

**CUSTOM TO STATUTE: NAVIGATING THE TRANSITION OF MARITAL FRAMEWORKS
AND ITS LEGAL IMPLICATION IN NIGERIA**

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Abstract

This study explored the transitioning of customary marriage to statutory marriage within the framework of law. This study critically examined the transition from customary to statutory marriage laws, analysed the legal, social, and human rights implications of this transformation. Doctrinal legal research was adopted with analysis of primary sources of law, such as statutes, judicial precedents and customary laws which were systematically reviewed to strengthen the study. Complementing this study, secondary sources of law such as peer-reviewed journals, books written by renowned scholars were examined. The justification for the adoption of this methodology was to facilitate the understanding of the former legal provisions and the lived experiences of families operating within these legal systems. The study revealed, among other findings, the prevalence of legal uncertainty, whereby both customary and statutory marriage laws lead to conflicts in legal interpretation and enforcement. The study concluded that the transition from customary to statutory marriage laws present significant, legal, social and human rights challenges while statutory laws aim to establish uniform legal standards. Finally, an attempt was made at recommending desirable reforms with a view to resolving the conflict which has been brought into being by such a conversion. The study recommended, among others, that there should be harmonization of legal frameworks to integrate customary and statutory marriage laws to create a more cohesive legal system.

Keywords: Customary marriage, Statutory marriage, Transition, legal system, Marital Frameworks, Inheritance.

1.0 Introduction

Marriage is universally acknowledged as the union between a man and a woman to create a relationship of husband and wife. It is a form of marital relationship voluntarily entered into between a man and a woman and thus a special legal union other than a mere contract is created. Each legal system determines the legal consequences of the relationship between a husband and a wife. A legal system has the capacity to dictate various forms of marriage. Whereas in Nigeria, our legal system permits both Customary, Islamic and Statutory marriage, only Statutory marriage operates in Europe. This form of marriage is as defined by Lord Penzance in *Hyde v Hyde*² as the "...the voluntary union of one man and one woman to the exclusion of all others". The consensual union of man and woman is one common fact of every marriage, though it may possess diverse features according to the law under which it was contracted. In Nigeria, marriages are constituted in accordance with the native law and custom. This normally reflects the locality where the marriage is being celebrated. Marriages that are celebrated in compliance with custom and native law are potential polygamous marriage and typically known as customary marriage. Polygamous marriage can be a man marrying many wives and can also be a woman marrying many husbands known as polygyny, a hybrid of polygamy (This is however not common in Africa but in Asia continent).

Marriages are also contracted in compliance with statute and this underscores statutory marriage which only allows for a man and a woman exchanging vows. Thus, with this type of marriage, a monogamous marriage is established and any further marriage contracted makes a man in the picture culpable of the offence of bigamy. This type of marriage came with the colonial masters because it is English in nature and rolled up with Christian religion. The institution of marriage varies significantly across different cultures and legal

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² (1866) LR 1 P&D 130

systems. In many regions, customary marriages are deeply rooted in cultural traditions and societal norms, often lacking formal recognition under statutory law. This study addressed the pivotal question: What are the legal effects and implications when a customary marriage transitions into a statutory marriage? The transition from customary to statutory marriage is not merely a procedural change; it encompasses a broader spectrum of legal, social, and economic dimensions. As societies evolve and legal frameworks adapt, understanding these implications becomes crucial for legal practitioners, policymakers, and community leaders.

The legal landscape surrounding marriage in many jurisdictions often encompasses various forms, including customary and statutory marriages. Customary marriage, rooted in cultural traditions and practices, coexists with statutory marriage, which is governed by formal legal frameworks. Each legal system determines the legal consequence of the relationship between a husband and a wife. The concept of transitioning from a customary marriage to statutory marriage is a situation where parties to a legally constituted customary marriage decided to contract statutory marriage. Some parties to customary marriage out of the reasons best known to them decided to make their marriage come under statutory marriage again. Incidences and consequences of each form of marriage is governed by their respective laws. While the statutory law is governed by the Matrimonial Causes Act, 1970³ and thus remain in the exclusive domain of the federal government, the remaining ones, e.g., customary and Islamic marriages are governed by laws made by the respective states. Unlike the Islamic marriage which permits a man to legally marry to as many as four wives once he is able to take care of them, a man under customary marriage can marry as many as he wishes. Even though these marriages have been operated side by side in our country Nigeria, the legality of each has never been an issue⁴. A man who contracted marriage under other forms of marriage cannot validly contract marriage under the Marriage Causes Act with another person without running afoul of the law. A man is thus given the leverage to contract a marriage under the statute once it is with the same person he married under the customary law without more. There is protection for him under the Marriage Cause Act⁵.

