

**A CRITIQUE OF NIGERIAN LAWS FROM GENDER AND SOCIO- CULTURAL PRACTICES  
VIEWPOINTS\***

**Abstract**

*In Nigeria, like many other patriarchal societies, laws and socio-cultural practices are often biased against women. This gender-based critique is evident in various aspects of life, ranging from issues of inheritance and property rights to discrimination in the civil space and access to education of the girl child. One of the key areas where the gender bias is most pronounced is in the legal system. Nigerian laws continue to uphold discriminatory practices that limit women's rights and perpetuate gender inequality. For example, under the Nigerian Constitution, women are still not granted equal right like their male counterparts are to transfer citizenship status to their non-Nigerian husbands. The goal of this essay is to conduct a critical analysis of the sociocultural elements that have shaped Nigerian women's rights fulfillment. The main focus of the article is Nigeria as a whole. It focuses on Nigerian legislation that are relevant to safeguarding women's rights. It also looks at other issues affecting women's rights in Nigeria as well as the detrimental sociocultural traditions that are common in the various Nigerian societies. The research process is based on doctrine. A combination of primary and secondary sources was used to collect information.*

**Keywords:** Gender, Critique, Law, Socio-Cultural, Nigeria

**1. Introduction: Historical Context**

Examining the historical background is crucial to comprehending the socio-cultural and historical viewpoints that have influenced the attainment of women's rights in Nigeria. With more than 250 ethnic groups, each with its own distinct customs, traditions, and social systems, Nigeria boasts a rich and diversified cultural legacy. In Nigeria, women have played a variety of roles in their communities throughout history, and customary laws and customs have shaped their rights. Women played a significant role in both social and economic life throughout pre-colonial times. There was a division of work based on gender, with women doing tasks like cooking, mat weaving, and pottery making. Women also had access to property owned by the community through their marriages or parents. A man headed the household in a patrilineal society, though older women oversaw the work of the younger family members.<sup>1</sup>

Beginning in precolonial times and continuing until the early 21st century, women's roles and status in Nigeria have evolved over time. Unfortunately, research on them has been hindered by the idea that they are a weak, oppressed, and disadvantaged minority, and little recognition has been given to the several crucial roles that Nigerian women have played throughout history.<sup>2</sup> The majority of well-off women were able to pursue other economic endeavors like manufacturing and trading. In South Western Nigerian Yoruba culture, it was a woman's responsibility to provide the funds required for household maintenance for her family. Women gladly embraced this role as their civic duty, gender obligation, and marital responsibility. Women's work was respected in Yoruba society as an addition to men's, and many of them rose to notable positions in the social and economic domains. However, women were frequently married into wealthy households or descended from them to hold positions of responsibility. By acquiring such power, they were able to tangentially impact politics, though they rarely made their influence known to the public.<sup>3</sup> Women's roles in many other Nigerian tribes were seen as complimentary to men's in their families, much like the family and societal structures, but the fact remains that pre-colonial Nigerian societies recognized men as superior to women and as having some degree of control over them. According to Sudarkasa.

Numerous Nigerian societies' religions acknowledged the value of women in society by emphasizing the role of female gods in fertility and social harmony. However, women were also connected to witchcraft, which seemed to represent the possible social risk that could arise from women exercising power without male supervision. In other groups, women had important responsibilities in agriculture, even though they were not as restricted to the home as the Hausa women in Northern Nigeria were.<sup>4</sup>

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<sup>1</sup>T. Falola, 'The role of Nigerian women'. *Encyclopedia Britannica* (6 Mar. 2023), available at <<https://www.britannica.com/topic/role-of-Nigerian-women-1360615>>Retrieved 13 June, 2024.

<sup>2</sup> Ibid, (Falola, 203)

<sup>3</sup>O. Labode, 'The Changing Roles and Status of Yorùbá Women, 1900-1950' (20220) available online <[https://www.academia.edu/62193935/The\\_Changing\\_Roles\\_and\\_Status\\_of\\_Yor%C3%B9b%C3%A1\\_Women\\_1900\\_1950](https://www.academia.edu/62193935/The_Changing_Roles_and_Status_of_Yor%C3%B9b%C3%A1_Women_1900_1950)> (Retrieved 13 June, 2024).

<sup>4</sup>S. Niara, 'Where Women Work: A Study of Yoruba Women in the Marketplace and in the Home' 1973 NO.53 *Anthropological Papers* (Ann Arbor: University of Michigan Museum of Anthropology), p.5.

