

A CRITICAL EXAMINATION OF DISCRIMINATORY AND HARMFUL TRADITIONAL PRACTICES IN NIGERIA: NEED FOR FURTHER REVIEW

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Abstract

Generally, in most African Countries, it has been the norm that women typically do not have a voice in the distribution of family property. It is a male dominated society that enslaves women in the name of culture and tradition. For instance, there is a strong traditional belief that when a pregnant woman has a very long labour, she will deliver a female child but if the labour is short, then there will be a male child. The rationale behind this is that male children quickly equip themselves and step out into the world, while female children often engage in gathering kitchenware and other items for a life traditionally focused on domestic duties. In most ethnic groups in Nigeria women including widows are discriminated against and deprived of lower of succession rights even in the face of constitutional guarantees and legislatives protections including other international convention of discrimination against women of which Nigeria is a signatory. It is against this background that this paper seeks to critically

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examine harmful traditional practices against women in Nigeria and whether enacted statutes protecting the rights of women against harmful traditional practices have yielded success. In adopting the doctrinal method of research, it was revealed that despite the existing body of laws which directly and indirectly protect the rights of women, yet no specific legal framework for the implementation, enforcement and protection of these rights, hence proffered recommendations.

Keywords: Critical, Discriminative, Harmful Traditional Practices, Enforcement and Protection

1.0 INTRODUCTION

In ancient civilization, women were regarded and treated as chattels and therefore were no even better than displayed merchandise to be inherited as part of an estate of a deceased person and by virtue of their position they were incapacitated in several respects, such as; she could not legally own property, enter into contract, make a will or be a surety. In Greece for example, she was regarded as a creature of evil fascination in human form, next to no status¹. Consequently, two conferences held in the 19th century concerning the issue of gender relation had the following agenda. The first held in France was to consider whether women were human beings. The consensus at that conference was that they were created purposely to worship

¹ A P Anyebe, *Customary Law; The War without Arms*(,4th Dimensions Publishers, 1985), 31

men. The second conference was held in Rome and its agenda were as follows:

1. Did women have souls equal to men and capable of going to heaven?
2. Are they entitled to worship?
3. Should women be taught religion²

These conferences and their agenda only illustrate how women were ranked. There appear to be a consensus that the oppression of women was even more endemic. In traditional societies such as Nigeria and African³ at large, women were under the complete dominance of their fathers, later their husbands and other members of their family. The girl child was despised from birth.

These led to the enactment of statutes protecting the rights of women against harmful traditional practices in Nigeria including other International Convention of discrimination against women, to which Nigeria is a signatory. Such laws as Abolition of Harmful Traditional Practices Against Women and Children 2000; African Charter on Human and People Rights 1981; Violence Against Persons Prohibition Act 2015; Convention on the Elimination of All forms of Discrimination Against (CEDAW) 2000; The Female Circumcision and Genital Mutilation (Prohibition) Law 2000; Malpractices Against Widows and Widowers (Prohibition) Law 2004; Protection Against Domestic Violence Law 2007 and others. It is sad to note however that despite these laudable enactments harmful traditional practices are still very rampant in Nigeria, especially

² A P Anyebe, (n- 1)

³ Abdul Mumin Sa'ad, "Socio-cultural impediments to women's rights;" *The case of Borno State; Human Rights Democracy & Development in Nigeria*. 1999, Legal Research & Development Centre. Vol. 1, 207

in rural area. This paper seeks to critically examine the harmful traditional practice against women under the customary laws in Nigeria and proffered suggestions were necessary.

2.0 Conceptual Definition

2.1 Woman

The Oxford Dictionary⁴ defines woman as an adult female person. Black's law⁵ dictionary defines a woman as the gender that conceives and gives birth to offspring. Woman therefore is to be handled with care and honour not subjugated to inhuman and degrading customs such as forced marriage, awkward widowhood rites, female genital mutilation and discriminatory policies and customs.

