

**A COMPARATIVE ANALYSIS OF STATUTORY AND CUSTOMARY LAW
MARRIAGE IN NIGERIA: LEGAL IMPLICATION FOR SPOUSAL RIGHTS**

SUBMITTED

BY

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DECLARATION

I hereby declare that this project work titled “A COMPARATIVE ANALYSIS OF STATUTORY AND CUSTOMARY LAW MARRIAGE IN NIGERIA: LEGAL IMPLICATION FOR SPOUSAL RIGHTS”, submitted to Faculty of Law, Alex Ekwueme Federal University Ndufu-Alike Ikwo, Ebonyi State is a record of an original work done by me under the guidance of Anoke, Uwadiogwu. This project work is submitted as a partial fulfillment of requirements for the award of the degree of Bachelor of Laws. The results embodied therein in this thesis has not been submitted to any other University or Institute for the award of any degree or diploma.

ALOZIE PRECIOUS ONYINYECHI

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SIGNATURE AND DATE

DEDICATION

I dedicate this work first to Almighty God, whose grace, wisdom, and strength have guided me throughout this journey. I also dedicate it to my loving parents whose sacrifices, prayers, and unwavering support have been the foundation of my success.

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LIST OF ABBREVIATIONS

CAMA – Companies and Allied Matters Act

CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women

UDHR – Universal Declaration of Human Rights

ECOWAS – Economic Community of West African States

UN – United Nations

CSR – Corporate Social Responsibility (appears in comparative sections)

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ABSTRACT

This study explores the legal implications of statutory and customary law marriages in Nigeria, with a focus on spousal rights and the disparities arising from the coexistence of these two legal systems. As Nigeria operates a plural legal system, marriages conducted under statutory law and customary law are recognized, yet they confer differing rights and obligations on spouses, particularly concerning inheritance, property ownership, and child custody. This research examines the legal frameworks governing both marriage systems, analyzing key statutes such as the Marriage Act, the Matrimonial Causes Act, and the Recognition of Customary Marriages laws, alongside judicial precedents and customary practices. Through a doctrinal approach employing analytical, comparative, and descriptive methodologies, the study investigates the extent to which these legal systems protect or undermine spousal rights, particularly for women, who often face systemic disadvantages under customary law. It also draws lessons from international legal standards and best practices to propose actionable recommendations for harmonizing Nigeria's marriage laws. The findings reveal significant gaps in legal protection, inconsistent enforcement, and cultural biases that perpetuate gender inequality. The study concludes by advocating for legal reforms, increased awareness, and the integration of equitable principles into both statutory and customary law to ensure the protection of spousal rights and the promotion of gender justice in Nigeria.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Marriage in Nigeria, as a deeply entrenched social institution, serves as a mirror reflecting the nation's rich tapestry of cultural, religious, and legal traditions. Within this mosaic, Nigeria's plural legal system recognizes two distinct forms of matrimony statutory and customary marriages each governed by its own set of legal principles¹. Statutory marriages, shaped by the enduring influence of English common law, are formalized through legislation such as the Marriage Act and the Matrimonial Causes Act. These unions, typically monogamous and requiring official registration, provide spouses with a clear, codified structure of rights and obligations. In contrast, customary marriages are rooted in the indigenous traditions and practices of Nigeria's diverse ethnic communities. Often polygamous and validated by communal acknowledgment rather than formal documentation, these marriages embody the fluidity and adaptability of cultural norms.

The legal status of customary law marriage and English law marriage in Nigeria presents a nuanced interplay of similarities and differences, highlighting both harmonious and conflicting elements². These two marriage systems, recognized and practiced concurrently in Nigeria, each possess distinct strengths, weaknesses, opportunities, and challenges. While both systems aim to provide a legal framework for marriage and its dissolution, they diverge considerably in terms of requirements, procedures, and outcomes. The application of customary law and English law in marital contexts has significant implications for issues such as gender equality,

¹ S E Ojogbo and K E Omerionwan, 'Comparing Maintenance and Property Rights in Marriage under Customary Law and Statutory Law in Africa.' *Oxford University Commonwealth Law Journal* Vol 22, No 2 2022 pp 229-252.

² A I Imiefoh and I J Andrew-Imiefoh, 'A Comparative Analysis of Customary Law and English Law Marriages in Nigeria.' *East African Journal of Law, Policy and Globalization* Vol 1, no. 2 2024. pp 12-25.

property rights, and family dynamics in Nigeria, underscoring the need for a deeper understanding of their respective impacts.

Statutory marriage, with its roots in colonial legacies and English common law, represents a formalized, individualistic approach to matrimony, emphasizing legal equality and structured processes. On the other hand, customary marriage, deeply embedded in the cultural ethos of Nigeria's diverse ethnic groups, embodies a communal and often patriarchal worldview, where marriage is not merely a union between individuals but a bond that ties families and communities together³. This duality raises fundamental questions about the nature of justice, equity, and the role of law in a pluralistic society. While statutory law seeks to codify rights and responsibilities in a manner that aligns with modern democratic ideals, customary law often operates within a framework that prioritizes tradition, collective well-being, and the perpetuation of cultural heritage. These contrasting paradigms create a dynamic interplay that shapes the lived experiences of spouses, particularly women, who frequently navigate the intersection of these systems with limited agency.

The coexistence of these two legal systems creates a complex and often contradictory landscape, particularly in the realm of spousal rights. Here, the philosophical tension between modernity and tradition becomes starkly evident. Statutory law, with its emphasis on individual rights and structured legal processes, offers a framework that ostensibly promotes equality, particularly in matters of inheritance, property ownership, and child custody. Customary law, however, often prioritizes communal harmony and patriarchal values, which can inadvertently perpetuate systemic disadvantages for women. Under this system, widows may be disinherited, and women may find their autonomy over marital property or household decisions severely constrained. These disparities underscore a deeper existential question: how can a society

³ C E Nwankwo and F O Okeke, 'Gender Justice in Nigeria's Dual Marriage Systems: A Philosophical Inquiry into Statutory and Customary Law.' *Journal of African Legal Studies*, Vol. 5 no. 2, 2023, pp. 78-85.

reconcile the preservation of cultural heritage with the imperative of advancing gender equality and justice?

The implications of this duality extend far beyond the individual, shaping the collective consciousness of marriage and family life in Nigeria⁴. Despite ongoing efforts to harmonize these legal frameworks, the journey toward a cohesive system remains fraught with challenges. Gaps in policy enforcement, limited legal awareness, and the slow integration of equitable principles into customary practices continue to hinder progress. This study seeks to navigate these philosophical and practical complexities by examining the legal foundations of statutory and customary marriages, interrogating their impact on spousal rights, and proposing pathways for reform. In doing so, it aspires to contribute to a broader dialogue on gender justice and legal pluralism, offering reflections that may guide Nigeria toward a more inclusive and equitable vision of marriage, one that honours tradition while embracing the universal principles of fairness and human dignity⁵.

1.2 Statement of the Problem

Nigeria's complex legal landscape, characterized by the simultaneous operation of statutory, customary, and Islamic legal systems, creates a profoundly challenging environment for the consistent protection of spousal rights within marriage. This legal pluralism while reflecting the country's rich cultural diversity generates substantial conflicts of law, jurisdictional uncertainties, and contradictory judicial precedents that directly impact the welfare and rights of married couples. The fundamental problem this essay addresses is how these conflicting legal frameworks create unequal and unpredictable outcomes for spouses depending on which

⁴ S Cotton, 'The Constitutional and Statutory Position of the 'Other' Wife: A Comparative Study of Constitutional Rights and Polygamous Customary Marriages in Commonwealth Africa.' *East African Journal of Law, Policy and Globalization* Vol 2 No 7 2018 pp 34-39.

⁵ A O Adeyemi and B C Okafor, 'The Impact of Legal Pluralism on Gender Equality in Nigeria: A Study of Statutory and Customary Marriages.' *African Journal of Law and Society*, Vol. 3 No. 1 2023, pp. 45-52.

system governs their marriage, particularly regarding property rights, inheritance, divorce proceedings, and protection from domestic violence. Despite constitutional provisions guaranteeing equality and human rights, the coexistence of these systems has permitted discriminatory practices to persist, especially against women, who often find their marital rights diminished by customary traditions that receive official recognition through state-sanctioned legal pluralism. This analysis identifies the critical need for a harmonized approach that respects cultural traditions while ensuring consistent protection of fundamental spousal rights across all marriage systems in Nigeria.

1.3 Research Questions

The questions that this research aims to answer are:

1. What are the legal and societal implications of the coexistence of statutory and customary law marriages on spousal rights in Nigeria?
2. How do the rights and obligations of spouses differ under statutory and customary law marriages, particularly in issues such as inheritance, property ownership, and child custody?
3. To what extent does customary law marriage perpetuate gender inequality, and how does this contrast with the protections offered under statutory law?
4. What legal and policy reforms are necessary to harmonize statutory and customary marriage laws in Nigeria to ensure equitable protection of spousal rights?

1.4 Aims and Objectives of the Study

This aims and objectives of this work is to investigate the legal implications of the coexistence of statutory and customary law marriages in Nigeria, with a focus on the disparities in spousal rights and their impact on gender equality. It seeks to analyse the legal frameworks governing

both marriage systems, identify the challenges they pose to the protection of spousal rights, and propose reforms to harmonize these systems for equitable outcomes.

The Objectives of the research work are as follows:

1. To examine the legal frameworks governing statutory and customary law marriages in Nigeria.
2. To analyse the rights and obligations of spouses under statutory and customary law marriages, particularly in areas such as inheritance, property ownership, and child custody.
3. To assess the extent to which customary law marriage perpetuates gender inequality and compare it with the protections offered under statutory law.
4. To recommend legal and policy reforms to harmonize statutory and customary marriage laws, ensuring equitable protection of spousal rights in Nigeria.

1.5 Research Methodology

The methodology employed in this study is primarily doctrinal and literature-based. This research utilizes both primary and secondary sources of information, including textbooks, journals, articles, dictionaries, statutes, case laws, and public documents. Through an examination of these sources, the study addresses the research questions generated by this work. The doctrinal approach is adopted to analyse the legal frameworks governing statutory and customary law marriages in Nigeria, with a focus on their implications for spousal rights.