This is thinly differentiated from double decked marriage as canvassed by Dr Olatubosun⁶ in his write up in that a man may set the process on from the onset to do the two marriages as it is commonly practiced, whereas transitioning from one marriage to the other envisages a situation whereby married couples under the law come under statutory marriage. The scenario can thus be interpreted as follows. If A married B under the customary law and for some reasons best known to them A decided to marry the same B under the law this is transitioning, and this is the central focus of this paper. It is distinguished from where A married B by first of all satisfying all conditions and processes under the customary law and ended it under statutory law just at a swoop or immediately and/or concurrently without any period of marital life in between the two. Quite often in Nigeria, and especially among the Yoruba of Southwest, couples start their marriage first by fulfilling every condition to establish their customary marriage and immediately fulfilling conditions under Marriage Act to ensure their marriage comes under statutory marriage because of some perceived advantages⁷. At every stage of each of the marriages, legal consequences are involved. While at the customary marriages, legal rights and consequences are involved and the statutory marriage to which the marriage has transitioned/transformed also carry its legal rights and consequences. Examining this situation is very crucial to this study because the personal affairs of parties to such marriages are subject to the combination of these marriages. This informed the submission of Prof. Ijalaye and other prominent scholars thus,

“of all the laws that Nigeria imported from England, none has been treated with disregard and reckless abandon as the Nigeria Marriage Act whose provisions are regularly being

³ Matrimonial Causes Act, 1970

⁴ Marriage Act Cap 218 of 1990. s.33 (1); as it gives teeth to the other forms of marriage or see 3(1)(a) of Marriage Causes Act of 1970.

⁵ Marriage Cause Act, 1970

⁶ A Olatunbosun, Double-Decker Marriage in Private International Law: A Dialectical Appraisal, *Indian Journal of International Law*, (2004) 44(1) 139.

⁷ Marriage Act Cap 218 of 1990

violated with impunity by the Nigerian people who also have the privilege of two other systems of marriage laws”⁸.

Aligning almost in the same tone is Prof. Jadesola, she submitted that “as expected, the dualism of English and customary law and the multiplicity of customary laws raise problems of local conflict of laws”⁹ In Nigeria and other societies, be it Africa, Asia, English, European and America, marriage is recognized as a social institution of remote antiquity, an institution that has been with human race since creation according to Bible. Originally, customary law dictated the tenets and practices of marriage in Nigeria. The customary law however recognized the peculiarity in each of the various tribes but almost always recognizing the same concept, principle and formalities.

The first type of marriage in Nigeria is the customary marriage. The coming of the European and colonization brought Christianity in 19th Century and with its spread in Nigeria, English concept, principle and formalities of marriage were thus imported into Nigeria. The need to regulate the laws of marriage in Nigeria led to the promulgation of Marriage Ordinance of 1863, replaced in 1914 and later styled Marriage Act of 1914. The second valid and subsisting legislation relating to marriage in Nigeria is the Marriage Causes Act of 1970. The concept of marriage having found its way into our marriage system thus established Statutory marriage in Nigeria. The customary marriage in Nigeria, until year 2000, encapsulated Islamic marriage, but with the enactment of Sharia law in some States in the North, it is doubtful whether Islamic form of marriage will be classified under customary law. One only needs to wait for Courts declaration/pronouncement on this. With the above background, one can safely argue that marriage can be found under three different types viz, Customary marriage, Statutory marriage and Islamic marriage in some Northern States of Nigeria. It is however usual to see couples observing more than one of these types of marriage. At least many couples contract marriage under two forms of marriage listed above.

Presently in Nigeria, there are three forms of marriage: viz Customary, Islamic and Statutory. For the purpose of this paper, I will proceed to examine Customary marriage vis-a-vis Statutory marriage. These forms of marriages have operated side by side with one another in Nigeria without any form of conflict because the Marriage Act by its Section 33(1) has a protecting provision to avoid conflict of any form. Section 33(1) of the Marriage Act¹⁰ states that,

“A Statutory marriage is void where either of the parties to it is already married by the native law and custom to any person other than the person with whom the Statutory marriage is being contracted.”

There have been a lot of reasons why people engage in transitioning. Over time, the following reasons have been identified, first, the desire to obtain a legal recognition instead of been taken as a wife without value, women often clamour for protection which they normally see as well secured under statutory marriage. It is always their desire to obtain legal recognition and protection of their marriage and rights, second, the quest to secure some inalienable rights especially right to inheritance and property for the offspring of marriages as greatly dictated the drive for transition. Couples want to know what happens to their offspring after their demise and always move to look for a better way to secure such rights. Transition is therefore often explored to secure inheritance and property rights for the spouse and children. Third, there are a lot of benefits that are inherent in statutory marriages which couples that have hitherto married under customary marriages do covet. Status of spouses under monogamous marriage is often respected by relevant matrimonial institutions, such as Court, during tendering of evidence at any proceedings in Court. Contemporary government likewise appears to be bias and often favour couples under statutory marriages when it comes to social security

⁸ D A Ijalaye, Marriage Laws in Nigeria – Harmonisation or Unification. *The Nigeria Bar Journal* Vol XII (1974) 21

⁹ J Akande, The Legal Problems of Converting a Customary Law Marriage with a Statutory Marriage (National Conference on Marriage Law in Nigeria, 1989).

¹⁰ Marriage Act Cap 218 of 1990

benefits. Statutory marriage has been seen as advantages because it assists couples to access social security benefits and other government services.

Fourth, it is always very seamless for couples under statutory marriage to surmount problems connecting documentation and secure same for international travelling. This is one of the reasons why some couples that had hitherto married under customary marriage do transit to statutory marriage. Statutory marriage easily helps to facilitate travel and immigration processes. Other reasons found settled over time hinge on couples' personal preference to formalise their commitment and marriage through a statutory process. Processes towards a recognized transition are benchmarked with couples ensuring that the couple meets the statutory requirements for marriage, such as age, consent, and capacity, gathering required documents, such as birth certificates, identification, and proof of customary marriage, submitting a joint declaration or application to the relevant authorities, stating their intention to formalise their customary marriage, and registering the marriage with the State or Government, and obtaining a marriage certificate.