She also highlights the interchangeability of male and female first names and the absence of gender in pronouns in many African languages as further consequences of society's de-emphasis on gender as a behavioral designation. She emphasizes that in the pre-colonial indigenous Nigerian culture, where seniority was valued above gender, women played a mostly complementary role to men Sudarkasa.<sup>5</sup> She points out that there are additional features of traditional culture that suggest Africans often minimize gender in relation to seniority and other status indicators, such individual clothing and jewelry choices, religious rituals, and intra-gender behavioral patterns.<sup>6</sup> But even though Nigeria's traditional communities did not prioritize gender issues, the government and its bureaucracy attempted to control women's lives by promoting domesticity and the unpaid work that women did for their families. As a result, a large portion of legislation pertaining to women tried to limit their sexuality and fertility, thus solidifying their status as subordinates.

## **2. Gender Discriminatory Laws and Practices in Nigeria**

Nigerian women's rights are primarily realized through two legal frameworks: domestic and international. But there are effects and influences between the two legal systems.

### **Constitution of the Federal Republic of Nigeria 1999 (as amended)**

The 1999 Constitution, which serves as the ultimate law of the land, establishes the legal foundation for the defense and upholding of fundamental human rights, particularly the rights of women. This section examines the provisions of the constitution that deal with equality, non-discrimination, negative vs. positive rights, gender quotas, citizenship and nationality, rights to property and inheritance, reproductive rights, marriage and family life, the status of customary and religious laws, and general guarantees of human rights and how they affect women. The Nigerian Constitution, Section 42, states the following:

- (1) A Nigerian national belonging to a specific community, ethnic group, or place of origin, regardless of their gender, sexual orientation, religion, or political beliefs, is not entitled to:
  - (a) either directly or indirectly be subjected to limitations or conditions that Nigerian citizens of other communities, ethnic groups, places of origin, sex, religions, or political opinions are not subjected to in the course of implementing any law currently in effect in Nigeria or any executive or administrative action of the government; or
  - (b) be subjected, either directly or indirectly, to limitations or conditions that Nigerian citizens of other communities, ethnic groups, places of origin, sex, religions, or political opinions are not subjected to in the practical application of any law currently in force in Nigeria or any executive or administrative action of the government; or
- (2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.
- (3) Nothing in this section's subsection (1) shall render any law unconstitutional merely because it places limitations on the appointment of individuals to state offices, the armed forces of the Federation, the Nigerian Police Force, or positions in the service of corporations directly established by laws currently in effect in Nigeria.

Though the Convention on The Elimination of All Forms of Discrimination Against Women defines discrimination against women in the following ways, it is important to note that Section 42 of the Nigerian Constitution does not define the term either.

Any discrimination, exclusion, or limitation based on a person's gender that has the intention or effect of preventing or undermining women's ability to exercise, enjoy, or be recognized for their rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field, regardless of their marital status

In the case of *Jone v. Eastleigh Borough Council*,<sup>7</sup> the local government waived the 65-year-old age restriction for men and gave women free entry to the pool at age 60. The House of Lords ruled that charging Mrs. Jones admission fees because she was over 50 but under 55 constituted discrimination. That is precisely what Section 42 aims to forbid. Additionally, a circular that attempted to limit some kids to only attending public schools was ruled to be discriminatory in the case of *Adewole v. Jakande*.<sup>8</sup> Comparably, the *Adamu v. A.G. Borno State* case demonstrates discriminatory behaviors that are instructive. In that case, the appellants, acting as plaintiffs, requested declarations opposing two practices: the first involved them paying out of pocket for their children to be raised as Christians while the local government employed Islamic teachers; the second involved their children being forced to learn Arabic and Islam. Sections 6(6), 39(1), and 35(1) of the Constitution were cited by the appellants. The court of first instance ruled that the case was not justiciable since it related to the core goals and guiding principles of state policy.

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<sup>5</sup>S, Niara, 'The Status of Women' in Indigenous African Societies' (1986), 12 (1) *Feminist Studies* pp. 91-103.

<sup>6</sup> Ibid.

<sup>7</sup> (1992) AC 751

<sup>8</sup> (1981)

The Court of Appeal reversed the lower court's ruling. The Court of Appeals ruled that even while S. 6(6)(c) of the Constitution prohibits chapter 2 from being brought before a court, the constitution's prohibitions on certain causes of action and rights must be implemented without regard to chapter 2. Consequently, a violation of a citizen's right to freedom of religion and against discrimination is justiciable when a local authority implements a policy in furtherance of the core goals of state policy. Section 42 states that every woman has the legally protected right to be free from discrimination. Nigeria must therefore define discrimination in its Constitution in a way that both complies with the definition provided by CEDAW and the convention that it has ratified. Furthermore, a separate section on gender equality must be considered, firmly outlining the equality and nondiscrimination principles that are popular in modern constitution building.