1.6 Scope and Limitation

The scope of this study includes a comprehensive examination of the legal frameworks governing statutory and customary law marriages in Nigeria, with an emphasis on their impact on spousal rights, particularly for women. It also involves a review of relevant literature, case

studies, and judicial decisions from Nigerian courts, as well as comparative insights from foreign jurisdictions where applicable. The study covers the period from the enactment of key statutory marriage laws, such as the Marriage Act of 1914, to the present day (2025).

The study is limited by the availability of relevant data and resources, including access to case laws, academic journals, and government reports. Financial constraints, time limitations, and the complexity of harmonizing diverse cultural practices with legal principles also pose challenges. Additionally, the study relies on secondary data sources, such as local newspapers, magazines, journals, and online resources, which may not fully capture the nuances of the issue.

1.7 Significance of the Study

The significance of this study lies in its ability to provide a comprehensive analysis of the legal implications of statutory and customary law marriages in Nigeria, particularly as they relate to spousal rights and gender equality. This study is of great importance to legal practitioners, policymakers, and researchers in the fields of family law, gender studies, and human rights, as it offers a deeper understanding of the challenges and disparities arising from Nigeria's plural legal system. It also contributes to the ongoing academic discourse on legal pluralism and gender justice, providing insights that could inform future research and policy reforms.

Furthermore, this study is valuable for government agencies, non-governmental organizations, and advocacy groups working to promote gender equality and protect spousal rights in Nigeria. By highlighting the gaps and inconsistencies in the current legal frameworks, the study aims to propose actionable recommendations for harmonizing statutory and customary marriage laws, ensuring equitable protection for all spouses. Ultimately, this research seeks to advance the broader goal of achieving gender justice and legal fairness within Nigeria's diverse socio-cultural context.

1.8 Chapter Analysis

This research work is structured into five comprehensive chapters that critically examine the implications of Nigeria's dual marriage systems on spousal rights and gender equality.

Chapter One: Introduces the study by outlining the background of statutory and customary marriages, the problem of legal conflict, and the research questions, objectives, and methodology for addressing disparities in spousal protections.

Chapter Two: Reviews relevant literature and constructs a multi-faceted theoretical framework, exploring key concepts of each marriage type and applying legal pluralism, feminist legal, and social contract theories.

Chapter Three: Forms the core of the legal and institutional analysis, examining the governing statutes like the Marriage Act and Matrimonial Causes Act, alongside customary and Islamic law, and the roles of institutions like the judiciary and the National Human Rights Commission.

Chapter Four: Presents a detailed comparative analysis of statutory and customary laws, detailing their differential impact on rights, inheritance, and divorce, the legal implications for spouses, and the systemic challenges, with a comparative lens on jurisdictions like Ghana and South Africa.

The final Chapter Five: Concludes the work by synthesizing findings on the discriminatory nature of the current system, affirming the urgent need for legal harmonization, and offering targeted recommendations including legislative reform, mandatory marriage registration, specialized courts, and public legal education to promote equitable spousal rights across all marital regimes in Nigeria.

CHAPTER TWO
CONCEPTUAL FRAMEWORK, THEROTRICAL FRAMEWORK AND
LITERATURE REVIEW

2.1 Conceptual Framework

2.1.1 Statutory Marriage

Statutory marriage in Nigeria is a formalized union recognized under the Marriage Act and the Matrimonial Causes Act, both of which are rooted in English common law. This type of marriage is characterized by its monogamous nature, requiring compliance with specific legal procedures, including the issuance of a marriage license, solemnization by a licensed officiant, and registration at the Marriage Registry. Statutory marriage provides a clear legal framework that defines the rights and obligations of spouses, particularly in areas such as inheritance, property ownership, and child custody. It is often viewed as a modern and structured approach to marriage, offering spouses a predictable and enforceable set of legal protections⁶.

However, statutory marriage is not without its challenges. Its formal requirements, such as registration and documentation, can be inaccessible to many Nigerians, particularly those in rural areas or with limited financial resources. Additionally, the rigidity of statutory law may conflict with cultural practices and traditions, making it less appealing to some individuals⁷. Despite these limitations, statutory marriage remains a critical institution for those seeking legal clarity and protection in their marital relationships, particularly in urban settings where adherence to formal legal systems is more prevalent.

⁶ H Boparai "The Customary and Statutory Law of Marriage in Nigeria." *The Rabel Journal of Comparative and International Private Law* Volume 46, No. 3 (1982) 530-557.

⁷ SC Zabel. "Hyde v. Hyde—A Comparative Study of the Law of Marriage in the Sudan and Nigeria—Part I." *Utah Law Review* (1969) No 22.

2.1.2 Customary Law Marriage

Customary law marriage in Nigeria is a traditional form of union recognized under the indigenous customs and practices of the country's numerous ethnic groups. Unlike statutory marriage, customary marriage does not require formal registration and is often validated through community recognition and adherence to cultural rites, such as the payment of bride price or the performance of traditional ceremonies⁸. This type of marriage is typically polygamous, reflecting the communal and patriarchal values of many Nigerian societies. Customary law marriage is deeply rooted in cultural identity and is often preferred in rural areas where traditional practices remain strong⁹.

The legal recognition of customary law marriages in Nigeria is firmly established, both by constitutional provisions and judicial precedents, which affirm their validity and enforceability within the Nigerian legal system. Section 37¹⁰ of the 1999 Constitution of Nigeria guarantees the right to private and family life, which implicitly includes the right to marry according to one's customs and traditions.¹¹ Furthermore, Section 42(1) of the Constitution prohibits discrimination on the grounds of ethnic origin, thereby protecting the diversity of customary practices across the country. Judicially, Nigerian courts have consistently upheld the validity of customary law marriages, provided they meet the essential requirements recognized by the community in question. For example, in the case of *Okonkwo v. Okagbue*¹², the court emphasized that a customary law marriage is valid if it is celebrated in accordance with the

⁸ A I Imiefoh and I J Andrew-Imiefoh, 'A Comparative Analysis of Customary Law and English Law Marriages in Nigeria.' *East African Journal of Law, Policy and Globalization* Vol 1, no. 2 2024. pp 12-16.

⁹ H Boparai "The Customary and Statutory Law of Marriage in Nigeria." *The Rabel Journal of Comparative and International Private Law* Volume 46, No. 3 (1982) 530-557.

¹⁰ Section 37, 1999 Constitution of the Federal Republic of Nigeria.

¹¹ A I Imiefoh and I J Andrew-Imiefoh, 'A Comparative Analysis of Customary Law and English Law Marriages in Nigeria.' *East African Journal of Law, Policy and Globalization* Vol 1, no. 2 2024. pp 12-16.

¹² *Okonkwo v. Okagbue* [1994] 9 NWLR (Pt 368) 301)

customs of the parties' ethnic group, even if it lacks the formalities of a statutory marriage¹³. However, this recognition is not absolute; customary law marriages must pass the repugnancy test, which ensures that they are not contrary to natural justice, equity, and good conscience¹⁴. This test has been instrumental in curbing discriminatory practices, such as those that deny women inheritance rights, as seen in landmark cases like *Ukeje v. Ukeje* (2014), where the Supreme Court declared the Igbo custom excluding female children from inheritance unconstitutional. Thus, while customary law marriages are legally recognized, their validity is contingent on their alignment with broader principles of justice and equality.

Despite its cultural significance, customary law marriage poses significant challenges, particularly for women. The patriarchal nature of many customary practices often results in limited rights for women in areas such as inheritance, property ownership, and decision-making within the household. Widows, for example, may face disinheritance or exclusion from marital property under customary law. These disparities highlight the tension between cultural preservation and the need for gender equality, raising critical questions about the adequacy of customary law in protecting spousal rights in contemporary Nigeria.

2.1.3 Legal Implications of Marriage on Spousal Rights

The legal implications of marriage on spousal rights in Nigeria vary significantly depending on whether the union is governed by statutory or customary law. Under statutory marriage, spouses enjoy clearly defined rights and obligations, including equal access to marital property, inheritance, and child custody¹⁵. The structured nature of statutory law provides a level of predictability and enforceability that is often absent in customary law marriages. This legal

¹³ S U Nweke-Eze, "An Appraisal of Customary Law Marriages in Nigeria." *Journal of Contemporary Issues in Nigerian Law*, (2023) 3(1), 40–44. Retrieved from <https://journals.ezenwaohaetore.org/index.php/JOCINL/article/download/2082/2125> visited: 05/09/2025

¹⁴ A I Imiefoh and I J Andrew-Imiefoh, 'A Comparative Analysis of Customary Law and English Law Marriages in Nigeria.' *East African Journal of Law, Policy and Globalization* Vol 1, no. 2 2024. pp 12-25.

¹⁵ A Y Olaore "Nigerian Marital Cultural Practices and Implications for Human Rights." *The Tensions Between Culture and Human Rights* Volume 47 No 2. 2012

framework is particularly beneficial for women, as it offers protections against discriminatory practices and ensures a more equitable distribution of marital assets.