2. 2 Right

The concept right is not one that is easy to define. The Back's law⁶ dictionary defines it as that which is proper under law, morally or ethics; something that is due to a person by just claim, legal guarantee, or moral principle..., it went on to say that;

Right is a correlative to duty where there is no duty, there can be no right. But the converse is not necessarily true. There may be duties without rights. In order for a duty to create a right, it must be a duty to act or forbear

⁴ Joyce M. Hawkins, Oxford Dictionary (New Edition, London, Charles letts Co. Ltd, 1995) 484

⁵B A Garner, The Black's Dictionary(9th ed. Thomas Reuter Business, 2009), 1346

⁷ *ibid*, 1436.

In the case of *Afolayan v. Ogunrinde*⁷, the Supreme Court affirmed that a right is an interest acknowledged and safeguarded by the law. This entails a threefold relationship in which the owner of the right holds a position that includes:

- a. It is a right against some person or persons
- b. It is a right to some act or omission of such person(s)
- c. It is a right over or to something to which the act or omission relates.

In Nigeria, amongst others, the right to dignity of a woman and against discrimination is frequently violated. Such as the degrading treatment given to widows such as shaving of their hairs, giving them the water used in bathing their dead husbands to drink (to prove innocence of the cause of the husband's death). This is never done to a man who lost his wife. Also, she is despised and degraded when she bears only female off springs. There are also a number of cases of violence against women classified as domestic violence, rape etc. These incidents violate the African Charter on Human and People's Right (1981) which has been ratified and adopted by Nigeria.⁸ The Constitution of the Federal Republic of Nigeria 1999 as amended, ensures the safeguarding of fundamental human rights.

2.3 Discrimination

This is defined as 'unfavourable treatment based on racial, sexual and prejudices'⁹. Gender discrimination occurs when gender groups effect allocations which disproportionately disadvantage a gender group. Such disfavour is explicable in

⁷(1990) 1 N.W.L.R. (Pt 127), 369

⁸ See also the case of *Fawehinmi v Abacha* [1996] 6 NWLR (pg475) 710 at 747

⁹Joyce M. Hawkins, Oxford Dictionary

terms of prejudiced or bigoted disvaluing of gender in question. This is against the law which is said to be colour blind, sex neutral and without the thought of religion¹⁰. The subjection of women to various form of discrimination is universal generally. Nigeria has its own share of discriminatory practices and policies, though in section 42 of the 1999 constitution as amended the right to freedom from discrimination is provided. This stipulates that none should be discriminated on the basis of origin, sex, religion or political opinion.

Customarily we witness widowhood rites but never 'widower hood rites'. The men on losing their wives never go through such degrading conditions that constitute widowhood rites. Furthermore, Nigerians greatly mind the sex of their babies. For instance, the igbo man though wanting children he necessarily prefers males (this is prevalent in most ethnic groups in Nigeria). This he¹¹ terms 'nwabugwu', a child is prestige but to him a baby boy is more prestigious than a baby girl.

The Beijing conference 1995 amongst its declarations in no. 8 expresses a dedication to:

The equal right and inherent human dignity of two men and other purposes and principles enshrined to the Universal of Declaration of human rights and other international human right instruments.

¹⁰ T Campbell, Sex Discrimination: Mistaking the relevance of Gender. Some Aspects of Sex Discrimination edited by Mac lean and Burrows; MacMillan Press 1988, 22-, 23

¹¹ M P Eboh, *Philosophical Critism Anthology of Gender Issues*(Pearl publisher 2000) 69

Also, there should be a full implementation of the human rights of women and the girl child as an inalienable integral and indivisible part of all human rights' fundamental freedoms.

In addition, article 1 of Convention on Elimination of all forms of Discrimination Against Women (CEDAW) produces that; for the purposes of the check, the term discrimination against women" means; any exclusion or instruction made on the basis of sex which has the effect of purpose or impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women of human rights and fundamental freedom in the political, economic, cultural, civil or any other field. Nigerian government ratified this convention in 1985 and has since made its initial and subsequent reports to the committee.

Moreover, the African Charter on Human and People's Right provision in article 2 that;

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

Article 3 provides that every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degrading of man particularly, slavery, slave trade, to the cruel in human or degrading punishment and treatment shall be prohibited.

Finally, the population of women in Nigeria is far more than that of the men but representation of both sex in political scenes and state affairs is a poor reflection of this population.