It is crucial to keep in mind that while section 42 prohibits discrimination based only on gender, discrimination based on customs, practices, or other actions is not protected. This point is shown in Section 42(3). According to the statement, nothing in subsection (1) of section 42 will render a law unconstitutional merely because it restricts the appointment of people to positions in state offices, the armed forces of the Federation, the Nigerian police force, or corporations whose charters are directly established by present-day Nigerian laws. Notable discriminatory acts that will be discussed in the following section of this article have their roots in this derogation.

### **Cumbersome Acquisition of Citizenship and Residency Rights**

According to the Nigerian Constitution,<sup>9</sup> a Nigerian man can grant citizenship to his foreign spouse by registration or naturalization; however, a Nigerian woman can only accomplish this through the difficult naturalization process. Even if such marriages produced offspring in Nigeria prior to the aforementioned constitution's adoption, those children were not considered Nigerian citizens. In real words, this implies that a woman from Europe or America who marries a Nigerian man will become a citizen by registration, while a Nigerian woman who marries a Kenyan husband will need to live in Nigeria for a certain amount of time in order to meet the conditions for naturalization. Another law that discriminates equally against people is Section 2 of the Federal Character Commission (Establishment) Act in Nigeria, which stipulates that a married woman must maintain her claim to her state of origin for the purposes of implementing the federal character formulas at the national level. The family and society are the two spheres of social organization where discrimination against women occurs. The choice to send a boy to school while keeping the girl at home to assist her mother with household chores is only one example of how discrimination against women occurs in families and households. Gender inequality is ingrained in the social structure and permeates every facet of the country's existence. In the following section, specific attention will be paid to additional spheres of life where discrimination against women occurs.

### **Inappropriate Marriage Laws**

Customarily, a woman's marriage cannot be formally recognized without her father's approval. According to customary norms, a woman is supposed to reimburse her bride price if she files for divorce. Should she fail to do so, the divorce will be refused. Accordingly, a woman who is unable to be married again or have children is still regarded as wedded even though she is unable to pay back her bride price. Kids are considered to be part of their fathers' and families' heritage because of the patriarchal structure of the culture. And for that reason, the women lose their children in the event of a divorce or the fathers passing away.<sup>10</sup> Local traditions hinder the administration of justice, encourage underage marriage, and deprive women in Nigeria access to rights that are purportedly theirs. Since cultural and religious elements frequently come together to thwart the full implementation of laws that are both constitutional and enacted, the Nigerian instance highlights social and legal dynamics that are visible in other nations. In the context of the Sharia legal system, women face more egregious discriminatory treatment. A woman cannot have four wives; a man is entitled to four wives. He can declare to his wife that they are no longer together at any time, but the wife has to follow legal procedures to actually get a divorce from him. These adult-traumatized child wives are compelled to have children before their bodies are fully developed. Vessico-vaginal, also known as recto-vaginal fistula, is a typical side effect of protracted obstructed labor that results in ripping of the walls between the vagina and the bladder or rectum due to lack of access to medical assistance. Women who have the illness frequently urinate and defecate, rendering them social misfits and vulnerable to divorce and desertion. Girls are married off at very young ages, often to males who are several years older than they are, as is customary in most African civilizations. These adult-traumatized child wives are compelled to have children before their bodies are fully developed. Vessico-vaginal, also known as recto-vaginal fistula, is a typical side effect of protracted obstructed labor that results in ripping of the walls between the vagina and the bladder or rectum due to lack of access to medical assistance. Women who have the illness frequently urinate and defecate, rendering them social misfits and vulnerable to divorce and desertion. Ahmad Sani Yerima, a senator from Nigeria, was charged in 2013 of being married to a thirteen-year-old in 2009. According to reports, Yerima then obstructed attempts to update the Nigerian constitution, voting in favor of maintaining a law that granted married females the right to relinquish their citizenship regardless of age, along with the majority of the Nigerian Senate. Despite the Childs Rights Act's stated ban on child marriage, opponents claimed the bill gave 'girls who are brides' 'special status'

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<sup>9</sup> Section 25-29 of Chapter III of the 1999 Constitution of Nigeria.

<sup>10</sup> J.Anderson, 'The Impact of Family Structure on the Health of Children: Effects of Divorce' (November 2014) T 81(4), *Linacre Quarterly*, pp.378-387

in an effort to 'construe them as adults'.<sup>11</sup> When asked about his purported marriage to a minor, Yerima justified his conduct, saying that 'there is no legislation in Nigeria that defines when and how you get married.' This was nearly ten years later, in May 2022, during his presidential campaign. Yerima went on to declare, 'if I had done anything wrong, I would have been tried in court,' at one point using religion as a justification. The National Agency for the Prohibition of Trafficking in Persons 'abandoned the matter because I didn't do anything illegal,' according to his claims.<sup>12</sup>