In contrast, customary law marriage often leaves spouses, particularly women, vulnerable to systemic inequalities. The lack of formal documentation and the reliance on patriarchal customs can result in limited legal recourse for women in cases of divorce, widowhood, or property disputes. One of the most significant legal implications of marriage for spousal rights in Nigeria concerns property ownership and economic rights, where the law has struggled to balance traditional practices with modern principles of equality. Nigeria operates under a default "separation of property" regime, meaning that assets acquired during marriage are legally owned by the spouse whose name appears on the title deed, regardless of their actual contributions.¹⁶ This regime applies uniformly across statutory, customary, and Islamic marriages, creating a system where spousal rights to property are often contingent on strict proof of financial contribution, thereby disadvantaging non-monetary contributions such as homemaking and child-rearing. For example, under the Married Women Property Act 1882, courts have the discretion to settle property disputes, but this discretion has frequently been exercised to uphold separate property rights rather than to recognize joint ownership or equitable distribution.¹⁷ The result is a legal framework that often fails to reflect the economic realities of marriage, where one spouse, typically the wife, may forgo career advancement to manage the household, only to find herself with no legal claim to the family's assets upon dissolution. This gap between legal doctrine and social practice has been the subject of intense debate, with scholars and activists calling for socio-legal research to inform reforms that would

¹⁶ Adekile, O. M. "Towards the Development of a Marital Property Regime for Nigeria: A Case for Socio-Legal Research for Gender Justice." *Unilag Journal of Humanities*, (2017) Vol. 4(2), 97–105. Retrieved from <https://ujh.unilag.edu.ng/article/download/87/53>

¹⁷ *Ibid*

create a more inclusive marital property regime, one that acknowledges both financial and non-financial contributions to the marital partnership.¹⁸

The dissolution of marriage, whether by divorce or death, further highlights the complex legal implications for spousal rights, particularly in the areas of maintenance, custody, and inheritance. Under statutory marriage, the Matrimonial Causes Act provides for spousal maintenance, allowing courts to order financial support for a dependent spouse, especially in cases where the marriage has broken down irretrievably.¹⁹ Maintenance is intended to prevent economic hardship and ensure that both parties can maintain a standard of living reasonably comparable to that enjoyed during the marriage. However, the award of maintenance is discretionary and often influenced by the court's perception of the spouse's conduct and financial needs, leading to inconsistent outcomes. In customary law marriages, the concept of maintenance is less formalized, with traditional authorities typically resolving disputes through family councils rather than formal legal processes.²⁰ Custody of children is another critical area where spousal rights are impacted; under statutory law, the welfare of the child is the paramount consideration, while customary law often prioritizes patrilineal ties, granting custody to the father's lineage.²¹ Inheritance rights further illustrate the disparities: statutory marriage provides for intestate succession under the Administration of Estates Laws, which generally protects the surviving spouse's rights, whereas customary law often excludes widows from inheriting their husband's property, a practice that has been repeatedly challenged in court.²²

¹⁸ *Ibid*

¹⁹ Abdu-Biu, M. T. An Examination of Spousal Rights and Their Reliefs Under the Marriage and Matrimonial Causes Acts. (2011). (*LLM Thesis, Ahmadu Bello University, Zaria*). Retrieved from <https://teras.ng/api/asset/document/ae7e3fc-d271-4890-8600-b74f64ae97ec>

²⁰ A I Imiefoh and I J Andrew-Imiefoh, 'A Comparative Analysis of Customary Law and English Law Marriages in Nigeria.' *East African Journal of Law, Policy and Globalization* Vol 1, no. 2 2024. pp 12-16.

²¹ *Ibid*

²² O Oluwafemi, "Inheritance Rights of Women in Nigeria | Legal Framework." *Trusted Advisors Law Firm*. March 12, 2025. <https://trustedadvisorslaw.com/inheritance-rights-of-women-in-nigeria-legal-framework-cultural-perspectives/>. Visited:05/072025.

These inconsistencies underscore the need for a more harmonized legal approach to spousal rights upon the dissolution of marriage.

2.1.4 Divorce and Dissolution

Divorce and dissolution under statutory law in Nigeria are governed by the Matrimonial Causes Act²³, which provides a clear legal process for ending a marriage. Grounds for divorce include adultery, desertion, and irreconcilable differences, among others. The Act also outlines provisions for the division of marital property, spousal maintenance, and child custody, ensuring that the rights of both parties are protected during the dissolution process²⁴. This structured approach offers spouses a predictable and enforceable mechanism for resolving marital disputes²⁵.

In contrast, divorce under customary law is often less formal and varies widely across different ethnic groups. While some customary systems provide mechanisms for divorce, such as the return of bride price or the intervention of family elders, these processes are often informal and lack the legal safeguards found in statutory law²⁶. Women, in particular, may face significant challenges in securing a fair settlement, as customary practices often favour men in matters of property division and child custody. This disparity highlights the need for legal reforms to ensure that all spouses, regardless of the type of marriage, have access to fair and equitable dissolution processes.

²³ Matrimonial Causes Act 1970 Cap M7 Laws of the Federation, 2004.

²⁴ *Ibid*

²⁵ A E Anekwe. "Legal Framework for the Dissolution of Marriage in Nigeria: Prospects, Challenges and the Way Forward." *Social Science Research Network*. September 29th, 2024. Available at SSRN: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4971062> accessed on 4th March, 2025.

²⁶ B E Oniha "Dissolution of Marriage and Custody of Children under Customary Law in Nigeria". *Edo State Judiciary Publication* 2017.

2.2 Theoretical Framework

2.2.1 Legal Pluralism Theory

Legal pluralism theory provides a foundational framework for understanding the coexistence of multiple legal systems within a single society, such as Nigeria's statutory and customary marriage laws. This theory recognizes that in pluralistic societies, formal state laws often operate alongside informal, non-state legal systems, including customary, religious, or indigenous laws. In the context of Nigeria, legal pluralism explains how statutory marriage laws, influenced by colonial legacies, coexist with customary marriage practices rooted in the traditions of various ethnic groups²⁷. This duality creates a complex legal landscape where individuals may navigate between different legal systems depending on their cultural, social, or economic circumstances.

The theory of legal pluralism helps illuminate how these different legal systems interact, compete, and sometimes conflict in regulating marital relationships, with significant implications for spousal rights and obligations. By acknowledging that state law is not the only normative order governing marriage, legal pluralism offers a more empirically accurate and theoretically sophisticated understanding of Nigeria's legal reality, where the majority of marriages are governed not by statutory law but by customary and religious systems that often embody different conceptions of rights, responsibilities, and justice²⁸. This theoretical perspective is particularly valuable for analysing how Nigerian spouses navigate between these different legal systems, sometimes strategically engaging in "forum shopping" to advance their interests by moving between legal frameworks that offer different advantages and protections.

²⁷ E A St Emmanuel "Legal Pluralism: An Examination of Conflicting Standards in Statutory, Customary and Islamic Law Marriage in Nigeria." *Ajayi Crowther University Law Journal* Volume 4, o. 1 (2023). pp 34-39.

²⁸ Xinyue Li, "Legal Pluralism" in *Oxford Bibliographies in Law* (last modified 21 June 2024) Retrieved from <https://doi.org/10.1093/obo/9780199796953-0258> Accessed 27th August, 2025.

The conceptual richness of legal pluralism theory lies in its ability to capture the dynamic interactions between Nigeria's official state legal system and the myriad unofficial legal orders that regulate marital relationships in practice. Rather than viewing customary and religious marriage laws as mere relics destined to be replaced by modern statutory systems, legal pluralism recognizes these normative orders as vibrant and adaptive systems that continue to evolve in response to social change²⁹. This theoretical approach encourages us to examine not just the formal rules governing marriage in different legal systems, but also the processes through which these systems interact how state courts incorporate customary law principles, how statutory reforms impact traditional practices, and how individuals navigate between these systems in their everyday lives. Legal pluralism theory also helps illuminate the power dynamics inherent in Nigeria's plural legal system, revealing how the coexistence of multiple marriage laws can both empower and disadvantage different groups depending on their gender, social status, and access to legal knowledge³⁰. For example, the theory helps explain how women might strategically invoke statutory law protections to challenge discriminatory customary practices, or how religious communities might resist state imposition of uniform marital standards in the name of cultural autonomy. By focusing on these complex interactions and power dynamics, legal pluralism theory provides a more nuanced and comprehensive framework for analyzing the legal implications of Nigeria's plural marriage system for spousal rights than approaches that focus exclusively on state law.

The theory highlights the challenges and opportunities presented by legal pluralism, particularly in reconciling conflicting norms and ensuring equitable outcomes for all individuals. For instance, while statutory law emphasizes individual rights and gender equality,

²⁹ Ibid

³⁰ B E Oniha "Dissolution of Marriage and Custody of Children under Customary Law in Nigeria". *Edo State Judiciary Publication* 2017.

customary law often prioritizes communal values and patriarchal structures. Legal pluralism theory underscores the need for a balanced approach that respects cultural diversity while promoting universal human rights³¹. It also provides a lens for analysing how legal reforms can harmonize these systems to address disparities in spousal rights, particularly for women, who often face systemic disadvantages under customary law.

2.2.2 Feminist Legal Theory

Feminist legal theory critiques the ways in which legal systems perpetuate gender inequality and seeks to reform laws and practices to achieve gender justice³². In the context of marriage laws in Nigeria, feminist legal theory provides a critical perspective on how statutory and customary laws impact women's rights. Statutory marriage laws, while offering formal protections, often fail to address the lived realities of women in patriarchal societies. Customary marriage laws, on the other hand, frequently reinforce gender disparities by prioritizing male authority and limiting women's access to property, inheritance, and decision-making³³.

The relevance of feminist legal theory to Nigerian marriage law extends beyond mere academic exercise; it offers a vital lens through which to evaluate the concrete impacts of legal pluralism on women's lives. Feminist theorists argue that law is not merely a neutral arbiter of disputes but rather a powerful social institution that shapes and reinforces gender norms and power dynamics.³⁴ This insight is particularly important in Nigeria, where customary laws governing marriage often remain deeply patriarchal, emphasizing women's domestic and reproductive roles while limiting their decision-making power within marital relationships. For instance, many customary marriage practices perpetuate women's economic dependence by restricting

³¹ J C Diala and A C. Diala. "Child Marriage, Bridewealth and Legal Pluralism in Africa." *Journal of Comparative Law in Africa* Volume 4, No. 2 (2017): 77-104.

³² A Pelemo, D Adetutu, and J T Adeboye. "Women's Rights and Feminism under the Law in Nigeria." *OAU Journal of Public Law* Volume 1, no. 1 (2021): 147-164.

³³ *Ibid*

³⁴ L. Obiora and R. Perry, "Feminist Legal Theory" in *International Encyclopedia of the Social & Behavioral Sciences* (Elsevier, 2001) 5464-5469.

their property rights and inheritance capabilities, effectively trapping them in unhappy or even abusive marriages due to financial insecurity³⁵. Meanwhile, even statutory marriage laws often fail to adequately protect women's interests, as they frequently operate within cultural contexts that implicitly privilege male authority. Feminist legal theory helps illuminate these subtle but pervasive power dynamics, providing a conceptual vocabulary for naming and challenging the various forms of discrimination that persist within both formal and informal legal frameworks. By foregrounding the lived experiences of women in diverse marital arrangements, feminist jurisprudence moves beyond abstract notions of equality to consider how law might genuinely serve the needs and interests of all spouses, regardless of gender.