Juxtaposing customary marriage and statutory marriage reveals a lot of differences while a customary marriage is a marriage that is conducted according to the customs and traditions of a particular ethnic group or community, a statutory marriage is a marriage that is conducted according to the laws of the country, typically through a formal ceremony and registration. In terms of requirements, the requirements for a customary marriage vary depending on the community, but typically involve the payment of bride price, the performance of certain rituals, and the consent of the families involved, while the requirements for a statutory marriage typically involve the parties obtaining a marriage license, undergoing a medical examination, and participating in a formal ceremony.

1.1 Research Purpose and Methodology

The study, as its primary purpose, critically examined the transition from customary to statutory marriage laws and analysed the legal, social, and human rights implications of this transformation. The study explored the tensions between customary practices and statutory regulations, investigated the enforcement challenges posed by dual legal systems, and proposed policy recommendations to ensure a harmonized and rights-based approach to marital laws with some specific objectives like; The analysis of the historical and legal evolution of marital frameworks, the tracing of the shift from customary to statutory regulation and examining the factors driving this transformation; the assessing of the extent to which statutory marriage laws align with customary norms, the exploring of areas of convergence and divergence in legal principles governing marriage, divorce, inheritance, and dowry; the examination of the impact of statutory marriage laws on indigenous marital practices, particularly in relation to gender rights, property rights, and family structures; the evaluation of the compatibility of statutory marriage laws with constitutional and international human rights norms, with a focus on the protection of fundamental rights and the promotion of gender equality; the investigation of the legal and social challenges arising from the coexistence of customary and statutory marriage laws, including jurisdictional conflicts, enforcement difficulties, and societal resistance to legal reforms and the exploring of the role of the judiciary in adjudicating marital disputes within the context of legal pluralism, analyzing case law and judicial interpretations of marriage laws.

This research adopted a qualitative and doctrinal legal research approach, focusing on legal analysis and comparative study. The methodology included a detailed examination of statutory provisions governing marriage, customary law principles, and case law precedents from various jurisdictions; a comparative study of different legal systems that have transitioned from customary to statutory marriage laws, identifying best practices and challenges; an assessment of international human rights treaties and constitutional provisions relevant to marriage law reform; and insights from anthropology, sociology, and legal pluralism was incorporated to understand the socio-cultural impact of legal transitions. The research in adopting a doctrinal method, relied on primary sources such as statutes, case law, and international legal instruments, as well as secondary sources including academic journals, books, and policy reports.

1.2. Research Problems and Limitations

The primary research problem addressed in this study is the legal challenges and implications associated with the transition of customary marriages to statutory marriages. This included the barriers faced by individuals seeking recognition under statutory law, the legal rights and protections afforded to them, and the potential conflicts that arise between customary practices and statutory regulations. By investigating these issues, the research provided a clearer understanding of how legal frameworks can better accommodate the diverse forms of marriage in contemporary society.

Marriage, as a fundamental social institution, has historically been governed by customary norms that reflect the cultural, religious, and traditional values of societies. However, the transition from customary to statutory regulation of marriage has introduced legal complexities, including conflicts between indigenous practices and formal legal frameworks. While statutory laws aim to standardize marriage, protect rights, and ensure gender equality, they often clash with deeply rooted customs, raising concerns about legal pluralism, the enforcement of statutory provisions, and the extent to which such transitions respect cultural autonomy. One of the critical challenges in this transition is the impact on marital rights, particularly regarding issues such as dowry, divorce, inheritance, and gender-based discrimination. The rigid codification of marriage laws may overlook the socio-cultural context of customary marriages, leading to resistance, non-compliance, or legal uncertainties. Furthermore, the legal implications of harmonizing custom and statute raise questions about constitutional rights, international human rights obligations, and the evolving nature of marriage as a legal contract. This study explored the dynamics of this transition, assessed its legal implications, and proposed a framework that balances statutory regulation with cultural sensitivity and human rights principles.

The study was subject to certain limitations but anchored primarily on legal and doctrinal analysis, meaning that direct empirical research on community perspectives was limited. This was as a result of lack of access to empirical data. Discussions around marriage laws often involve deeply entrenched cultural and religious beliefs. While this study adopted an objective legal approach, it acknowledged the potential resistance to statutory reforms in certain communities. Cultural sensitivity has always been a resisting factor. Marriage laws are dynamic and subject to frequent legislative amendments. The study reflected legal developments up to the time of research, but future legal reforms could impact the findings. The dynamic nature of our legal system could evolve a different legal landscape with time.