### **A Culture of Violence**

Another crucial area where the legal, religious, and cultural spheres collide is violence against women. Legal safeguards are not as strong as they should be when it comes to women seeking refuge from domestic abuse. In rape and assault cases, the situation is comparable. Law enforcement and the legal system frequently cooperate to discourage women from filing reports. It is unusual that convictions result from their reporting. For instance, just a small percentage of the 2,279 rape and indecent assault cases recorded by the Nigerian Bureau of Statistics in 2017 ended in a conviction. In our society, rape incidents have frequently gone undetected because victims fear the accompanying public disgrace and contentious attention. Concerns about potential spouses losing interest arise, especially from female victims, because of the pervasive belief that 'how could I marry someone who has been raped by other guys; without protection that may have been armed robbers and terrible people'? Either way, this is quite close to what actually occurs. One study found that for every 100,000 women, there are 198 rapes committed each year. Given the high rate of unreported rapes, the actual number was probably far lower. The Cape Times reported that there were approximately 300 rapes and attempted rapes for every 100,000 women in South Africa, which is an extremely high rate.<sup>13</sup> In one occasion, the law legitimizes the culture of violence against women. For instance, nothing constitutes an offense under the Panel Code 'that which does not amount to the infliction of grievous hurt upon a person who is 18 years of age and above and which is done by a husband and wife being subject to any native law or custom in which such correction is recognized as lawful'.<sup>14</sup> This subsection exemplifies how cultural biases can be reflected in lawmaking, inadvertently undermining the fundamental concepts of justice and equity. About the topic of domestic abuse, this law also stems from the fundamental premise that a husband and wife's relationship is one of inequality and that the stronger side's right to correct the weaker party must be upheld. To put it plainly, the husband has the right to correct his wife by beating her up or by other methods; the corrector will decide what constitutes a proper correction. There is undoubtedly a huge opportunity for the encouragement of domestic abuse.

Violence against women is a major risk to their health since it erodes their self-confidence and has an adverse effect on their physical, emotional, and psychological well-being. Physical abuse, emotional and psychological torment, disregard for fundamental necessities, violation of rights, and sexual molestation of women are all considered forms of violence against women. The prevalent types of violence against women are as follows: repressive authority targeting women; wife assaulting indecent attack; Rape; threatening women with defilement; intimidation to obtain unauthorized sexual knowledge of them; mutilation of the female, circumcision, etc; sexual harassment; and dehumanization of widows<sup>15</sup> The ways in which these acts of violence are committed vary depending on what motivates the offenders. The fundamental idea, though, is the extreme trauma that women endure as a result of being stabbed, burned, bit, suffocated, beaten, and subjected to other violent acts that have the potential to cause death or serious injury to the body. In addition, financial repression, verbal abuse, restricting a woman's right to express her emotions, and denial of her rights to an education, career, and reproductive choices are all examples of violence against women. Even more damaging than physical abuse are these psychological torments. Male lecturers in postsecondary institutions and male instructors in secondary schools frequently harass female pupils at schools in a sexual manner. These girls are threatened with failing on their exams and physical harm. Punishment. Male students also threaten, bully, and occasionally rape female students and teachers some of whom are even old enough to be their mothers—either singly or in groups. Additionally, they create, write, and post disparaging drawings, images, and remarks against female pupils.<sup>16</sup>

At work, threats and intimidation are frequent occurrences. Women are frequently asked for sexual favors in order to be promoted and keep their employment. Rape crimes go unreported because a hundred would divorce his wife, part of the society's nonchalant attitude toward acts of violence against women. Girls who are single may not get married, and victims would face stigma. Because society accepts these acts as acceptable in theory, victims hesitate to disclose these incidents while suffering severe bodily harm as well as severe emotional distress.

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<sup>11</sup>O. Obi, 'When Rights Slip through the Cracks of Culture: Women's Rights and Justice in Nigeria or Lack Thereof' (2023), *Harvard International Review*, P. 1.

<sup>12</sup> Ibid.

<sup>13</sup>G. Abarder, 'Western Cape Cops Tops for Serious Crime' Cape Times (Cape Town, 13May, 1999) May; 13:9.14.

<sup>14</sup>Section 55 (1) (d) Laws of Northern Nigeria Cap 89, 1963

<sup>15</sup>N. Imoukhuede, 'Violence Against Women and Girls – Rape and Defilement' Paper presented at a conference on Elimination of Discrimination Against Women, organized by Constitutional Rights Project (Benin city-Nigeria, May 1995)

<sup>16</sup>A. Shumba & A. Masiki, 'Sexual Harassment of College Students by Lecturers in Zimbabwe' (April 2002) 1. *Journal of Society and Learning* pp.45-59

Genital mutilation of females is another instance of violence against them. The term 'practice' refers to a broad category of procedures that include extractions, known as infibulations, of all or part of the clitoris and other external genitalia. The clitoris and both labia are removed, and the vulva's two sides are sewed together, leaving only a tiny gap for the less severe kind of bodily fluid escape. Genital mutilation has its roots in the desire to keep young girls virgin until marriage and to regulate female promiscuity. A person's right to complete sexual fulfillment should never be restricted in any way as long as society morality is not in jeopardy. Female genital mutilation is a practice that is supported by several myths,<sup>17</sup> but at its foundation is the idea that males will not marry uncircumcised women because they are dirty, promiscuous, and sexually irresponsible.