This theory emphasizes the need to challenge and transform legal frameworks that marginalize women, advocating for reforms that promote equality and empowerment. For example, feminist legal theory critiques the patriarchal nature of customary practices such as polygamy and bride price, which often reduce women to subordinate roles within marriage. It also highlights the importance of addressing systemic barriers, such as limited access to legal resources and cultural resistance to change³⁶. By applying feminist legal theory, this study seeks to identify ways to reform Nigeria's marriage laws to ensure that women's rights are protected and upheld, regardless of the legal system under which they are married.

2.2.3 Social Contract Theory

Social contract theory, rooted in the works of philosophers such as John Locke, Jean-Jacques Rousseau, and Thomas Hobbes, explores the relationship between individuals and the state, emphasizing the mutual obligations that underpin societal order. In the context of marriage laws in Nigeria, social contract theory provides a framework for understanding the role of the

³⁵ P A Ejembe and M M Mnyim, "The Quandary of Sexism: An Exposition of Feminist Jurisprudence in the Nigerian Context" *International Journal of Comparative Law and Legal Philosophy*. (2020) Vol.2(1) p125

³⁶ E Chegwe. "A Gender Critique of Liberal Feminism and its Impact on Nigerian Law." *International Journal of Discrimination and the Law* (2014) Vol.14(1) p66-78.

state in regulating marital relationships and protecting the rights of spouses³⁷. Statutory marriage laws can be seen as part of the social contract, where the state establishes legal frameworks to ensure fairness, equity, and the protection of individual rights within marriage.

The social contract theory as developed by Hobbes, Locke, and Rousseau, though differing in significant details, shares common ground in explaining how and why individuals transition from a hypothetical state of nature to organized society through mutual agreement. Hobbes' particularly bleak portrayal of the state of nature as a perpetual "war of all against all" (*bellum omnium contra omnes*) where life was characterized by constant fear and violence provides the starkest justification for why rational individuals would willingly submit to absolute sovereign authority.³⁸ For Hobbes, the social contract represented a collective agreement among individuals to establish a powerful sovereign whether a monarch or assembly capable of enforcing rules and maintaining order, with this sovereign not being a party to the contract but rather its beneficiary, thus holding absolute power.³⁹ This perspective finds resonance in how state-regulated statutory marriages establish governmental authority over marital relations, providing clear rules and enforcement mechanisms that replace potential conflicts with structured order. The Hobbesian view emphasizes security and order as primary benefits of social arrangements, which correlates with how legal marriage frameworks provide stability and predictability for spouses, especially vulnerable parties who might otherwise suffer from the arbitrary exercise of power within relationships.

In contrast, John Locke's more optimistic conception of social contract theory offers a different emphasis that proves particularly relevant to understanding spousal rights in marriage. Locke conceived of the state of nature not as a state of license but as one governed by natural law

³⁷ LL Ngare. "Ethnic Diversity and National Unity: Reimagining Social Contract Theory in Nigeria." *JASSD- Journal of African Studies and Sustainable Development* Volume 4, No. 4 (2023). pp 56-85

³⁸ S McCartney "Social Contract Theory" *BCcampus* 17th July, 2015. Retrieved from "<https://opentextbc.ca/ethicsinlawenforcement/chapter/social-contract-theory/>" visited:27/08/2025.

³⁹ Ibid

where humans were fundamentally free, equal, and independent, yet obliged to respect each other's rights to life, liberty, and property⁴⁰. For Locke, the social contract established a commonwealth with impartial power to arbitrate disputes and redress injuries, with the crucial condition that the obligation to obey civil government was conditional upon the protection of natural rights.⁴¹ This Lockean perspective introduces the revolutionary idea that governmental authority derives from the consent of the governed and remains legitimate only insofar as it protects these fundamental rights, with citizens retaining the right to revolt against governments that fail in this fundamental duty.⁴² When applied to marriage institutions, this aspect of social contract theory provides a powerful framework for evaluating whether Nigerian marriage laws adequately protect the natural rights of spouses, particularly women who have historically been disadvantaged by certain customary practices. The Lockean emphasis on conditional submission to authority and the right to rebel against unjust governance offers philosophical grounding for challenging marital arrangements that violate fundamental spousal rights, whether through statutory reform or reinterpretation of customary laws.

Rousseau's distinctive contribution to social contract theory further enriches its application to marriage frameworks by emphasizing collective sovereignty and the general will. Unlike Hobbes and Locke, Rousseau conceived of the social contract as creating a collective moral body called the "general will" (*volonté générale*), through which individuals achieve moral freedom and community while remaining as free as they were in the state of nature.⁴³ This conception emphasizes that legitimate authority must reflect the collective interests of the community rather than merely individual preferences, with laws expressing the general will rather than the will of particular individuals or groups. Rousseau's formulation challenges us

⁴⁰ Ibid

⁴¹ *Encyclopaedia Britannica*, "Social Contract" (last updated July 31, 2025) <https://www.britannica.com/topic/social-contract> accessed 27th August, 2025.

⁴² Ibid

⁴³ Ibid

to consider whether Nigerian marriage laws genuinely reflect the general will of the communities they govern or merely entrench the interests of powerful traditional elites. Furthermore, his concept of the "general will" as distinct from the "will of all" invites critical examination of whether customary marriage practices truly serve the collective good or merely perpetuate particularistic interests that disadvantage vulnerable spouses. This Rousseauian perspective proves particularly valuable for analyzing the democratic legitimacy of both statutory and customary marriage laws in Nigeria, asking whether these institutions genuinely result from collective self-determination or represent imposed structures that constrain rather than enable human flourishing within marital relationships.

The enduring relevance of social contract theory lies in its ability to explain why rational individuals would choose to enter into binding social arrangements like marriage, and what obligations these arrangements create for both participants and governing institutions. As Hobbes famously argued in his seminal work *Leviathan* (1651), without enforceable social arrangements, human life would be "solitary, poor, nasty, brutish, and short" a state of nature characterized by constant fear and conflict⁴⁴. This pessimistic view of human nature outside social structures provides a compelling rationale for why individuals would willingly submit to the constraints of marital institutions that regulate behaviour, define responsibilities, and provide mechanisms for dispute resolution. Similarly, Locke's conception of social contract theory emphasizes the protection of natural rights to life, liberty, and property, which finds resonance in how marriage laws safeguard spousal rights to inheritance, security, and personal autonomy⁴⁵. Rousseau's interpretation of the social contract as the foundation for legitimate authority that reflects the "general will" of the people offers yet another lens through which to

⁴⁴S McCartney "Social Contract Theory" *BCcampus* 17th July, 2015. Retrieved from "https://opentextbc.ca/ethicsinlawenforcement/chapter/social-contract-theory/" visited:27/08/2025.

⁴⁵ *Encyclopaedia Britannica*, "Social Contract" (last updated July 31, 2025) <https://www.britannica.com/topic/social-contract> accessed 27th August, 2025.

evaluate whether Nigerian marriage laws genuinely reflect the collective interests of spouses or merely perpetuate traditional power imbalances.⁴⁶ Together, these philosophical perspectives provide a rich conceptual framework for examining the normative foundations of marital obligations and rights in Nigeria's plural legal system.

However, the theory also raises questions about the state's responsibility to address inequalities arising from customary practices that may conflict with constitutional principles of equity and justice. For instance, the state's recognition of customary marriages, which often disadvantage women, challenges the notion of a fair social contract. Social contract theory thus calls for a re-examination of the state's role in harmonizing statutory and customary laws to ensure that all individuals, regardless of gender or cultural background, are afforded equal rights and protections. This perspective aligns with the study's goal of proposing reforms that reconcile Nigeria's plural legal systems with the principles of fairness and justice inherent in the social contract.

2.3 Literature Review

The reviewed literature provides a comprehensive overview of the legal frameworks governing statutory, customary in Nigeria, highlighting the complexities and disparities arising from the coexistence of these systems. Authors such as *Borapai* and *Emmanuel* emphasize the differences in formation, validity, and rights under each system, particularly noting the challenges faced by women under customary law, such as limited inheritance rights and polygamy. However, gaps remain in the literature, including insufficient exploration of the practical implications of legal pluralism, particularly how conflicting norms create confusion or injustice for spouses, especially women. Additionally, there is limited analysis of the enforcement of spousal rights in practice, systemic barriers to accessing justice, and the role of judicial interpretation in harmonizing these legal systems. Furthermore, while the literature

⁴⁶ Ibid

identifies gender inequalities perpetuated by customary practices, it often lacks concrete policy recommendations or solutions to address these disparities. These gaps underscore the need for further research to explore practical solutions, judicial trends, and legislative reforms that can harmonize Nigeria's plural legal system and ensure equitable protection for all spouses, particularly in promoting gender equality and safeguarding spousal rights.

2.4 Gaps in Literature

In *Imiefoh's* work⁴⁷, several gaps can be identified in the comparative analysis of customary and English law marriages in Nigeria. Firstly, while the author provides a detailed comparison of the formation, validity requirements, and rights of spouses under both legal systems, there is limited exploration of the practical challenges faced by individuals navigating these dual systems. For instance, the excerpt does not sufficiently address how conflicting legal norms create confusion or injustice for spouses, particularly women, who may be caught between statutory protections and customary practices. Secondly, the discussion on inheritance and property rights highlights the systemic disadvantages women face under customary law but fails to propose concrete solutions or reforms to address these disparities. Additionally, while the author mentioned the challenges of legal pluralism and conflict of laws, there is no in-depth analysis of how these conflicts are resolved in practice or how they impact access to justice for affected individuals. Lastly, the excerpt lacks a critical examination of the role of judicial interpretation in harmonizing customary and statutory laws, as well as the potential for legislative reforms to bridge the gaps between these systems. These omissions suggest a need for further research to explore practical solutions, judicial trends, and policy interventions that could promote gender equality and protect spousal rights in Nigeria's plural legal system.