The attitude of the society is that the women's place is only in the kitchen and household chores. All these attitudes and *socio-cultural beliefs add up in creating discriminatory practices policies and laws.*

2. 4 Customary Law

Customary law never lends itself to an easy definition due to the varied nature of traditions and customs of the African society. There are as many customary laws as there are ethnic groups although at times certain ethnic groups may have similar customary laws. Onuh¹², defines Nigerian customary law go as follows:

Customary law means rule of body of customary rules regulating rights and imposing correlative duties being customary rules or body of customary rules which obtained are fortified by established usage and which are appropriate and *applicable to any particular case, mailer, dispute, issue or question.*

Elias in his book titled "The Nature of African Customary Law"¹³ says that the customary law of a given community is the body of rules which are recognized as obligatory by its members on the principles of their social imperative and is a dynamic social conduct, an accepted behaviour which the vast majority or

¹²Azogu Udom, "Women and Children: A Disempowered Group Under Customary Law" in *Towards a Restatement of Nigeria Customary Law*, (1999), Federal Ministry of Justice Law Review Series Vol. 10, 130

¹³(1956) , 55

its members regard as absolutely necessary for the common wellbeing.

Not every form of social conduct fits into the definition of customary law even if well established. It would fail to meet the criteria of being a law if its violation only elicits disapproval or disdain from society. It has to be those norms the violation of which calls for the employment of sanction directly affecting property or status of the offender.

In the Supreme Court case of *Kharie Zaidan v. Fatima Khalil Mohssen*¹⁴, the court provided the following definition for customary law:

Customary law is a system of law, not being the common law (of England) and not being a law enacted by a competent legislative in Nigeria, but which is enforceable and binding within Nigeria as between the parties subject to its sway.

Justice Obaseki in the case of *Onyewumi v. Ogunesa*¹⁵ stated:

Customary law is the organic or living law of the indigenous people of Nigeria regulating their lives and transactions. It is organic in that it is not static; it is regulatory in that it controls the lives and transactions of the community subject to it. It is said that the custom is a mirror of the culture of the people.

¹⁴ (1973) ANLR 740 at 753

¹⁵ (1990) 3 NWLR (Pt. 137) 182 at 207

The use of the word 'custom' to describe 'customary law' however does not detract from its merit as law. Custom is a particular way of behaviour which because it has long been established among members of a social group or tribe can develop and acquire the force of law or right. In other word, custom itself is known to be a practice or usage that by common adoption and acquiescence, by long and unvarying habit, has become compulsory, and has acquired the forces of law with respect to the place or subject matter to which it relates. In *Lewis v. Bankole*, Osborne C. J. held that¹⁶:

One of the most striking features of West African Native and Customs is its flexibility, it appears to have been always subject to motives of expediency, and it shows unquestionable adaptability to altered circumstances without entirely losing its character.

Also, its acceptance is an obligation by the community. It is largely unwritten though the Islamic law is an exception to this feature.

2.5 Muslim law /Islamic law

The Muslim law on the other hand is received customary law which was introduced into the country as part of Islam and also applicable to members of the same faith. Thus, it is principally written having its source as the Holy Koran, practice of the prophet (the Sunna). Moslem law is alternatively known as Sharia law (the sacred law of Islam). The version of Muslim law in force in Nigeria is muslim law of Maliki school.

Finally, for a customary law to be recognized by the courts in Nigeria it must be seen as enforceable by passing three

¹⁶ (1908) 1 NLR 81 at 83

important tests. These are; repugnancy test; emphasis is laid on the customary law not being repugnant to natural justice, equity and good conscience. In *Dawodu v Danmole*¹⁷ the Judicial Committee of the Privy Council not only approved of the rule of Yoruba customary law styled -idi-igi under which the deceased's widows constitute the unit of inheritance, but also held that due recognition must be given to the circumstances availing in a polygamous society such as Nigeria. This passed the repugnancy test. In *Chawere v Aihenu & Anor*¹⁸ it was held that any rule of customary law even if proved to the effect that an adulterous wife ipso facto of the adultery became the wife of the adulterer would not be judicially enforced because of the repugnancy-doctrine. Another necessary quality of any customary law is that it must not be inconsistent with public policy. Thirdly, it must not be in conflict with any existing written law at that time.