Repeated verbal abuse, harassment, incarceration, deprivation of material, financial, and private resources, repeated threats to force the victim from the married home, and control over family contact are examples of psychological or mental violence. Practices driven by women's desire to meet socially dictated standards of beauty and marriageability are another type of psychological abuse. These include high-risk cosmetic surgery, sex selection abortion, and pathological diets, such as anorexia and bulgimai.<sup>18</sup> Widows in Calabar, South-South Nigeria, particularly those of traditional rulers, are treated inhumanely since they are placed in mourning homes for up to a month, depending on the family or the community. She will be given a basin or container to hold her tears until the grieving time is finished, and she will be required to look unkempt, scrape her hair, rub cow manure, wear one dress, and eat off of an unwashed plate. In order to demonstrate her innocence, the widow is compelled to walk on the water and across the door, and the water used to wash her husband's corpse is spilled on the roof. She will be called a witch if she refuses.<sup>19</sup> In an attempt to prove her husband's innocence of his death, wives of the Igbo people in the Southeast are required to shave every hair on their body and sleep in the same bed as his corpse.<sup>20</sup> Between two in the morning and midnight in the riverine region, the woman is brought to the creeks and forced to undergo a variety of rites. While all of this is going on, the man's family takes away all of his possessions. Women's health and wellbeing are known to suffer as a result of these practices. The fact that some of these behaviors frequently result in women colliding with one another is regrettable.

Women have suffered from physical and sexual abuse as well as psychological harm. Certain laws let husbands to physically and sexually abuse their wives because they mistakenly think that a woman is a man's property when they are married. Although husbands have the right to take legal action against anyone who cheats on their wife or seduces them, they are not held accountable if they compel their spouses into having sex.<sup>21</sup>

### **Denial of Property Rights**

The majority of customary rules prohibit women from acquiring or disposing of property that they have obtained during a marriage. Since she is considered to be part of her husband's inheritance upon his death and most land tenure systems only grant women usufructural rights, any property she acquires is assumed to be her husband's. Men have the right to control the land. This may be interpreted as being in violation of Section 43 of the 1999 Nigerian Constitution,<sup>22</sup> which *declares that 'any Nigerian citizen shall have the right to purchase and own immovable property anywhere in Nigeria, subject to the provisions of this constitution.'* According to customary law, a man's landed property passes to his surviving male children first, before passing on to his female children, when he dies testate. As of right now, the law will not impede the disposition as directed by the decedent's will. Which legal system the afflicted person managed his or her affairs under while alive determines which law will control the devolution of his or her property. Though it is not the ultimate factor, the way the deceased performed their marriage ceremony is a pertinent aspect in this regard.

Regardless of whether the deceased passes away testate, either spouse is entitled to inherit under common law. In the event that a husband passes away testate, a wife is not entitled to inherit from his estate under the majority of customary rules. In the *Suberu v. Sunmonu* case, Jibowu L.J.<sup>23</sup> thus: provided the following justification for the Yoruba custom: 'A wife could not inherit her husband's property since she herself is, like a chattel to be inherited by a relative of her husband.' Backley J. had previously stated in *Sogunro Davies and ors*<sup>24</sup> Backley J case that Yoruba local law and custom denied the widow the right to inherit from her late husband's assets since property

<sup>17</sup>G. Arowolo, 'Protecting women from violence through legislation in Nigeria: Need to enforce anti-discrimination laws' (2020) 20 (4) *International Journal of Discrimination and the Law*, pp.245-288

<sup>18</sup> Anorexia nervosa is a serious and potentially life-threatening but treatable eating disorder. It's characterized by extreme food restriction and an intense fear of gaining weight. Treatment usually involves several strategies, including psychological therapy, nutritional counseling and/or hospitalization available online< <https://my.clevelandclinic.org/health/diseases/9794-anorexia-nervosa>> (Retrieved,26 June, 2024)

<sup>19</sup> E. Idialu, 'The Inhuman Treatment of Widows in African Communities' (2012),4 (1) *Current Research Journal of Social Sciences* pp.23.

<sup>20</sup> O. Chukwudifu, 'Women and Children as Disempowered Groups' In: Kalu, Awa U. and Osinbajo, Yemi (eds.) *Women and Children under Nigerian Law*. Lagos: Federal Ministry of Justice (1990) pg. 9

<sup>21</sup> Violence against women, World Health Organization Fact-Sheet, 25 March 2024.