⁴⁷ A I Imiefoh and I J Andrew-Imiefoh, 'A Comparative Analysis of Customary Law and English Law Marriages in Nigeria.' *East African Journal of Law, Policy and Globalization* Vol 1, no. 2 2024. pp 12-25.

In the work by *St. Emmanuel*⁴⁸, several gaps can be identified in the discussion of marriage under statutory, customary, and Islamic law in Nigeria. First, while the author provides a detailed explanation of the formation, validity, and types of marriages, there is limited exploration of the practical challenges faced by individuals navigating these legal systems. For instance, the author does not sufficiently address how conflicting legal norms create confusion or injustice for spouses, particularly women, who may be caught between statutory protections and customary or Islamic practices. Secondly, the discussion on the rights and obligations of spouses under different marriage systems lacks a critical analysis of how these rights are enforced in practice. The author highlights the legal frameworks but did not delve into the systemic barriers, such as limited access to legal resources or cultural resistance, that hinder the realization of these rights.

Another gap is the insufficient discussion on the intersection of gender equality and marriage laws. While the author mentioned the disadvantages women face under Customary law, such as limited inheritance rights and polygamy, there is no in-depth analysis of how these practices perpetuate gender inequality or how they can be reformed. Additionally, the author did not propose concrete solutions or policy recommendations to address these disparities.

Finally, the author does not critically examine the role of judicial interpretation in harmonizing these legal systems or the potential for legislative reforms to bridge the gaps between them. These omissions suggest a need for further research to explore practical solutions, judicial trends, and policy interventions that could promote gender equality and protect spousal rights in Nigeria's plural legal system.

⁴⁸ E A St Emmanuel "Legal Pluralism: An Examination of Conflicting Standards in Statutory, Customary and Islamic Law Marriage in Nigeria." *Ajayi Crowther University Law Journal* Volume 4, o. 1 (2023). pp 34-39.

In the work by *Borapai*⁴⁹, a significant gap lies in the limited exploration of the practical implications of legal pluralism on women's rights in Nigeria. While the author provides a comprehensive overview of the differences between statutory and customary law marriages, there is insufficient analysis of how these legal systems interact in real-life scenarios, particularly in cases where women are subjected to conflicting norms. For instance, the author did not delve into the challenges women face when seeking redress for issues such as inheritance disputes or domestic violence, where customary practices often override statutory protections. Additionally, the work lacks a critical examination of the role of judicial interpretation in reconciling these legal systems, as well as the potential for legislative reforms to address systemic gender inequalities. These gaps highlight the need for further research to explore practical solutions and policy interventions that can harmonize Nigeria's plural legal system and ensure equitable protection for all spouses.

⁴⁹ H Boparai "The Customary and Statutory Law of Marriage in Nigeria." *The Rabel Journal of Comparative and International Private Law* Volume 46, No. 3 (1982) 530-557.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK FOR MARRIAGES IN NIGERIA

3.1 Legal Framework for Marriages in Nigeria

3.1.1 The Marriage Act 2004

The Marriage Act of 2004⁵⁰, as amended, serves as the primary legal framework governing statutory marriages in Nigeria. This legislation, rooted in English common law, establishes the formal requirements for contracting a valid marriage, including the issuance of a marriage license, solemnization by a licensed officiant, and registration with at the Marriage Registry. The Act enforces a monogamous union, prohibiting either party from being married to more than one person simultaneously⁵¹, and provides a structured legal process for the dissolution of marriages under the Matrimonial Causes Act⁵². It also outlines the rights and obligations of spouses, particularly in areas such as inheritance, property ownership, and child custody, offering a predictable and enforceable set of legal protections. However, the rigidity of the Marriage Act often conflicts with Nigeria's diverse cultural practices, making it less accessible to individuals in rural areas or those who prefer customary or Islamic marriages. Despite these limitations, the Act remains a critical legal instrument for those seeking clarity and protection in their marital relationships, particularly in urban settings where adherence to formal legal systems is more prevalent.

The procedural requirements for contracting a valid marriage under the Act are notably rigorous, reflecting the legislature's intention to create a formalized, state-regulated institution with clearly defined rights and obligations. Prospective spouses must initially provide written

⁵⁰ The Marriage Act, 2004

⁵¹ Section 33 of the Marriage Act, 2004.

⁵² Section 45, Matrimonial Causes Act. 1990.

notice to the Registrar of Marriages in their district⁵³, specifying their intention to marry and subsequently awaiting a mandatory twenty-one day period during which any lawful objections may be lodged through formal caveats.⁵⁴ This waiting period serves as a protective mechanism allowing for third-party interventions in cases where impediments to marriage might exist, such as undisclosed existing marriages, lack of proper consent, or prohibited relationships between the parties. Following this period and the resolution of any objections, the Registrar issues a certificate authorizing the solemnization of the marriage, which must then be conducted either at a registry office or in a licensed place of worship by an authorized officiant.⁵⁵ The Act further specifies detailed requirements regarding venue, witnesses, and registration procedures, with non-compliance rendering the marriage potentially void a stark contrast to the relative informality of many customary marriages. These procedural safeguards fundamentally shape the nature of statutory marriage as a highly formalized legal construct rather than primarily a social arrangement, establishing evidentiary certainty but simultaneously creating accessibility challenges for populations with limited access to formal legal institutions or those who prioritize cultural practices over state recognition.

A particularly significant aspect of the Marriage Act's framework is its detailed treatment of spousal capacity and consent requirements, which establishes substantive protections that distinguish statutory marriages from their customary counterparts. The Act mandates that parties under twenty-one years of age must obtain parental or guardian consent, reflecting societal values regarding youth protection while simultaneously creating potential barriers for adults seeking to exercise autonomous marital choices against family wishes⁵⁶. Beyond formal age requirements, the legislation incorporates the concept of "real consent" as defined in the

⁵³ Section 7, Marriage Act, 2004.

⁵⁴ "Marriage Under The Act" *Intergovernmental Marriage Registration* Retrieved from <https://intergovernmentalmarriagereg.org/nreg/marriage-under-the-act.php> visited:28/08/2025.

⁵⁵ Ibid

⁵⁶ Ibid

Matrimonial Causes Act, invalidating marriages contracted under duress, fraud, or mental incapacity a provision that offers important safeguards against forced marriages that might otherwise occur under customary systems without similar protections.⁵⁷ The Act further establishes elaborate rules prohibiting marriages within certain degrees of consanguinity and affinity, detailed in Section 3 of the Matrimonial Causes Act⁵⁸, which restrict marital possibilities between relatives to a significantly greater extent than many customary systems. These comprehensive restrictions reflect the Act's foundation in English Victorian moral frameworks rather than indigenous Nigerian values, creating a distinctive regulatory approach that privileges certain forms of biological relationship over social and kinship considerations that might prevail in customary contexts. For spouses in statutory marriages, these provisions provide clear ex ante guidance about permissible partnerships while simultaneously limiting marital possibilities that might be culturally acceptable and socially functional within specific ethnic communities.

3.1.2 The Matrimonial Causes Act of 1970

The Matrimonial Causes Act of 1970⁵⁹ is a foundational piece of legislation in Nigeria that governs the dissolution of statutory marriages and addresses related issues such as divorce, separation, and annulment. This Act provides a clear legal framework for ending marriages, outlining specific grounds for divorce, including adultery, desertion, unreasonable behaviour, and irretrievable breakdown of the marriage. It establishes formal procedures for filing petitions, serving notices, and obtaining decrees, ensuring a transparent and structured process for marital dissolution⁶⁰. Additionally, the Act addresses critical post-divorce matters, such as the division of marital property, spousal maintenance, and child custody, aiming to protect the

⁵⁷ Ibid

⁵⁸ Section 3, Matrimonial Causes Act, 1970

⁵⁹ The Matrimonial Causes Act, 1970

⁶⁰ Section 106, Matrimonial Causes Act, 1970.

rights and interests of both parties⁶¹. By providing a predictable and enforceable legal process, the Matrimonial Causes Act of 1970 plays a vital role in safeguarding the rights of spouses in statutory marriages and ensuring equitable outcomes in marital disputes.

The substantive provisions of the Act are comprehensive in scope, addressing multiple dimensions of matrimonial disputes with particular attention to procedural detail and substantive rights. The Act's foundational principle, articulated in Section 15⁶², establishes irretrievable breakdown of marriage as the sole ground for divorce, moving away from the previous fault-based system that required proof of specific matrimonial offenses.⁶³ This shift reflects a modern understanding of marital breakdown as a complex social phenomenon rather than merely a legal fault. To operationalize this principle, Section 15(2)⁶⁴ enumerates eight specific facts that may evidence irretrievable breakdown, including adultery, desertion, unreasonable behaviour, and prolonged separation, providing courts with clear criteria for evaluation while maintaining judicial discretion to assess the unique circumstances of each case. The Act further demonstrates its protective function through Section 30's two-year rule, which prohibits divorce petitions within the first two years of marriage except in exceptional circumstances involving exceptional hardship or depravity, thereby encouraging marital stability and discouraging impulsive dissolution of marriages.⁶⁵ These provisions collectively establish a balanced approach that respects the sanctity of marriage while acknowledging the reality of marital breakdown.

Beyond reforming the grounds for divorce, the Matrimonial Causes Act of 1970 comprehensively addresses the legal implications of marital dissolution for spousal rights,

⁶¹ Section 69, Matrimonial Causes Act, 1990.

⁶² Section 15, Matrimonial Causes Act, 1970.

⁶³ M Agbo "An Analysis of The Matrimonial Causes Act (MCA), As A Good Divorce Law In Nigeria" *Modern Ghana*. 8th October, 2018. Retrieved from <https://www.modernghana.com/news/888502/an-analysis-of-the-matrimonial-causes-act-mca-as-a-good-d.html> visited:03/09/2025.

⁶⁴ Section 15(2), Matrimonial Causes Act, 1970.