3.0 Main Features of Customary Law Affecting the Rights of Women in Nigeria

Human rights as inalienable rights of man are non-existent as far as our customary laws regarding women are concerned. The concept of women being regarded as chattel and articles of property to be used at will and discarded at any time dominates our customary laws on *marriage, divorce, property ownership, intestate succession, inheritance laws* and also reflected in the harmful traditional practices prevalent in the ethnic groups of Nigeria.

Customary law marriage encourages polygamy which has the characteristic of making women or wives valueless. The

¹⁷ (1962) 1 ALL NLR (Pt 4) 702

¹⁸ (1935) 12 NLR 4

traditional marriage arrangements in some ethnic communities go with an outrageously high bride price which makes the women to be portrayed as indeed an article for sale. Thereafter, remain treated as an article purchased after marriage. Practices such as rite of inheritance and custody rights, lack of economic independence are founded on this idea of the woman being the property of the man. The wife is seen as an investment to yield profit in the light of a baby breeding machine, servant and subordinate to the husband. Having, just the sole role of looking after the home, assisting in farming or trading as the case may be. It is no surprise that wife battery is a common feature even in present day marriages with this concept of the position of a wife in the family. Women in some communities are treated like beast of burden for instance in Ijaw land, the woman works hard to feed the man or her husband.

Also, under customary law the reproductive rights of women are far from being recognized, the existing traditions encourage as many children as wanted by the husband. Under Islamic law, there is the provision of "Ijabr" which gives a father the right to compel his virgin daughter into marriage without her consent, even if she has not attained puberty. This has gone a long way to encourage early and forced marriages in the Northern areas and some Muslim Communities of South Western Nigeria. This practice comes with its fatal consequences of health problems such as *Vesico Vaginal Fistula*. This occurs due to the fact that the body of the girl is not matured enough to carry pregnancy and in the course of labour there is a tear in the bladder due to prolonged labour caused by under developed pelvic cavity. The victim becomes a societal stigma because she smells from the leakage of urine and faces caused by the torn bladder.

Divorce is allowed under customary law but it is the men mostly who have recourse to it. The husband can merely ask the woman to go away portraying her as an article that can be discarded and another bought thereby reducing the worth of women.

Hence, in applying the repugnancy doctrine, the court held in *Solomon v Gbobo*¹⁹ that such custom which allows a husband to divorce his wife at will, but the wife could not obtain a divorce unless the husband consented was contrary to natural justice, equity and good conscience and therefore not enforceable under section 20(2) of the Rivers State High Court Law 1963.

Property rights and inheritance under customary law are generally heavily weighted against women; their rights of inheritance amongst other rights suffer unduly in the fact of systematic gender discrimination and oppression. Note that there is a slight difference between the word 'succession' and 'inheritance'. Succession refers to the transfer of all the legal attributes of the deceased, including their roles as a spouse, parent, leader of the family, property owner, debtor, creditor, and any ongoing legal proceedings. Inheritance on the other hand means taking over on death the property of the deceased holder. The latter would be considered here in relation to the ethnic groups of Igbo and Yoruba. Yoruba customary law of inheritance under the Yoruba customary law, it is the children of the deceased, whether male or female, who are entitled to succeed the deceased father's property on his death. This property is under the management of the eldest surviving son "dawodu" of the deceased. The estate is divided among the children, either equally per capita ("ori-jori") or by representation ("idi-igi") if the deceased had multiple wives. In

¹⁹ 1974 4 E CSLR 457

*Sule v Ajisegeri*²⁰ it was held that the sharing must be equal between those entitled children regardless of sex.

In contrast, a wife has no right of inheritance in her deceased husband's estate. They are even seen as forming part of the estate of their husbands. As demonstrated in the case of *Suberu v Sunmonu*²¹ Jibowu, F. J. noted:

It is a well settled role of native law and custom of the Yoruba people that a wife herself is like chattel to be inherited by a relative of her husband.

Furthermore, in the case of *Sungunro Davies v Sungunro*²², Beckly J expressed that the rationale behind withholding inheritance rights from a wife in her deceased husband's estate was rooted in the principle that property succession under native law and custom is determined by blood ties. Therefore, it seems the administration of estate law 1988 applicable to the whole Yoruba land which gives spouses right to succeed to each other's property does not apply to person subject to customary law.