<sup>22</sup> 1999 Constitution of the Federal Republic of Nigeria.

<sup>23</sup> (1957) 2 F. S. C. 33.

<sup>24</sup> (1929) 2 NLR 79 at 80

devolution follows blood. To the exclusion of his siblings, the first son of the Binis family in Mid-West-Nigeria, inherits all of the disposable property.<sup>25</sup> According to Yoruba customary law, a woman might inherit property from her parents or siblings.<sup>26</sup> Both religious and customary, the Islamic/Sharia system has a significant effect on customary law in Northern Nigeria. The primary asset of the Hausa people before the arrival of Islam was usually the livestock of their deceased father, which the eldest son would then distribute among his younger siblings based on their individual needs. The estate of their deceased father was not open to inheritance by young men or women.<sup>27</sup> The reasoning for this was that little boys and girls shouldn't be permitted to inherit anything since they can't go to battle and gather bodies or treasure (Gamima). The traditional Hausa local custom held that the ladies belonged to the line of inheritance. The only people who may inherit were brothers and adult sons.<sup>28</sup> Women are allowed to inherit the mobile belonging of their mothers. It's interesting to note that only men in a family are eligible to inherit land, regardless of who owns it. However, Qawama is seen in the Sharia system to signify that males are superior to women and act as their guardians.<sup>29</sup> Nevertheless, the Sharia is the only tradition that ensures women have the right to inherit, regardless of whether they are spouses or daughters.<sup>30</sup>

In the *Ogiamen v. Ogiamen* case, the court maintained the Bini custom, holding that the Bini custom of inheritance was common in many highly developed communities around the globe. That being said, the legal situation has changed following the decision of the Court of Appeal in the case of *Mojekwu v. Mojekwu*.<sup>31</sup> Judge Niki Tibi made the following statement in that case:

We must go all the way to Beijing to understand that certain of our customs such as the Nnewi Oli-ekpe custom on which the appellant relies do not align with the modern, civilized world in which we all live. As far as I'm concerned, God alone has the authority to decide a baby's sex—not the parents. Though the scientific community disputes this holy fact, I think that God, who created humans, also has the final say over gender identity. Therefore, discrimination against one sex in a custom or customary rule is, at the very least, an insult to Almighty God Himself. Let no one act in that manner. I find it easy to maintain that the Nnewi Oli-Ekpe custom is incompatible with justice, equity, and morality.<sup>32</sup>

The inheritance customs prevalent in the majority of Nigerian societies place limitations on the rights of women as beneficiaries. Most customary legal frameworks. Women are not able to inherit from their dads or from their husbands. For instance, in the Igbo community. Among the Yoruba, on the other hand, daughters enjoy the same property rights as their brothers. Islamic law states that married women are only entitled to half of their husbands' property, and daughters can only inherit half of their brothers'. In Nigeria, the actualization of women's rights is significantly impacted by socio-cultural viewpoints, which cover a broad spectrum of elements like customs, religious practices, traditional beliefs, and society standards. The status of women in Nigerian society has been greatly influenced by these viewpoints, which have also molded their access to opportunities and rights. For instance, patriarchal norms and behaviors that restrict women's autonomy and agency are common in many traditional Nigerian civilizations.

### **Civil Status**

While granting the same surety for an accused individual to men and women, in addition, a married woman applying for an international travel passport needs to include her husband's agreement letter. With the male, this isn't the situation. At reality, women are not permitted to post bail or act as sureties in police stations or courts for friends or family members. It's even shocking that some female judges, attorneys, magistrates, and police officers participate in this kind of chauvinistic behavior or thought. Courts frequently claim that they do not want to visit them with the repercussions of a reinforced bond, which is why they are not permitted to exercise this right.<sup>33</sup> The Federal Republic of Nigeria, 1999 Constitution's section 42 (1) (a) is violated by the police's discriminatory actions toward women. In principle, bail allows the accused person or people to return home and appear in court or at the station whenever necessary, depending on the circumstances of the case. Legally speaking, sureties must be able to produce the accused person or people in court or at the police station in order to be granted bail. There is no discriminatory disqualification of women based on gender under the regulations governing bail-related sureties. Women should be able to post bond on the same terms as males as they are capable of adhering to these legal

<sup>25</sup> E.I. Nwogugu, *Family Law in Nigeria* (1974) p. 314

<sup>26</sup> *Adedoyin v. Simeon* (1928) 9 NLR 77 at 78.

<sup>27</sup> *Mohammedu v Mohammed* (2002) NWLR (Pt 709) p. 104

<sup>28</sup> *Adedoyin v. Simeon* (1928) 9 NLR 77 at 78.

<sup>29</sup> D. Mosope, '220 verse 4.34 of the Quran quoted from Gender Discrimination Challenges for the twenty-first century' 2002, 4 (2) *LASU Law Journal* p.167.