1.3 Significance of this Research

The study was considered to be significant in so many ways. It could educate all young people planning to enter into marriage with a view to count their cost and mitigate cost for expenses. It could help intending couples to make a beneficial decision that are of immediate and future benefits. The policy makers could be equipped especially when it is time to review our laws to meet the aspiration of the people and comply with cultural values and compatibility. The Law becomes home grown and autochthonous when it reflects the cultural values of the people it is meant to regulate and serve. It could also assist to broaden the knowledge of all the stakeholders in the family law practices, couples, judges and policy makers. It could also provide information for the public on how best they can conserve their scarce resources when planning for marriage. Above all, the findings could serve as a base line data for government and other agencies interested in healthy matrimonial life and stable society. In this regards our registries conducting marriages and intending couples will not necessarily be at sea when it comes to legal implication and effect of transiting from one marriage to the other could have. The transition from customary to statutory marriage laws has profound implications for legal theory, human rights, and policy-making. This research is significant in several ways, contributing to legal scholarship, legislative reforms, and the broader discourse on marital rights.

With respect to contribution to legal scholarship; this research has added to existing academic literature on marriage law by providing a comprehensive analysis of the legal transition from custom to statute. By

examining the evolution of marriage laws; this research contributed to discussions on legal pluralism, the interplay between statutory and customary norms, and the role of law in shaping societal values. With respect to its relevance to human rights and gender equality; statutory marriage laws often aim to promote gender equality by eliminating discriminatory customary practices. This research assessed the extent to which legal transitions protect women's rights, particularly in relation to dowry practices, marital consent, divorce rights, and inheritance. The findings are relevant for human rights advocates, policymakers, and gender equality campaigners. As to the impact on legal and policy reforms; this research provided evidence-based recommendations for policymakers and legislators seeking to reform marital laws. By identifying gaps and inconsistencies in statutory and customary marriage laws, the research offered insights into how legal frameworks can be improved to reflect contemporary realities while respecting cultural traditions.

On the issue of addressing legal and judicial challenges; legal pluralism presents significant challenges in the enforcement and adjudication of marriage laws. This research examined how Courts navigate conflicts between statutory and customary marriage laws, providing recommendations for judicial decision-making and legal harmonization. Lastly, on the issue of socio-cultural implications, it is important to note that beyond legal considerations, the transition from custom to statute affects social structures, family relationships, and cultural identity. This research explored how legal changes influence societal attitudes toward marriage and whether statutory regulations effectively alter entrenched customary practices.

2.0 Conceptual Clarifications, Theoretical Frameworks, Historical Foundation, and Literature Review.

2.1 Conceptual Clarifications

In this study certain concepts are defined and they are as follows;

- a. **Customary Marriage:** A marriage recognized under indigenous or traditional legal systems, often governed by unwritten customs, rituals, and community norms.
- b. **Statutory Marriage:** A marriage formalized under national legal frameworks.
- c. **Legal Pluralism:** The existence of multiple legal systems within a single jurisdiction, where customary, religious, and statutory laws operate simultaneously.
- d. **Dowry:** A cultural practice involving the transfer of money, property, or gifts from one family to another as part of a marriage arrangement, with varying legal and social implications.
- e. **Legal Codification:** The process of transforming customary or common law principles into formal statutory law through legislative enactments.
- f. **Human Rights in Marriage:** The application of human rights principles—such as gender equality, non-discrimination, and personal autonomy—to the institution of marriage.

2.2. Theoretical Frameworks

This study is guided by four key legal and socio-legal theories and how these theories relate to the transition from customary marriage to statutory marriage. They are;

- A. **Legal Pluralism Theory:** Legal pluralism recognizes that multiple legal systems coexist within a single society. In the context of customary marriage, legal pluralism acknowledges the validity of customary laws alongside statutory laws. It is relevant to this work in that it is essential for understanding the complexities of transitioning from customary marriage to statutory marriage. It

highlights the need for recognition and accommodation of customary laws within the statutory framework. It was propounded by various scholars as Eugene Ehrlich¹¹ and Marc Galanter.¹²

- B. Feminist Theory:** Feminist theory critiques the patriarchal nature of societies and institutions, including those related to marriage and family law. It is relevant to this study from the point of view that the transition from customary marriage to statutory marriage highlights the potential for gender-based discrimination and inequality within customary laws. Feminist theory advocates for the protection of women's rights and interests within the statutory framework. The proponents include Simone de Beauvoir¹³ and Catharine MacKinnon.¹⁴
- C. Human Rights Theory:** Human rights theory emphasizes the universal and inalienable rights of individuals, including those related to marriage, family, and equality. Human rights theory is relevant to the transition from customary marriage to statutory marriage as it provides a framework for evaluating the compatibility of customary laws with international human rights standards. Human rights theory advocates for the protection of individual rights and freedoms within the statutory framework. The proponents include, John Locke¹⁵ and Hannah Arendt.¹⁶
- D. Social Change Theory:** Social change theory examines the processes and mechanisms that drive social transformation, including changes in laws, institutions, and cultural norms. Social change theory is relevant to the transition from customary marriage to statutory marriage as it provides insights into the social, cultural, and institutional factors that shape the transition process. Social change theory can inform strategies for promoting social change and advancing human rights within the context of marriage and family law. The proponents include, Karl Marx¹⁷ and Herbert Blumer¹⁸

2.3. Historical Development of Customary and Statutory Marriage Laws

The evolution of marriage laws has been shaped by socio-cultural traditions, religious influences, and state interventions. Allott¹⁹ provides an extensive historical analysis of African customary law, emphasizing its communal nature and oral tradition. He argues that customary marriages, being unwritten and evolving within indigenous societies, were largely regulated by family structures and traditional authorities. Woodman²⁰ expands on this by highlighting how colonial legal systems introduced statutory marriage laws that often conflicted with pre-existing customary norms. Olivier²¹ discusses the role of colonial administrations in codifying marriage laws, noting that statutory marriage regulations were modeled on European legal traditions. This codification process, while intended to modernize legal systems, often marginalized indigenous marital practices. Himonga and Moore²² further critique the imposition of statutory laws, arguing that they disrupted existing social structures and introduced legal uncertainties, particularly regarding the recognition of polygamous marriages and divorce rights.

