailing throughout Nigeria, customary law differ from one locality to another. Customary law possesses three unique features, it is unwritten, it must be a 'mirror of acceptable usage'²¹ in the area where it is applied, and its rules changes with time.²² Although writing is not a feature of customary law, there are increasing instances of the recording of rules of that system of law. Local Governments are authorized by the appropriate laws in most states of Nigeria to make declarations or modifications of customary law rules applicable to any particular matter within their respective areas of authority. Such declarations or modifications of customary law which are to be written form then apply within the jurisdiction of the particular Local Government. Declarations of by Local Governments have been made in respect of matters like the celebration and dissolution of customary law marriages, *quantum* of bride price, child betrothal and the rights and duties of customary law spouses.²³

9. Challenges Associated with Polygamous Marriage

Partiality of husbands: This is where favoritism comes in, a situation in which a husband favors a certain wife and children. This causes conflicts within the family, between wives and between children and their father.

Impotence: This is a situation in which a man is traumatized because of proving to himself that he cannot have children even after getting married to more than two wives. Conflicts in the family arise accusing him of not being sincere and not being 'a man enough.'

Competition and Opposition: This is where the wives compete for love and power. This makes them enemies and not friends which in essence, directly affects their marriage and indirectly, affects their children.

Gossip: This is where a wife shares marriage problems with other outsiders like friends. It is a major weakness in a polygamous marriage because a wife will talk ill of the other wife and her children.

Lack of Trust: It is often true that women in a polygamous marriage do not trust each other. When one wife sees the husband with the other wife, she starts believing they are talking about her.

Education: This division arises when there is disparity in education. Children from a certain woman may be educated while the other may be non-educated. This raises conflicts among families.

10. Impact of Polygamy

Women's proactive power was really of great importance to her husband. It served as a way of strengthening her husband's power. This is one of the reasons women acknowledged and accepted. They were regarded as 'women producers' with a principal intention in securing their marriages and as a way of making their husbands happy. In case a woman failed to deliver or give birth to a child, she got divorced. In other words, this culture made women lose their identity as individuals. They were only recognized by the number of children who they would give birth to and boys were superior to girls. This is an oppressive and unfair lifestyle and culture within the cycle of marriage to an African woman. The expectation of a polygamous marriage is a high number of children. The inability to provide the needs to such high families has constantly put pressure on the heads of the family (husbands.) There used to be a measure of a 'real man' in the African context. The above problems often led to conflicts in the family and in advanced cases to family break-ups. The failure of a man to manage and control his wealth effectively could often diminish his economic power, reputation and respect accorded by the society. As a result, this could lead to humiliation, frustration and psychological trauma to the man. Although, since wealth is one of the decisive factors put into scale by a man before going for multiple wives, few of them will have enough resources to gather for their women and children. This will make the husband spread or distribute the limited resources among the women. In this case, women in polygamous marriages experience limited resources and financial support as compared to women in monogamous marriages. Wife inheritance also creates problems both for the children and the wife. The husband might act partially on how he treats the inherited wife and children in regards to his own wife and children. This creates family conflicts between children as well as permits wives to usher in pain rather than pleasure to the family

11. Conclusion

Polygamy has declined in the last decade but remains common in West Africa. For example, 33% of women in Nigeria reported that their husbands have more than one wife. This very old practice is essentially recognized under customary law and/or religious practices. In most West African countries, polygamy is also recognized and regulated by the civil law that allows a man to marry up to four women under certain conditions, including the financial capacity to support multiple wives and families. In practice, a polygamous union is in

²¹ Bairaman, FJ, in *Owonyin v Omotosho* [1961] ALL NLR, 304, 307

²² Osborne, CJ, in *Lewis v Bankole* [1909] 1 NLR, 81, 101

²³ See the NA (Declaration of Biu Native Marriage Law and Custom) Order, 164 (NALW 9 of 1964) the NA (Declaration of Borgu Native Marriage Law and custom) the NA (Declaration of Idoma Native Law and custom) The NA (Declaration of Tiv Native Marriage Law and custom) all of which were made under section 49 of the Native Authority Law of Northern Nigeria-Cap. 77 Laws of Northern Nigeria, 1963.

most cases limited to two women per couple. Six West African countries have civil codes that formally prohibit polygamy (Benin, Cape Verde, Côte d'Ivoire, Ghana, Guinea and Nigeria) but legal restrictions are rarely enforced. Other countries such as Burkina Faso or Togo recognize polygamous unions under modern civil law, but allow couples or men (Chad, Mali and Senegal) to choose between a monogamous or polygamous union. In some countries such as Mauritania, a man is only allowed to marry a new woman with the consent of his existing spouse/s. regimes operate in parallel. While civil law formally prohibits polygamy, the 12 northern states that are governed under Islamic Sharia law recognize polygamous marriage.²⁴ In some jurisdiction, marriage is seen as the union between two persons of the same sex, usually entailing legal obligations of each person to the other. The legal concept of marriage has been expanded to include marriage between a man and a man and between a woman and a woman in some jurisdictions. Family law has been a prestigious and foremost in the Nigeria Culture like in other African Cultures, so, much importance is attached to the family and marriage in Nigeria society, such that laws are provided to guide the marriages and family.

It is clear that polygamous marriage in Nigeria and Ghana are the same. Customary law marriage operates as polygamous or monogamous marriage in both jurisdictions. Polygamous marriage in both jurisdictions is a union between a man and more than two wives (polygyny) however the marriage act in Nigeria did not make provision for polygamous marriage, the marriage Act in Ghana gives room for polygamous marriage to operate in the country. . Polygamous marriages are illegal under civil law. They are arguably considered to be legal under customary law. As long as our societies are marked by both poverty and patriarchy, it will continue. Women still depend on men financially and social norms entitle men to dominant roles Reasons behind the 'institution of polygamy' are as diverse as the cultures around the world or even just on the continent are. Whatever polygamy was about and is about, it remains the inalienable rights of adults to determine how to live. Generally Christian populations tend to be less polygynous than Muslim ones while ethnic groups that hold to traditional African belief systems are most polygynous. It is also less prevalent in societies where more adult women are literate. These and many other factors have been identified by different authors as the basis to support the prevalence of polygamy in different societies. Polygamy is still prominent in African countries and especially the sub-Saharan Africa, despite the challenges that this type of institution poses. Polygamy still exists as either being recognized or unrecognized by the state.

²⁴ www.westafrica-brief-.org/sahel and west Africa club, accessed on 6th October 2023