<sup>30</sup> P.Baiyere, 'Right To Inheritance In Nigeria: A Liberation For Widows' *ABU Law Review*, available online < djetlawyer.com> (Retrieved: 26, June, 2024)

<sup>31</sup> Court of Appeal Enugu Division.

<sup>32</sup> Per Justice Niki Tobi Court of Appeal Enugu Division. P. 238

<sup>33</sup> N. Agunwa, 'Women and Bail' A Paper presented at the Constitutional Rights Project (CRP) Conference on the Elimination of Discrimination Against Women and The Criminal Procedure Laws of the Federal Republic of Nigeria (1995) p.9.

requirements. Therefore, when the people they take on bail default, women should be able to use their ability to set bond conditions and face the repercussions of a forfeited bail.

### **Control of Women's Fertility and Sexuality**

Regulations 121, 122, 125, 126, and 127 of the Nigerian Police Act <sup>34</sup> are discriminatory laws that specifically target female police officers. For instance, Regulation 127 requires a female police officer who is single and wishes to be married to submit a written application to the commissioner of police, specifying the name, home, and job of her future husband. It's noteworthy to note that male police officers are not required to abide by this particular Police Act clause. When it comes to the punishments for making personal assaults, the Criminal Code likewise discriminates against women. In contrast to assaulting a woman, assaulting a male is regarded as a misdemeanor. <sup>35</sup> Women's rights to manage their fertility are violated by the need that they accompany their spouses to government-funded family planning clinics on their initial visit. The sexuality of widowed and single women is also limited by this requirement. This implies that the only way these women may express their sexuality is through marriage. Furthermore, women's reproductive and sexual rights are violated by the National Population Policy's clause allowing women to have a maximum of four children while men are allowed to have an unlimited number. In the unreported case of *Lagos State Attorney General v. Muhammad Garuba and Ors.*<sup>36</sup>

Lounge J stated: 'The international character of our constitution cannot be unilaterally abolished, even if this aspect is suspended or removed by any provision of our local law. When he launched the Nigeria, Justice Eso, the illustrious jurist and legal uncle, forewarned us. Foreign Treaties: we have thrown ourselves open to the world, and we do not unilaterally violate any of the conditions without our international allies scowling.

In a similar vein, Nnaemeka Agu JSC. States <sup>37</sup> in *Kim v. The State* that 'although it is up to individual member states to choose which of the many declared rights to include in their national legislation, once those rights are included, their application no longer has the character of isolated isolationism, instead of basing their standard of interpretation and application on a universal charter'. The implication of this ruling is that any international agreement ratified by the Nigerian government and incorporated into our domestic laws is legally binding. Despite these clauses ensuring women's equal rights and opportunities, laws, customs, and practices nonetheless apply differently to men and women. The division of labor between the sexes, which represents and upholds female subordination in society, is the source of this prejudice.

### **3. Legal Reforms and Progress**

Through legislative changes and policy measures, there have been major attempts in recent years to address the issues of women's rights in Nigeria. The promotion of gender equality and the defense of women against violence and discrimination have been the goals of legislative initiatives such as the passing of the Violence Against Persons (Prohibition) Act, 2015 and the Gender and Equal Opportunities Bill,<sup>38</sup> and in addition, the creation of governmental and non-governmental groups dedicated to advocating for women's rights has helped to increase awareness and advance gender-sensitive policies.

#### **Violence against Persons (Prohibition) Act 2015**

In May of 2015, the Violence against Persons (Prohibition) Act (VAPP) was signed into law. To end violence in both public and private life, the Act was passed into law. It also forbids discrimination against individuals, and all forms of violence, including physical, sexual, psychological, and harmful traditional practices, and it offers victims and offenders the best possible protection as well as effective remedies and punishment. <sup>39</sup> The Act's provisions are extensive, covering the majority of the common types of violence that exist in Nigeria today, including sexual, psychological, physical, harmful cultural practices, and socioeconomic violence. The service provider is identified as the National Agency for the Prohibition of Trafficking in Persons (NAPTIP).<sup>40</sup> Under the VAPP Act, rape,<sup>41</sup> spousal battery,<sup>42</sup> forceful ejection from home,<sup>43</sup> forced financial dependence or economic

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<sup>34</sup> The Nigerian Police Act (Repeal and Re-Enactment) NO. 2, 2020.

<sup>35</sup> See Sections 353 and 360 of the Criminal Code

<sup>36</sup> Reported in (1994) 4 Journal of Human Rights Law and Practice 205.