In the vast majority of Igbo communities, the family grouping is patrilineal²³ strictly. The general rule is that, if a man dies all his property passes to his eldest son, if he is old enough to look after them. Thus, inheritance is based on the principles of primogeniture which is, succession by the eldest son, known as '*okpala*' or '*diokpa*'²⁴. In the case of the deceased being a

²⁰ 13N.L.R. 146

²¹ (1956) 2 F.S.C. 33

²² (1929)2 N.L.R. 79

²³ It has been observed that no Nigerian ethnic system fits into the pure form of matrilineal inheritance - right of succession though remains

²⁴ Joy Ezelio, *Laws and Practices Relating to Women's Inheritance Rights in Nigeria*, (Enugu, Women's Aid Collective, 2000) 12

polygamist, the eldest sons of each of the wives may take part in sharing of the intestate.

Daughters and wives however have no right or say concerning the inheritance of their father's movable and unmovable property. According to some customs, wives do not inherit due to the belief that women are considered as property to be inherited themselves. In *Nezianya v Okagbue*²⁵, the Supreme Court held that;

Under the native law and custom of Onitsha, a widow's possession of her deceased husband's property is not that of a stranger and however long it is, it is not averse to her husband's family and does not make her owner. She cannot deal with property without the consent of his family she cannot by the defluxion of time claim the property as her own, if the family does not give their consent, she cannot, it would appear deal with the property. She has however, the right to occupy the building or part of it but this subject to good behaviour. Further, the court stated that no e.g. unity arose in the widow's favour through long possession, it having been acquired by her qua member of her husband's family with consent actual or implied of his family.

After 20 years this position was reaffirmed in the decision made by the Supreme Court in *Nzekwu v Nzekwu*²⁶ where it was maintained that the interest of the widow in the house is possessor and not proprietary so that she cannot dispose of it.

²⁵ (1963) All N.L.R. 358. S. c

²⁶ [1989]2N.W.L.R. 373

Daughters do not also inherit under the Igbo customary law²⁷. An exception to this is through the 'Nrachi' or 'Tdegbe' practice. This is when the daughter chooses to remain unmarried in her father's house with a view to raise children in the father's name. This is quite discriminatory because serious conditions are placed on the female gender before taking part in the inheritance of property, but such are not placed on the males, the fact that they are males prevails.

In the case of *Mojekwu v Mojekwu*²⁸, however, the Appeal Court held unconstitutional and contrary to democratic values an age long Igbo customary law under which males and not females inherit their father's property. According to Justice Niki Tobi, who delivered the lead Judgement;

All human beings male and female are born freely without any inhibition on grounds of sex; and that is unconstitutional any form of societal discrimination on ground of sex, apart from being unconstitutional is antithetic to a civil society built on the tenets of democracy which we have freely chosen as a people we need not travel all the way to Beijing to know that some of our customs, including the Nnewi "oli-ekpe" custom relied upon by the appellant are not consistent with our civilized world in which we all live today, including the appellant, in my humble view, it is the monopoly of God to determine the sex of a baby and not the

²⁷ Also in Bini, it is based on Primogenitive. The eldest son takes after performing the full burial ceremony; *Ogiamen V Ogiamen* [1967] N.M.L.R. 245; *Lawal-osuola v. Iyadia Modupe Osuola* [1993] 2 N.W.L.R. 158

²⁸ [1997] 7 N.W.L.R. 283; Also *Mojekwu V Ejikure* [2000] 5 N.W.L.R.(pt 657) held against "Nrachi' custom

parents..... Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affront on the almighty God himself let no body do such a thing. On my part I have no difficulty in holding that the oli- ekpe custom of Nnewi is repugnant to natural justice.

The Supreme Court in the cases of *Amusei v Olawumi*²⁹, *Ukeje v Ukeje*³⁰ and *Anekwe v Anekwe*³¹ abolished the Igbo customary law that barred females from inheriting the property of their husbands and fathers.