⁶⁵ *Ibid*

particularly in the areas of property division, maintenance, and child custody. Section 72⁶⁶ of the Act empowers Nigerian courts to make orders for the equitable settlement of property between spouses, ensuring that the distribution of assets acquired during the marriage is just and fair, taking into account each spouse's financial and non-financial contributions. This provision is crucial because it recognizes that a spouse's contributions, whether through income, homemaking, or child-rearing, are equally valuable to the marital partnership⁶⁷. Additionally, the Act provides for spousal maintenance, enabling courts to award financial support to a dependent spouse where necessary, thereby safeguarding against economic hardship post-divorce.⁶⁸ The legislation also outlines detailed procedures for child custody, prioritizing the best interests of the child above all else. By codifying these protections, the Matrimonial Causes Act seeks to balance the rights and responsibilities of both parties, prevent the impoverishment of one spouse at the expense of the other, and ensure that the dissolution process does not unduly disadvantage vulnerable family members.

However, the Act's applicability is limited to statutory marriages, excluding customary and Islamic law marriages, which are governed by different legal frameworks. This limitation creates a significant gap in legal protection for individuals in polygamous unions, particularly women, who may face systemic disadvantages under customary or Islamic law. For instance, while the Matrimonial Causes Act provides mechanisms for equitable property division and spousal support, these protections are not extended to spouses in customary or Islamic marriages, leaving them vulnerable to unfair practices such as disinheritance or exclusion from marital property⁶⁹. This disparity highlights the need for legal reforms to harmonize Nigeria's

⁶⁶ Section 72, Matrimonial Causes Act, 1970.

⁶⁷ F Waziri-Ibrahim, Protecting Spousal Rights: Safeguarding Property During Divorce. *Legit.ng*. March 15th, 2023 Available at: <https://www.legit.ng/editorial/opinion/1652417-protecting-spousal-rights-safeguarding-property-divorce-preventing-asset-concealment> Accessed on: 05/09/2025].

⁶⁸ *Ibid*

⁶⁹ J C Diala,, and A C Diala. "Child Marriage, Bridewealth and Legal Pluralism in Africa." *Journal of Comparative Law in Africa* Volume 4, No. 2 (2017): 77-104.

plural legal systems and ensure that all spouses, regardless of the type of marriage, have access to fair and equitable dissolution processes. Despite its limitations, the Matrimonial Causes Act of 1970 remains a critical legal instrument for resolving marital disputes in statutory marriages and serves as a model for potential reforms in other marriage systems⁷⁰.

3.1.3 Customary Law

Customary Law in Nigeria is a body of unwritten rules and practices derived from the traditions, customs, and norms of various ethnic groups. It plays a significant role in regulating marriages, particularly in rural areas where traditional practices remain deeply entrenched. Customary law marriages are recognized under Nigerian law, provided they are conducted in accordance with the customs of the parties involved⁷¹. These marriages are often characterized by their informal nature, as they do not require formal registration or documentation. Instead, they are validated through community recognition and adherence to cultural rites, such as the payment of bride price, the performance of traditional ceremonies, and the involvement of family members. Customary law marriages are typically polygamous, allowing a man to marry multiple wives, which reflects the communal and patriarchal values of many Nigerian societies⁷².

Beyond property and inheritance, customary law marriage also shapes spousal rights in the context of divorce, custody, and maintenance, though these areas remain less codified and more subject to local interpretation. Dissolution of a customary law marriage is typically handled by family councils or traditional rulers, rather than formal courts, and the process

⁷⁰ A I Imiefoh and I J Andrew-Imiefoh, 'A Comparative Analysis of Customary Law and English Law Marriages in Nigeria.' *East African Journal of Law, Policy and Globalization* Vol 1, no. 2 2024. pp 12-25.

⁷¹ R A Onouha. "Discriminatory Property Inheritance Under Customary Law In Nigeria: NGOs To The Rescue." *Int'l J. Not-for-Profit L.* 10 (2007): 79.

⁷² G Jonah (2025). A Comparative Analysis of Statutory and Customary Marriage in Nigeria. *Social Science Research Network*. February 12th, 2025. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5381487 accessed on March 18th, 2025.

often involves the refund of the bride price or the performance of specific rituals to formally terminate the union.⁷³ In such proceedings, the rights of spouses, particularly women, can be precarious, as customary law does not always provide clear guidelines for the division of property or the award of maintenance. Custody of children is traditionally granted to the father's lineage, reflecting the patrilineal nature of most Nigerian societies, though modern courts are increasingly prioritizing the best interests of the child, as advocated by international conventions and domestic laws.⁷⁴ Despite these challenges, customary law marriage remains a vital and respected institution in Nigeria, offering a sense of cultural identity and continuity for millions of Nigerians. Its resilience and adaptability demonstrate the capacity of traditional systems to evolve in response to changing social norms and legal standards, ensuring that spousal rights under customary law are progressively aligned with the principles of justice and equality that underpin Nigeria's broader legal framework.

Despite its cultural significance, customary law marriage poses significant challenges, particularly for women. The patriarchal nature of many customary practices often results in limited rights for women in areas such as inheritance, property ownership, and decision-making within the household. For instance, widows may face disinheritance or exclusion from marital property under customary law, and women may have little control over marital assets or household decisions⁷⁵. These disparities highlight the tension between cultural preservation and the need for gender equality, raising critical questions about the adequacy of customary law in protecting spousal rights in contemporary Nigeria. While customary law remains an integral part of Nigeria's legal pluralism, there is a growing need for reforms that harmonize

⁷³ S U Nweke-Eze, "An Appraisal of Customary Law Marriages in Nigeria." *Journal of Contemporary Issues in Nigerian Law*, (2023) 3(1), 40–44. Retrieved from <https://journals.ezenwaohaetorc.org/index.php/JOCINL/article/download/2082/2125> visited: 05/09/2025

⁷⁴ A I Imiefoh and I J Andrew-Imiefoh, 'A Comparative Analysis of Customary Law and English Law Marriages in Nigeria.' *East African Journal of Law, Policy and Globalization* Vol 1, no. 2 2024. pp 12-25.

⁷⁵ *Ibid*

traditional practices with constitutional principles of equality and justice, ensuring that all spouses, particularly women, are afforded equal rights and protections under the law.

3.1.4 Islamic Law

Islamic law represents a fundamental pillar within Nigeria's pluralistic legal system, governing marriage and spousal rights for the country's substantial Muslim population. The constitutional recognition of Sharia as a distinct legal system alongside statutory and customary law creates a unique tripartite framework that reflects Nigeria's diverse religious and cultural landscape. This recognition extends particularly to personal status matters, including marriage, divorce, inheritance, and family relations, which fall under the jurisdiction of Sharia courts in twelve northern states where Islam predominates⁷⁶. The legal foundation for Islamic marriages draws from multiple sources, including the Qur'an, Sunnah (traditions of Prophet Muhammad), and classical juristic interpretations primarily from the Maliki school of jurisprudence, which dominates Nigerian Islamic legal practice⁷⁷. This complex interplay between religious doctrine, cultural norms, and contemporary legal frameworks produces both distinctive protections and significant challenges for Muslim spouses in Nigeria, particularly concerning gender equality and the harmonization of religious principles with modern human rights standards.

The institutional structures administering Islamic marriage law include both informal traditional systems and formal judicial institutions. Sharia courts operate at state levels with varying degrees of integration into the broader judicial system, while Hisbah groups religious police forces engage in moral enforcement and dispute mediation in communities, though their authority and practices differ significantly across states.⁷⁸ The procedural aspects of Islamic

⁷⁶ I Jaafar-Mohammad, & C Lehmann "Women's Rights in Islam Regarding Marriage and Divorce." *Journal of Law and Practice*, 2011 Vol 4(1), 3.

⁷⁷ Ibid

⁷⁸ Ibid

marriage formation require compliance with essential requirements: offer and acceptance (*ijab* and *qabul*), presence of witnesses, and payment of *mahr* (dower) to the bride as a fundamental financial security mechanism. However, the substantive legal framework contains provisions that raise significant concerns regarding gender equality, particularly the permission of polygyny for men without equivalent rights for women, the contractual capacity of women requiring guardian (*wali*) consent in certain interpretations, and differentiated rights regarding divorce initiation and child custody.⁷⁹ These traditional interpretations, when applied without contemporary contextualization, create substantial tensions with constitutional guarantees of equality and international human rights commitments that Nigeria has undertaken, presenting ongoing challenges for legal harmonization and reform efforts.

3.1.5 The Constitution of the Federal Republic of Nigeria

The Constitution of the Federal Republic of Nigeria, 1999 (as amended), serves as the supreme legal document governing the country, providing the framework for its legal, political, and social systems. It establishes the structure of government, delineates the powers and responsibilities of its branches, and enshrines fundamental human rights and freedoms for all citizens. Among its provisions, the Constitution guarantees the right to freedom from discrimination⁸⁰, the right to dignity of the human person⁸¹, and the right to own and acquire property⁸². These provisions are particularly relevant in the context of marriage and family law, as they provide a constitutional basis for challenging discriminatory practices in customary and Islamic law marriages, such as those that limit women's rights to inheritance, property ownership, and decision-making.

⁷⁹ Ibid

⁸⁰ 1999 Constitution of the Federal Republic of Nigeria as amended, Sec 42

⁸¹ 1999 Constitution of the Federal Republic of Nigeria as amended, Section 35.

⁸² 1999 Constitution of the Federal Republic of Nigeria as amended, Sec 43.

However, the Constitution also recognizes Nigeria's plural legal system, allowing for the coexistence of statutory, customary, and Islamic laws. This recognition creates a complex legal landscape where constitutional principles of equality and justice often clash with traditional and religious practices. For instance, while the Constitution promotes gender equality⁸³, customary and Islamic laws, which are deeply rooted in patriarchal norms, frequently perpetuate systemic inequalities in marriage and family matters. This tension underscores the need for judicial interpretation and legislative reforms to harmonize these legal systems with constitutional provisions. The judiciary has played a crucial role in this regard, with courts often invoking constitutional principles to strike down discriminatory practices. Nevertheless, gaps remain in the enforcement of these rights, particularly in rural areas where customary practices dominate. The Constitution, therefore, serves as both a shield and a sword in the fight for gender equality and the protection of spousal rights, but its full potential can only be realized through consistent enforcement, public awareness, and legal reforms that align traditional practices with constitutional values.