<sup>37</sup> (1985) 2NWLR

<sup>38</sup> While the VAPP Act, was passed by the Nigerian Senate, the Gender and Equal Opportunities Bill did not receive senate approval for being against 'religious and cultural beliefs of most of the Nigerian population'; A.Makinde and C. Onyemelukwe, et al. 'Rejection of the Gender and Equal Opportunities Bill in Nigeria: A setback for sustainable development goal five' (2017) 32 (3) *Gender in Management*: pp. 234-240.

<sup>39</sup> The long title of the Act.

<sup>40</sup> Section 44.

<sup>41</sup> Section 1

<sup>42</sup> Section 19

<sup>43</sup> Section 19



abuse,<sup>44</sup> harmful widowhood practices,<sup>45</sup> female circumcision or genital mutilation,<sup>46</sup> abandonment of children,<sup>47</sup> harmful traditional practices,<sup>48</sup> harmful substance attacks<sup>49</sup> such as acid baths, political violence,<sup>50</sup> forced isolation and separation from family and friends,<sup>51</sup> depriving persons of their liberty,<sup>52</sup> incest,<sup>53</sup> indecent exposure<sup>54</sup> and violence by state actors (especially government security forces) among others are punishable offenses.

#### ***Rape under the VAPP Act***

The Act's definition of rape and its prohibition on it are two of its most noteworthy and admirable features. While other laws already in place restricted the definition of rape to protect only women from unconsented vaginal penetration.<sup>55</sup> The definition and application of rape have been greatly expanded under the VAPP Act. According to the Act, rape occurs when someone purposefully penetrates another person's vagina, anus, or mouth with any other part of their body or anything else without that person's consent, or when that consent is obtained through coercion, threats, intimidation, or fear of harm, or by making false and fraudulent claims about the nature of the act, the use of a substance or additive that can take away that person's will, or, in the case of a married person, by impersonating that person.<sup>56</sup> According to this definition, rape is prohibited for both men and women. For a considerable time, Nigerian jurisprudence has been preoccupied with gender bias in rape since the existing legal framework did not acknowledge circumstances in which a man could or would be sexually assaulted. The Act expanded the definition of rape to include the mouth and anus in recognition of the evolving nature of sex, which transcends the traditional sex organs. This is because in the past, it was challenging to classify an issue of coerced oral or anal sex as rape because our laws did not anticipate or allow for such an occasion.

#### **4. Conclusion**

Generally speaking, Nigerian laws do not distinguish between male and female genders in their provisions about fundamental rights; yet, women encounter discriminatory practices when attempting to exercise these rights. For instance, discrimination based on gender is already prohibited by Section 42 of the Federal Republic of Nigeria's 1999 Constitution. However, this is irrelevant because the tragedy of gender discrimination is a product of social construction, with the goal being the establishment and enforcement of distinct standards for men and women. In light of this deeply ingrained patriarchal stereotype, substantive law may not have much of an impact on long-standing behavioral habits resulting in few court rulings about rigorous women's rights jurisprudence.<sup>57</sup> . It is feasible to create more successful plans for advancing gender equality and enabling women to fully exercise their constitutionally guaranteed rights by critically analyzing the socio-cultural elements that influence women's rights in Nigeria. Nigerian laws often fail to protect women from domestic violence and other forms of gender-based violence. The lack of legal safeguards for victims of abuse means that many women are forced to suffer in silence, unable to seek justice or protection from their abusers. This not only perpetuates the cycle of violence but also sends a dangerous message that women's lives and well-being are not worth protecting. Socio-cultural practices in Nigeria play a significant role in perpetuating gender inequality. From early childhood, girls are often socialized to conform to traditional gender roles that limit their opportunities and potential. As a result, many women are discouraged from pursuing education and career goals, further widening the gender gap in economic and social spheres. Harmful practices such as child marriage and female genital mutilation continue to be prevalent in many parts of Nigeria, despite being illegal. These practices not only violate women's rights but also have serious consequences for their health and well-being. Based on this stereotype, which places males in the position of the breadwinners, men are better positioned to manage decision-making processes because they have more power, opportunity, and access to resources. Under Nigerian legislation, women's rights fulfillment is a dynamic, intricate process that is greatly impacted by sociocultural viewpoints. It needs a multifaceted strategy that includes legislative changes, policy proposals, and revolutionary social change to address these issues.

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<sup>44</sup> Section 12

<sup>45</sup> Section 15

<sup>46</sup> Section 6

<sup>47</sup> Section 16

<sup>48</sup> Section 20

<sup>49</sup> Section 21

<sup>50</sup> Section 20

<sup>51</sup> Section 21

<sup>52</sup> Section 10

<sup>53</sup> Section 25

<sup>54</sup> Section 26

<sup>55</sup> Section 24

<sup>56</sup> Section 1 (1) (a) - (c)

J. Shestack 'The Jurisprudence of Human Right' in T. Meron (ed), *Human Right in International Law Legal and Policy Issues* (1984).