It should be noted that despite these celebrated Nigerian Supreme Court cases on inheritance the customary law practice on inheritance is still very dominant especially in the rural area of Nigeria. More proactive steps therefore still need to be taken especially because of women in rural area of the country.

Consequently, women married under the act enjoy better inheritance rights than those under customary laws. There should be legislation and measures taken to make sure that all marriages enjoy equal status.

4.0 Harmful Traditional Practices against Women

Recognition of the importance of human rights protection of women and girl-child against harmful practices such as female circumcision or female genital mutilation, early girl-child marriage or forced marriage and widow hood rites, is reflected in the fact that;

²⁹(2002)12 NWLR(Pt. 780), 30

³⁰(2014)11NWLR(pt. 1418), 384

³¹(2014)9 NWLR (pt.142), 393

1. *Women and girl-children are entitled to full rights protection because they are human beings and second, they constitute the most vulnerable segment of humanity.*
2. *Such harmful practices are violation of the internationally guaranteed socio-economic rights of women and girl children to health and education, their fundamental human rights to life and human dignity, they are dehumanizing and discriminatory, and finally, constitute violence against women³²*

4.1 Female genital mutilation

This is one of the oldest and most enduring traditional practices in certain regions, often referred to as 'female circumcision' or more accurately, female genital mutilation (FGM), it is a summation of all procedures that include the partial or total removal of the external female genitalia. The World Health Organization defines FGM as follows:

Female genital mutilation comprises all procedures that involve partial or total removal of the female external genitalia and or injury to the female genital organs for cultural or any other nontherapeutic reasons.

This definition is endorsed, among others, by the regional plan of action aimed at expediting the eradication of female genital mutilation in Africa. The plan of action noted that this is deeply rooted in traditional practices, a form of violence against women resulting in severe adverse effects on health and reflecting the discrimination experienced by women and girls.

³² Women Advocates Research & Documentation (WARD) et al, *Sharia & Women's Human Rights in Nigeria: Strategies for action*, 2002

It also violates the guarantee against torture and inhuman or degrading treatment in sec 34(1) of the 1999 Nigerian constitution as amended.

The Urhobo and Isoko women are normally circumcised at advanced stages of their pregnancy which can cause material mortality from infection complication or other complications during child birth. Among the Ijaw of Rivers state e.g. (*Aboh and Patani*) *circumcision is still practiced with the belief that until a girl is circumcised, she is not fit to be called a woman. Thus, done before she gets married or after the first child.*

The reasons for this practice range from socio-cultural to psychological, hygienic, aesthetic and even religious. The common explanation which seems to cut across ethnic and religious boundaries however that is the practice serves to prevent sexual promiscuity among young girls, thereby making them better wives and mothers³³.

Finally, even though there are laws prohibiting female genital mutilation, it is still more practice in the rural area or communities in Nigeria due lack awareness of the laws or probable because of hygienic, aesthetic and religious belief.

4.2 Widowhood Practices / Rites

The grief that death brings especially to close associates is always much. The widow in Nigeria faces more challenges because the death of their husband does not simply represent the passing away of a partner and bread winner but also a change in her social status, other situations include the ordeal which most Nigeria widows go through. Such rites are at times both inhuman and dehumanizing.

³³Tbid , 68

Widowhood rites have been identified as the most persuasive form of human rights abuse involving women in Nigeria. This is largely because the various widowhood rites prevalent among the Nigerian ethnic groups have been known to inflict either physical and psychological violence to women or the widow.

Among the Edo, Esan community the mourning period is seven days, in which she eats from unwashed plates using her left hand. Sometimes, the leg of the dead man is washed and the widow is asked to drink the water or swear before an oracle in the presence of the elders to prove her innocence concerning the death of her husband. The situation is not very different from what obtains in Anambra state.

Overall, widows are subjected to the following in most ethnic groups of Nigeria;

- a. Disinheritance
- b. Forced marriage to in-laws (wife inheritance)
- c. Prolonged mourning for weeks, months or for over a year
- d. Restriction to the house
- e. Forbidden from eating certain food items
- f. Forced to sleep with the corpse
- g. Required to wear dark/dull mourning clothes for weeks or for a period of a year
- h. Forced out of matrimonial homes
- I. Forced to take cold water bath
- J. Forced to wail incessantly to show remorse and grief
- K. Forced to shave the hair on their head and /or the pubic region

I. Deprived of basic personal hygiene i.e., prevented from bathing for several days³⁴.

The gravity of the practices however, depends on the demands of individual families and to some extent depends on the good will or the relationship between the widow and her husband's relatives.