¹¹ E. Ehrlich, *Fundamental Principles of the Sociology of Law* (Walter L. Moll tr, Harvard University Press, 1936).

¹² M. Galanter, "Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law" (1981) 19 *Journal of Legal Pluralism and Unofficial Law* 1.

¹³ S. de Beauvoir, *The Second Sex* (H.M. Parshley tr, Vintage Books 2011).

¹⁴ C. A. MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989)

¹⁵ J. Locke, *Two Treatises of Government* (Peter Laslett ed, Cambridge University Press 1988).

¹⁶ H. Arendt, *The Origins of Totalitarianism* (Harcourt, Brace & Company 1951).

¹⁷ K. Marx, *A Contribution to the Critique of Political Economy* (Charles H. Kerr & Company 1904).

¹⁸ H. Blumer, *Social Movements* (Prentice-Hall 1969).

¹⁹ A. N. Allott, *Essays in African Law, with Special Reference to the Law of Ghana, Vol. I* (London: Butterworth, 1970) 123.

²⁰ G., Woodman. *Customary Law in a Changing World: The Crossfire of Sudan's War of Identities* (Oxford University Press, 2011).

²¹ M Oliver, 'Indigenous law and colonial codification: The impact on family and marriage law in Africa' in J Fenrich, P Galizzi and TE Higgins (eds), *The Future of African Customary Law* (Cambridge University Press 2012) 231.

²² C Himonga and A Moore, 'Reform of Customary Marriage, Divorce and Succession in South Africa: Living Customary Law and Social Realities' in J Fenrich, P Galizzi and TE Higgins (eds), *The Future of African Customary Law* (Cambridge University Press 2011) 191.

2.4 Literature Review and Comparative Insights

The transition from customary to statutory marriage laws has been widely explored in legal scholarship, anthropology, and human rights discourse. Scholars have analyzed the legal pluralism inherent in marriage laws, the role of colonial influence in statutory legal development, the impact of marriage law reforms on gender rights, and the intersection of international human rights norms with domestic legal frameworks. This review examines key academic contributions to these discussions, identifying gaps and areas of scholarly debate. This is treated in segments as shown below.

2.4.1 Legal Pluralism and the Coexistence of Customary and Statutory Marriage Laws

The coexistence of customary and statutory marriage laws within a single legal system has led to legal pluralism, a phenomenon extensively studied by Griffiths²³, who defines it as the presence of multiple legal systems governing a particular area of law. He asserts that legal pluralism in marriage law creates challenges in terms of jurisdictional conflicts, enforcement inconsistencies, and ambiguities in legal interpretation. Menski²⁴ supports this view, emphasizing that legal pluralism allows for both flexibility and conflict. He argues that in societies where customary and statutory laws coexist, individuals often navigate between the two systems based on convenience, strategic legal advantage, or cultural loyalty. Ubink²⁵ further elaborates on this by examining Ghana's dual marriage system, where couples may register their marriage under customary law, statutory law, or both, leading to legal complexities in matters of inheritance, divorce, and child custody.

2.4.2 The Impact of Statutory Marriage Laws on Women's Rights

The transition from customary to statutory marriage laws has significantly impacted women's rights, particularly in terms of marital consent, inheritance, and property ownership. Nzegwu²⁶ critiques customary marriage laws for historically subordinating women, particularly through bride price systems that commodify women and restrict their autonomy. She argues that statutory marriage laws, by contrast, provide stronger legal protections for women, including the right to divorce, legal recognition of marital property, and equal inheritance rights. Banda²⁷ examines the role of statutory reforms in addressing gender inequalities in marriage. She highlights cases where statutory laws have outlawed forced marriages, early marriages, and discriminatory inheritance practices. However, she also notes that enforcement remains weak, particularly in rural areas where customary norms hold greater authority than statutory regulations. Hellum and Aasen²⁸ analyse the impact of statutory marriage laws in Southern Africa, noting that while statutory protections exist on paper, customary practices continue to prevail in practice. They argue that legal reforms must go beyond legislation to include grassroots advocacy, legal literacy programs, and judicial training.

2.4.3 International Human Rights Instruments and Marriage Law Reform

International human rights treaties have played a crucial role in shaping domestic marriage laws. An-Na'im²⁹ explores the relationship between international law and domestic legal reforms, arguing that human rights instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Maputo Protocol have influenced legal changes in many African and Asian countries. He

²³ J., Griffiths, 'What is Legal Pluralism?' *Journal of Legal Pluralism and Unofficial Law*, (1986) 24(1) 1-55

²⁴ W Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (2nd edn, Cambridge University Press 2006).

²⁵ J. Ubink, 'The Justice Gap in Ghana's Plural Legal System: Normative and Institutional Challenges' in M Goodale and T Dijkstra (eds), *Real Legal Certainty and Its Relevance: Essays in Honour of Jan M. Smits* (Eleven International Publishing 2019) 147.