3.2 Institutional Framework

3.2.1 The Judiciary

The judiciary in Nigeria plays a pivotal role as a legal institution in addressing the complexities arising from the coexistence of statutory, customary, and Islamic law marriages. As the interpreter and enforcer of the law, the judiciary is tasked with resolving conflicts between these legal systems and ensuring that constitutional principles of equality, justice, and human rights are upheld. In cases involving spousal rights, inheritance, and property disputes, Nigerian courts have often been called upon to reconcile the rigid provisions of statutory law with the flexible, culturally rooted practices of customary and Islamic law. For

⁸³ 1999 Constitution of the Federal Republic of Nigeria as amended, Section 42.

instance, courts have invoked constitutional provisions, such as the right to freedom from discrimination⁸⁴ and the right to dignity of the human person⁸⁵ to challenge discriminatory practices in customary and Islamic marriages, such as the disinheritance of widows or the denial of property rights to women. Through landmark judgments, the judiciary has gradually expanded the scope of legal protections for spouses, particularly women, in Nigeria's plural legal system.

Despite its critical role, the judiciary faces significant challenges in addressing the disparities and conflicts inherent in Nigeria's plural legal framework. Limited access to justice, particularly in rural areas, and a lack of awareness about legal rights often hinder individuals, especially women, from seeking redress. Additionally, the judiciary's reliance on precedent and formal legal procedures can sometimes conflict with the informal nature of customary and Islamic law, creating delays and inconsistencies in the administration of justice. Furthermore, cultural and societal pressures often influence the enforcement of judgments, particularly in cases involving deeply entrenched traditional practices. To address these challenges, there is a need for increased judicial training on gender-sensitive adjudication, public awareness campaigns to educate citizens about their rights, and legislative reforms to harmonize statutory, customary, and Islamic laws. By strengthening its role as a guardian of justice and equity, the judiciary can play a transformative role in ensuring that all spouses, regardless of the legal system under which they are married, are afforded equal rights and protections under the law.

⁸⁴ Section 42 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

⁸⁵ Section 34 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

3.2.2 The Nigerian National Human Rights Commission (NNHRC)

The Nigerian National Human Rights Commission (NNHRC) is a critical institution tasked with promoting and protecting human rights in the country. Established under the National Human Rights Commission Act of 1995⁸⁶, the NNHRC operates as an independent body with the mandate to investigate human rights violations, provide redress for victims, and advocate for the enforcement of human rights laws and policies. In the context of marriage and spousal rights, the NNHRC plays a vital role in addressing systemic inequalities and discriminatory practices that arise from Nigeria's plural legal system. For instance, the Commission has been instrumental in highlighting issues such as the disinheritance of widows, denial of property rights to women under customary and Islamic law, and other gender-based violations that occur within marital relationships⁸⁷. By conducting investigations, raising public awareness, and making recommendations to the government, the NNHRC serves as a watchdog and advocate for the protection of spousal rights, particularly for women who are often marginalized under traditional and religious legal systems.

However, the NHRC faces significant challenges in fulfilling its mandate, including limited resources, bureaucratic constraints, and societal resistance to change, particularly in rural areas where customary practices are deeply entrenched. Despite these challenges, the Commission has made notable strides in advancing human rights in Nigeria⁸⁸. It has collaborated with civil society organizations, international bodies, and other stakeholders to promote gender equality and advocate for legal reforms that harmonize statutory, customary, and Islamic laws with constitutional provisions. The NHRC's efforts have also included public education campaigns to raise awareness about the rights of spouses and the legal remedies

⁸⁶ National Human Rights Commission Act of 1995

⁸⁷ B Mibzar "NHRC Unveils 16-day Activism to Celebrate Human Rights Day" *Leadership.ng* 17th December, 2024. Retrieved from <https://leadership.ng/nhrc-unveils-16-day-activism-to-celebrate-human-rights-day/> visited: 25/08/2025.

⁸⁸ Ibid

available to them. By strengthening its capacity and expanding its reach, the NHRC can play an even more transformative role in addressing the disparities in Nigeria's plural legal system and ensuring that all individuals, regardless of gender or cultural background, are afforded equal rights and protections within marriage and family life.

3.2.3 Customary Courts and Their Jurisdiction

Customary courts in Nigeria represent a foundational component of the country's legal pluralism, serving as specialized judicial bodies designed to adjudicate matters based on indigenous customs and traditions. These courts are established under various state laws and operate within a structured hierarchy that reflects Nigeria's commitment to preserving its cultural heritage while administering justice⁸⁹. The historical evolution of customary courts can be traced back to colonial administrative policies that recognized the need for distinct judicial mechanisms to address disputes arising from native laws and customs. Today, these courts continue to function as important institutions within Nigeria's judicial framework, particularly in matters involving personal status and family law. The composition of customary courts typically includes individuals knowledgeable in local customs, with some courts requiring legal training for presiding officers while others prioritize traditional expertise. This dual approach ensures that decisions are grounded in both legal principles and cultural authenticity, creating a unique judicial environment that respects Nigeria's diverse ethnic traditions while maintaining connections to the formal justice system. The operational guidelines for these courts are established through state legislation, which defines their jurisdictional boundaries, procedural rules, and relationship with other judicial bodies.⁹⁰

⁸⁹ C Nwagbara, "The Nature, Types and Jurisdiction of Customary Courts in the Nigeria Legal System." *Journal of Law Policy & Globalization* (2014) Vol. 25(1) p34

⁹⁰ *Ibid*

The jurisdictional authority of customary courts primarily encompasses civil matters relating to customary law, including disputes arising from marriage, divorce, inheritance, child custody, and land tenure under traditional systems⁹¹. Specifically, these courts exercise original jurisdiction over cases involving the validity of customary marriages, bride price negotiations, matrimonial disputes, and the allocation of matrimonial property according to indigenous customs. Their jurisdictional reach extends to matters of inheritance and succession where distribution of property is governed by customary rules, as well as land disputes subject to traditional tenure systems⁹². The legal foundation for this jurisdiction is derived from both state statutes and the inherent recognition of customary law as a valid source of legal norms within Nigeria's pluralistic system. The Federal Capital Territory Customary Court Act of 2007⁹³, for instance, explicitly grants these courts authority to hear and determine causes and matters based on customary laws, along with such other matters as may be conferred upon them by legislative provisions⁹⁴. This jurisdictional framework ensures that customary courts address matters deeply rooted in cultural practices while operating within the broader constitutional structure of Nigeria.

The operational dynamics of customary courts reveal their significance as accessible forums for dispute resolution, particularly in rural areas where traditional customs maintain strong influence. These courts typically employ procedures that incorporate elements of both formal adjudication and traditional dispute resolution mechanisms, emphasizing mediation, consensus-building, and restorative justice approaches⁹⁵. The procedural flexibility allows customary courts to consider oral traditions, community testimony, and cultural practices that

⁹¹ M N Umenweke, , and U M Anushiem. "Strengthening the Place of the Customary Court in Nigeria: Imperative for Enhanced Justice Delivery." *Journal of Customary and Religious Law* (2024) Vol 1(1) p68.

⁹² *Ibid*

⁹³ Section 14, Federal Capital Territory Customary Court Act of 2007

⁹⁴ C Nwagbara, "The Nature, Types and Jurisdiction of Customary Courts in the Nigeria Legal System." *Journal of Law Policy & Globalization* (2014) Vol. 25(1) p34

⁹⁵ A C Diala, . "A Butterfly That Thinks Itself a Bird: The Identity of Customary Courts in Nigeria." *The Journal of Legal Pluralism and Unofficial Law* 51, no. 3 (2019): 381-405.

might be excluded in conventional courts, thereby ensuring that decisions resonate with local understandings of fairness and justice. However, these courts also face significant challenges, including questions about procedural consistency, the protection of constitutional rights within customary proceedings, and the need to adapt traditional practices to contemporary legal standards⁹⁶. The evolving jurisprudence surrounding customary courts reflects ongoing efforts to balance cultural preservation with modern human rights standards, particularly regarding gender equality and the rights of vulnerable parties. Despite these challenges, customary courts remain vital institutions for resolving disputes in accordance with the customs and traditions that govern many aspects of communal life, while gradually incorporating principles of constitutional democracy and universal human rights into their adjudicative processes.

⁹⁶ Ibid

CHAPTER FOUR

COMPARATIVE ANALYSIS OF STATUTORY AND CUSTOMARY LAW

MARRIAGE IN NIGERIA

4.1 Differences Between Statutory and Customary Law Marriage

The Nigerian legal system is a fascinating tapestry of statutory and customary laws, each reflecting distinct philosophical underpinnings and societal values. Statutory marriage, governed primarily by the Marriage Act of 1914⁹⁷, represents the formal, state-sanctioned approach to marital unions. It is a product of colonial legacies and Western legal traditions, emphasizing individualism, equality, and the rule of law. In contrast, customary law marriage is deeply rooted in the traditions and cultural practices of Nigeria's numerous ethnic groups, reflecting a communal philosophy that prioritizes family and societal harmony over individual rights. These two systems coexist in Nigeria, creating a legal pluralism that is both a source of richness and a cause of significant tension, particularly in matters of spousal rights and gender equality⁹⁸.

Statutory marriage is characterized by its formal procedures and legal requirements. To be recognized as valid, a statutory marriage must comply with specific conditions, such as obtaining a marriage license, conducting the ceremony in a licensed place of worship or registry, and ensuring that both parties are of legal age and consenting to the union⁹⁹. The Marriage Act also enforces monogamy, meaning that a person cannot legally enter into a statutory marriage with more than one spouse at a time. This emphasis on formality and exclusivity reflects the Western philosophical ideals of individualism and contractual

⁹⁷ Marriage Act 1914, Cap M6, Laws of the Federation of Nigeria 2004.

⁹⁸ J O Asein "The Nigerian Legal System and the Challenges of Legal Pluralism," *Journal of African Law*, Vol. 45, No. 1 (2001), pp. 1-20.

⁹⁹ Marriage Act 1914, Cap M6, Laws of the Federation of Nigeria 2004.

obligations, where marriage is seen as a legal agreement between two consenting adults. The state plays a central role in regulating and enforcing these marriages, ensuring that the rights and obligations of spouses are clearly defined and protected under the law¹⁰⁰.