Finally, widowhood rites are harmful practices that constitute denial of widow right to the freedom of choice and association, degradation and dehumanization of the widow, exploitation and impoverishment of the widow, exposure to health hazards and imposition of low quality of life and reduce self-esteem and engender gender violence³⁵

4.3Widow Inheritance / Leverage Marriages

This is the practice of marrying the widow of one's brother. It is brought about by the conception of marriage as being to the family of man. Sometimes the widow's opinion is not sought. In many localities however though widow inheritance still prevails it is done with less compulsion than before, once the period of mourning is over the widow is presented with the option of being inherited especially if she is still of reproductive age. In many communities of Nigeria however the woman is not in any case compelled to remain in the late husband's family if she chooses not to do so. But at most times, if she chooses to go, she automatically relinquishes her right to the late husband's property and lose custody of her children, though she may be

³⁴Civil Resource Development and Documentation Centre (CIRDDOC), Reproductive Health and Rights in Nigeria, Public Education Series No. 7,4th Dimension Publishers, 2002.

³⁵Women Advocates Research and Document (WARDC) et al, Sharia and Women's Human Rights in Nigeria: Strategie for Africa, 72

allowed visits. This has been discovered to be the same for Muslim widows.

4.4 Certain practices under sharia that affect women

The women can never be in from or near the front row to pray. They are relegated to the rear. In their wildest dreams they cannot lead prayers in the mosque or aspire to be Imams. Also, there is the practice of 'purdah' which involves the confinement of Muslim wives (to the backyard at most times). There are seen only by their husbands thereby having their freedom of movement highly restricted.

5.0 Conclusion

The Nigerian legal system can be said to have laws that recognize and protect the rights of women. Amongst such laws mainly is the guarantee of fundamental human rights for both men and women, specifically section 42(2) of the Constitution of the Federal Republic of Nigeria 1999 as amended which furnishes freedom from discrimination on the basis of sex inclusive and other laudable enactments. Despite these provisions, there are still found discriminatory customary laws practices, and customs that continually violate the rights of women. Also, it could be said that the implementation of the laws provided are in certain occasions flouted on societal prejudices having root in socio-cultural attitudes targeting the female population. Customary law is one weapon that greatly violates the right of women as portrayed in harmful traditions deeply rooted in the culture of the people. This makes a change in this area to be met with strong resistance and the attitude of seeing the one that wants a change for the better to be one that is at fault and in need of an orientation of their customs and traditions.

6.0 Recommendations

The 'gate keepers' of tradition should be enlightened on the adverse effects of these practices and clear their minds of the fables and evil consequences that are believed to go with failure to perform such rites. It is not just enacting Acts that matter but there should be massive and extensive education of various targeted groups such as policy makers, opinion moulders, traditional rulers, community leaders, different women and men groups, traditional birth attendants, traditional zealous youths and school children.

Education and knowledge are key tools in attaining freedom therefore conferences, seminars and social means by which information can be disseminated should be funded and sponsored by Government and NGOs in order to enlighten women and how to enforce their rights.

The court should continue to use the repugnancy test to reduce the influence and effect of the harmful customary laws practice and customs. To prohibit such practices of circumcision and unhygienic parts amongst other degrading parts which the widow is made to play in the burial of her late husband.

Existing laws that are inadequate for the protection of the rights of women should be updated and abolished in Nigeria. The Constitution in the provision against discrimination should define discrimination and encompass all forms of existing discriminatory laws, practices, customs and tradition.

There should be the domestication and effective and full implementation of international treaties and local enactments promoting the rights of women.

Special Enforcement Taskforce should be constituted to implement or enforce these laudable enactments against women rights and harmful tradition practices against women, particularly in rural areas.

The Nigeria Bar Association should be prepared and ready to provide legal aid to women of less privilege or poor who rights have been infringed upon or violated but were unable to afford the cost of litigation.