²⁶ O. Nzegwu, 'The Problem of Gender and Culture: Women's Rights, Customary Law and Sharia Law in Africa' *Journal of African Law* [2006] 14, 71.

²⁷ F Banda, 'Women, Law and Human Rights: An African Perspective', (Hart Publishing, 2020).

²⁸ A Hellum and H Aasen, 'Customary Marriage Laws and Women's Rights in Southern Africa: Balancing Statutory Reform and Customary Practice' in M Kok, S Moyo and T Gunda (eds), *Women and Law in Southern Africa* (African Books Collective 2013) 45.

²⁹ A An-Na'im, '*African Constitutionalism and the Role of Islam*', (University of Pennsylvania Press, 2010).

highlights case studies where international advocacy has led to legislative reforms banning child marriage and promoting marital consent. Holtmaat³⁰ examines the challenges of implementing international human rights standards in marriage laws. She argues that while many countries have ratified treaties promoting gender equality in marriage, enforcement is often hindered by cultural resistance, lack of political will, and weak legal institutions. Mutua³¹ similarly contends that international legal norms must be adapted to local contexts to be effective, rather than imposed in a top-down manner.

2.4.4 Challenges in the Enforcement of Statutory Marriage Laws

Despite legislative reforms, enforcement remains a major challenge in transitioning from customary to statutory marriage laws. Chuma³² explores the difficulties of enforcing statutory marriage laws in rural communities, citing issues such as lack of awareness, resistance from traditional authorities, and limited access to legal institutions. Okeke³³ analyzes case law from Nigeria, Kenya, and India, demonstrating how courts struggle with interpreting marital disputes that involve both customary and statutory legal principles. He highlights landmark cases where courts have either reinforced or invalidated customary marriage practices based on constitutional principles of gender equality and human rights.

2.4.5 The Future of Marriage Law: Trends and Emerging Issues

Looking forward, scholars predict continued legal evolution in marriage laws. Fenrich and Higgins³⁴ discuss the role of feminist legal activism in shaping future reforms, while Bonthuys³⁵ examines the potential for hybrid legal frameworks that merge statutory protections with culturally sensitive customary practices. Johnstone and Menski³⁶ suggest that technology could play a role in marriage law reforms, particularly through digital marriage registration systems and online legal education initiatives aimed at increasing legal awareness.

2.4.6 Comparative Perspectives on Marriage Law Reforms

Comparative studies on marriage law reforms provide insight into how different jurisdictions have navigated the transition from customary to statutory frameworks. Eekelaar and Nhlapo³⁷ compare marriage laws across Africa, noting variations in how customary and statutory laws interact. They highlight countries like South Africa, where customary marriages have been formally recognized by an Act within the statutory legal system.³⁸ This Act attempts to balance customary traditions with statutory protections, particularly regarding women's rights and marital registration. Glendon³⁹ examines marriage law reforms in Western legal systems, contrasting them with post-colonial legal developments in Africa and Asia. She argues that while statutory laws in Western countries have evolved to emphasize individual autonomy and gender equality, many post-colonial legal systems still struggle with the integration of customary norms. By examining jurisdictions that have undergone similar transitions, the study offered comparative legal insights into best practices and challenges in the regulation of marriage. Lessons from different legal systems will provide a global

³⁰ A. Holtmaat, 'Challenges in Implementing International Human Rights Standards in Marriage Laws: Challenges and Prospects' *Human Rights Quarterly* [2017] 39, 145.

³¹ M. Mutua, 'Human Rights and Powerlessness: Pathologies of Choice and Substance' *Buffalo Human Rights Law Review* [2002] 1 1.

³² Chuma, 'Enforcing Statutory Marriage Laws in Rural Communities' *Journal of African Law* [2017] 45(2) 123.

³³ Okeke, 'Judicial Interpretation of Marital Disputes: A Comparative Study of Nigeria, Kenya, and India' *Journal of African Law* [2021] 49(2) 112.

³⁴ J Fenrich, & T., Higgins, *The Future of African Customary Law* (Cambridge University Press, 2001).

³⁵ E., Bonthuys, *Gender and the Law in South Africa: Domestic and International Perspectives*. (Juta Law, 2018).

³⁶ Johnstone and W. Menski, 'The Role of Technology in Marriage Law Reform: Digital Registration and Legal Awareness' *Journal of African Legal Studies* [2020] 52(1), 88.

³⁷ M. A. Glendon. *The Transformation of Family Law: State, Law, and Family in the United States and Western Europe* (University of Chicago Press, 1989).

³⁸ Republic of South Africa, *Recognition of Customary Marriages Act*, Act No. 120 of 1998, *Government Gazette* No. 19578, 2 December 1998.

³⁹ M. A. Glendon. *The Transformation of Family Law: State, Law, and Family in the United States and Western Europe* (University of Chicago Press, 1989).

perspective on the evolution of marriage laws. In conclusion, the reviewed literature highlights that the transition from customary to statutory marriage laws is a complex, multidimensional process influenced by historical, legal, cultural, and international factors. While statutory reforms have introduced critical protections, particularly for women's rights, challenges remain in terms of enforcement, cultural resistance, and legal uncertainty. Future research must continue exploring the interplay between legal pluralism, human rights, and socio-legal change to ensure that marriage law reforms are both effective and culturally sensitive. This extensive empirical review provides a strong foundation for analyzing the legal implications of transitioning from customary to statutory marriage laws.

2.5 Gaps in the Literatures Reviewed

Against the background of the literature review, the following gaps were identified. First, there is a clear gap of insufficient clear guidelines and protocols for couples navigating the transition from customary to statutory marriage. Second, there is limited awareness and understanding among couples, communities, and legal practitioners about the legal implications of transitioning from customary to statutory marriage. Third, in some jurisdictions, the legal framework may not be adequately equipped to handle the complexities of transitioning from customary to statutory marriage. And finally, there is the need to balance cultural and traditional sensitivities with the requirements of statutory marriage.

3.0 Analysis of Legal and Institutional Frameworks

This section explores the national, judicial, and international legal mechanisms that regulate marriage laws, examining how they facilitate or hinder the transition from customary to statutory frameworks.

3.1. National Legal Frameworks Governing Marriage

National legal frameworks typically establish the conditions for the recognition, registration, and dissolution of marriage. In most countries, statutory laws provide specific requirements for marriage. In Nigeria, the following legal frameworks combined to govern marriage, these are, the Constitution of the Federal Republic of Nigeria, 1998, Section 33 and 43 protects rights such as dignity, family life, and property impacting how marriages and family life are structured. Sections 21 and 22 recognise the promotion of Nigerian cultures and encourage respect for customary institutions.

Marriage Act Cap M6, LFN 2004, the principal statute regulating statutory marriages in Nigeria, stipulates the process for celebration, registration, and annulment of marriages under statutory law. **Matrimonial Causes Act Cap M17, LFN 2004** governs divorce, custody, maintenance, and other matrimonial reliefs. It applies exclusively to statutory marriages. **Child Rights Act, 2003**, the Act has been domesticated in some of the states impacts family structure, especially with respect to child custody, child marriage (often linked to customary systems), and child welfare. **Violence against Persons (Prohibition) Act, 2015**, offers protection from domestic violence within marital relationships, applicable in the FCT and in some states that have adopted it. Many statutory laws set a minimum age for marriage to prevent child marriages, whereas customary practices may allow early marriages. Statutory laws require free and informed consent from both spouses, in contrast to some customary practices that permit arranged marriages. Legal registration ensures the official recognition of marriage, whereas customary marriages often exist outside formal legal documentation. Statutory laws often regulate or prohibit polygamy, whereas customary laws may recognize multiple marriages.

3.2. Judicial Interpretation and Case Law

Courts play a crucial role in interpreting and enforcing marriage laws, particularly in cases where customary and statutory laws conflict. Judicial decisions in various jurisdictions have helped clarify the legal status of customary marriages, particularly concerning; the recognition of customary marriages within statutory legal systems, the rights of women in customary marriages regarding inheritance and property ownership and the

legal procedures for dissolving customary marriages. Specifically, the case of *Meribe v. Egwu*⁴⁰ is relevant, having clarified that double marriage systems are not interchangeable and established that customary and statutory marriages are mutually exclusive when it comes to marital status. Also, *Ukeje v. Ukeje*⁴¹, a landmark decision upholding gender equality inheritance, it overruled discriminatory customary laws and reinforced the constitutional supremacy over customary practices. *Agidigbi v. Agidigbi*⁴² is significant because it confirms that marriage type affects property distribution. It also shows that the legal regime for family property rights depends on whether the marriage is statutory or customary. *Ohochukwu v. Ohochukwu*⁴³ brought to the fore a gradual judicial shift from rigid customary norms to universal child protection standards. The case also shows the capacity of the courts to balance cultural norms with modern family law principles. In the cases of *Okafor & Ors v. Okafor & Anor*⁴⁴ and *Osamwonyi v. Osamwonyi*⁴⁵, the court has clarified what it takes to contract a valid customary marriage, reiterating the payment of dowry, handing over of bride and performance of customary rites. In the case of *Nwosu v. Nwosu*⁴⁶, the issue of child custody came to the fore. The court held that under statutory marriage, child custody is judged by the child's best interest, unlike customary marriages where fathers have prima facie rights.

3.3. International Human Rights Instruments and Marriage Law Reform

International treaties and human rights bodies continue to influence marriage law reforms. Governments are expected to harmonize their domestic laws with international standards to ensure the protection of fundamental rights in marriage. The Universal Declaration of Human Rights (1948), by its Article 16(1), states that "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family." This article is very important because of its direct provisions regarding: (1) Men and women of full age... have the right to marry and to found a family... (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979). The Convention requires states to take measures to eliminate discrimination against women in marriage and family relations. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979—also referred to as the International Bill of Rights for Women is a core international treaty that directly addresses issues arising from customary and statutory marriages, especially their impacts on family dynamics and women's rights. The African Charter on Human and Peoples' Rights (1981) by its Article 18(1) emphasizes the importance of family life and the protection of family rights. The African Charter on Human and Peoples' Rights (ACHPR), adopted in 1981 (also known as the Banjul Charter), provides critical legal grounding for analysing the impact of customary and statutory marriage on family dynamics, particularly within African legal systems that operate under legal pluralism.

3.4 Institutional Framework

A good number of institutions operate to enforce the sanctity of marriage in Nigeria. These include; The National Human Rights Commission (NHRC) monitors and investigates human rights abuses within families, including violations arising from customary marriage practices. The Federal and State High Courts. They have Jurisdiction over Matrimonial Causes under Statutory Marriage. The State High Courts in Nigeria are pivotal in shaping family dynamics, especially by: Interpreting and enforcing both customary and statutory marriage laws; protecting fundamental human rights; Serving as appellate bodies from customary court

⁴⁰ (1976) 1 NMLR 47

⁴¹ (2014) 11 NWLR (Pt. 1418) 384 (SC)

⁴² (1992) 2 NWLR (Pt. 221) 98

⁴³ (2010) 1 NWLR (Pt. 1175) 513

⁴⁴ (2022) LPELR – 59136 (CA).

⁴⁵ (1972) 1 All NLR 353 (SC)

⁴⁶ (2012) 8 NWLR Pt 1301.

decisions; Ensuring alignment with international treaties and constitutional provisions. The Federal High Court, while not central to family matters, plays a supportive role in fundamental rights enforcement and treaty interpretation. The Customary Courts and Area Courts. They handle disputes arising from customary marriages, often without Written Rules of Evidence Nigeria's plural legal system accommodates customary and Islamic legal systems through Customary Courts (in southern Nigeria) and Area Courts (in northern Nigeria). These courts operate outside the formal statutory legal framework, but are statutorily recognised and serve as grassroots adjudicatory bodies for: Marriage, divorce, dowry, child custody, inheritance, family obligations under customary law.

The Ministry of Women Affairs. It engages in Policy Formulation and Advocacy Related to Women's Rights and Family Protection. The Federal Ministry of Women Affairs (FMWA) is a core institutional actor in Nigeria responsible for formulating gender-sensitive policies, protecting women's and children's rights, promoting family welfare and social development, advancing Nigeria's compliance with international instruments like CEDAW 1979, Beijing Declaration 1995, African Charter on Human and Peoples' Rights 1981. The National and State Houses of Assembly They Legislate on Marriage-Related Laws within their Jurisdictions, especially for Customary Practice. Both the National and State Houses of Assembly are critical actors in shaping the legal framework of family life in Nigeria. Their roles include: Enacting laws that regulate customary and statutory marriage, protecting the rights of women and children, transforming discriminatory customs through law reform, to improve family dynamics and gender equality, legislators must: domesticate human rights instruments, align customary law with constitutional values, respond to the realities of pluralism in Nigerian family law.

4.0 Summary of Findings

The study revealed the coexistence of so many legal systems in a single jurisdiction. The coexistence of customary and statutory marriage laws led to conflict in legal interpretation and enforcement. The study further revealed constant resistance to statutory reforms. Communities, stakeholders and practitioners of custom and native law are still of the view that customary marriage should be adhered to. They still stand in love with practices flowing from custom and native laws and find it so difficult to flow with the implications arising from transition from customary to statutory marriage. More often than not, they still bypass statutory regulations to enforce customary practices, especially when issues regarding women's rights on inheritance are considered.

It was also found that Courts still struggle to balance respect for customary traditions and the enforcement of statutory laws. Our courts are often caught in the web of uncertainty in their decision when issues touching on custom and statutory regulations are adjudicated into. Courts are always confronted with conflicts and often face herculean tasks in coming to an acceptable decision to balance respect for customary marriage and enforcement of statutory laws. The study further revealed that women's rights are still not adequately protected because of the inherent attitude of some of our courts that often lean towards customary norms and practices despite clear stance of statutory regulations. The weak enforcement mechanisms in some jurisdictions are responsible for this. It was also found out that despite the various efforts of international instruments such as conventions, treaties and protocols, there are still cultural and institutional barriers for their full domestication and implementation. While international human rights instruments promote legal reforms, cultural and institutional barriers hinder their full implementation.

5.0 Conclusion and Recommendations

The transition from customary to statutory marriage laws present significant legal, social, and human rights challenges. While statutory laws aim to establish uniform legal standards, they often face resistance from traditional authorities and communities. This study highlighted the need for legal harmonization, effective enforcement mechanisms, and cultural sensitivity in implementing marriage law reforms. By balancing legal modernization with respect for cultural traditions, policymakers, legal practitioners, and human rights

advocates can work toward a more inclusive and equitable marital framework. This study contributed to legal scholarship by providing an in-depth analysis of the complexities surrounding the transition from customary to statutory marriage laws, offered comparative legal insights, examined how different jurisdictions have navigated this transition, explored the interplay between legal pluralism, human rights, and judicial decision-making in marriage law, and Proposed policy recommendations for effective legal harmonization. The recommendations offered are as follows;

1. **Harmonization of Legal Frameworks:** Integrating customary and statutory marriage laws to create a more cohesive legal system.
2. **Strengthening Legal Enforcement:** Ensuring that statutory marriage laws are effectively implemented through public awareness and institutional reforms.
3. **Judicial Training and Capacity Building:** Educating judges and legal practitioners on best practices for adjudicating marital disputes.
4. **Community Engagement and Cultural Sensitivity:** Encouraging dialogue between traditional leaders, religious authorities, and legal institutions.
5. **Gender-Inclusive Legal Reforms:** Ensuring that statutory marriage laws protect and promote women's rights effectively.