Customary law marriage, on the other hand, operates outside the formal legal framework and is governed by the traditions and customs of the parties involved. It is often informal, requiring only the consent of the families and the payment of a bride price, which symbolizes the transfer of rights and responsibilities from the bride's family to the groom's family¹⁰¹. Unlike statutory marriage, customary marriage is typically polygamous, allowing a man to marry multiple wives, a practice that is deeply embedded in many Nigerian cultures. This reflects a communal philosophy, where marriage is not just a union between two individuals but a bond between families and communities¹⁰². The emphasis is on maintaining social harmony and preserving cultural heritage, often at the expense of individual rights, particularly for women.

The recognition of these two systems by the Nigerian legal framework creates a dualistic approach to marriage, where statutory and customary marriages coexist but are governed by different principles and rules¹⁰³. This duality raises important philosophical questions about the role of law in society. Should the law prioritize individual rights and equality, as in statutory marriage, or should it uphold cultural traditions and communal values, as in customary marriage? The tension between these two approaches is particularly evident in cases where the rights of women are at stake. While statutory marriage offers a more equitable framework for spousal rights, customary marriage often perpetuates patriarchal norms that disadvantage women. This dichotomy highlights the need for a nuanced approach that reconciles the benefits of both systems while addressing their shortcomings.

¹⁰⁰ E.I. Nwogugu, *Family Law in Nigeria* (3rd edn, Heinemann Publishers Plc, 2014)

¹⁰¹ A C Diala, "The Concept of Customary Marriage in Nigeria: A Critical Appraisal," *African Journal of International and Comparative Law*, Volume. 22, No. 2 (2014), pp. 245-263.

¹⁰² J O Asein "The Nigerian Legal System and the Challenges of Legal Pluralism," *Journal of African Law*, Vol. 45, No. 1 (2001), pp. 1-20.

¹⁰³ *Ibid*

The rights and obligations of spouses under statutory and customary law marriages in Nigeria differ significantly, reflecting the philosophical and cultural values that underpin each system¹⁰⁴. Statutory marriage, governed by the Marriage Act and other related laws, provides a structured framework that emphasizes equality and mutual respect between spouses. Customary law marriage, on the other hand, is shaped by the traditions and practices of Nigeria's diverse ethnic groups, often prioritizing communal harmony and patriarchal authority over individual rights¹⁰⁵. These differences have profound implications for spousal rights, particularly for women, and highlight the challenges of achieving gender equality in a plural legal system.

Under statutory marriage, the rights and obligations of spouses are clearly defined by law. Both parties are considered equal partners in the marriage, with equal rights to property, inheritance, and decision-making. The Matrimonial Causes Act, for instance, provides guidelines for the division of property and the payment of maintenance in the event of a divorce, ensuring that both spouses are treated fairly¹⁰⁶. Statutory marriage also prohibits practices such as polygamy and child marriage, which are often associated with gender inequality. This reflects a modern, egalitarian philosophy that seeks to protect the rights of individuals, particularly women, within the marital relationship.

In contrast, customary law marriage is often characterized by patriarchal norms that limit the rights of women. Under customary law, the husband is typically considered the head of the household, with authority over family decisions and property. Women, particularly in polygamous marriages, may have limited rights to inherit property or make decisions about

¹⁰⁴ Himonga, C., and Bosch, M., "The Application of African Customary Law under the Constitution of South Africa: Problems Solved or Just Beginning?" *South African Law Journal*, Vol. 117, No. 2 (2000), pp. 306-341.

¹⁰⁵ F Anyogu, and C S Ibekwe. "A Comparative Exposition of Customary Law Marriage in Nigeria and South Africa." *IJOCLLEP* 2 (2020): 135.

¹⁰⁶ Section 70 of the Matrimonial Causes Act CAP M7 Laws of The Federation Of Nigeria, 2004

their own lives¹⁰⁷. For example, in many Nigerian cultures, a widow's right to inherit her husband's property is often subject to the approval of his family, and she may be required to marry a male relative to retain her rights. This reflects a communal philosophy that prioritizes the interests of the family and community over those of the individual, often at the expense of women's rights.

The differences in spousal rights under statutory and customary law marriages raise important philosophical questions about justice and equity. Should the law prioritize individual rights and gender equality, as in statutory marriage, or should it uphold cultural traditions and communal values, as in customary marriage? This tension is particularly evident in cases where the rights of women are at stake. While statutory marriage offers a more equitable framework for spousal rights, customary marriage often perpetuates practices that disadvantage women. This dichotomy highlights the need for legal reforms that reconcile the benefits of both systems while addressing their shortcomings.

4.2 Legal Implication for Spousal Rights

The legal implications of statutory and customary law marriages in Nigeria for spousal rights are profound, reflecting the broader philosophical tensions between individualism and communalism, modernity and tradition, and equality and hierarchy¹⁰⁸. Statutory marriage, governed by the Marriage Act of 1914 and related legislation, provides a structured framework that emphasizes equality, mutual respect, and the protection of individual rights. In contrast, customary law marriage, rooted in the traditions and practices of Nigeria's diverse ethnic groups, often prioritizes communal harmony and patriarchal authority, frequently at the expense of women's rights. These differences have significant implications for spousal rights,

¹⁰⁷ L M Mpedi, "The Recognition of Customary Marriages Act: A Tool for Gender Equality?" *Journal of African Law*, Vol. 47, No. 1 (2003), pp. 116-129

¹⁰⁸ J O Asein "The Nigerian Legal System and the Challenges of Legal Pluralism," *Journal of African Law*, Vol. 45, No. 1 (2001), pp. 1-20.

particularly in areas such as inheritance, property ownership, and decision-making within the household. The coexistence of these two systems creates a legal pluralism that is both a source of richness and a cause of significant tension, raising important questions about justice, equality, and the role of law in shaping societal norms¹⁰⁹.

Under statutory marriage, the rights and obligations of spouses are clearly defined by law, reflecting a modern, egalitarian philosophy. The Marriage Act requires that both parties consent to the union, be of legal age, and comply with formal procedures such as obtaining a marriage license and conducting the ceremony in a licensed place of worship or registry. This emphasis on formality and consent underscores the importance of individual autonomy and equality within the marital relationship¹¹⁰. The Matrimonial Causes Act further reinforces these principles by providing guidelines for the division of property and the payment of maintenance in the event of a divorce, ensuring that both spouses are treated fairly¹¹¹. Statutory marriage also prohibits practices such as polygamy and child marriage, which are often associated with gender inequality. This reflects a commitment to protecting the rights of individuals, particularly women, within the marital relationship. However, the formalities and costs associated with statutory marriage often make it inaccessible to many Nigerians, particularly those in rural areas, leading to a preference for customary marriages.

Customary law marriage, on the other hand, is shaped by the traditions and practices of Nigeria's diverse ethnic groups, reflecting a communal philosophy that prioritizes family and societal harmony over individual rights¹¹². It is often informal, requiring only the consent of the families and the payment of a bride price, which symbolizes the transfer of rights and

¹⁰⁹ *Ibid*

¹¹⁰ I O Smith, "The Legal Framework for Marriage in Nigeria: A Critique," *Nigerian Journal of Contemporary Law*, Volume. 15, No. 2 (2010), pp. 45-60.

¹¹¹ Section 70 of the Matrimonial Causes Act CAP M7 Laws Of The Federation Of Nigeria, 2004

¹¹² F Anyogu, and C S Ibekwe. "A Comparative Exposition of Customary Law Marriage in Nigeria and South Africa." *IJOCLLEP* 2 (2020): 135.

responsibilities from the bride's family to the groom's family. Unlike statutory marriage, customary marriage is typically polygamous, allowing a man to marry multiple wives, a practice that is deeply embedded in many Nigerian cultures. This reflects a communal philosophy, where marriage is not just a union between two individuals but a bond between families and communities. However, this emphasis on communal values often comes at the expense of individual rights, particularly for women. Under customary law, the husband is typically considered the head of the household, with authority over family decisions and property. Women, particularly in polygamous marriages, may have limited rights to inherit property or make decisions about their own lives. For example, in many Nigerian cultures, a widow's right to inherit her husband's property is often subject to the approval of his family, and she may be required to marry a male relative to retain her rights. This reflects a communal philosophy that prioritizes the interests of the family and community over those of the individual, often at the expense of women's rights.

The legal implications of these differences for spousal rights are profound, particularly in terms of gender equality. While statutory marriage offers a more equitable framework for women's rights, customary marriage often perpetuates practices that disadvantages women¹¹³. This dichotomy highlights the need for legal reforms that reconcile the benefits of both systems while addressing their shortcomings. It also raises important philosophical questions about the role of law in promoting justice and equity. Should the law prioritize individual rights and gender equality, as in statutory marriage, or should it uphold cultural traditions and communal values, as in customary marriage? This tension is particularly evident in cases where the rights of women are at stake. For example, in cases of divorce or the death of a spouse, women in statutory marriages are often better protected under the law, with clear

¹¹³ L M Mpedi, "The Recognition of Customary Marriages Act: A Tool for Gender Equality?" *Journal of African Law*, Vol. 47, No. 1 (2003), pp. 116-129

guidelines for the division of property and the payment of maintenance. In contrast, women in customary marriages may face significant challenges in asserting their rights, particularly if they are in polygamous unions or if their rights are subject to the approval of their husband's family.

4.2.1 Rights of Wives and Husbands in Statutory and Customary Marriages

Under statutory marriage in Nigeria, the rights and obligations of spouses are clearly defined by law, reflecting a modern, egalitarian philosophy that prioritizes equality, mutual respect, and the protection of individual rights. Statutory marriage, governed primarily by the Marriage Act of 1914 and the Matrimonial Causes Act of 1970, establishes a legal framework that treats both parties as equal partners in the marital relationship. This framework is designed to ensure fairness and justice, particularly in areas such as property ownership, inheritance, and decision-making. The emphasis on equality within statutory marriage is a stark contrast to customary marriage, which often perpetuates patriarchal norms and gender inequality. By prohibiting practices such as polygamy and child marriage, statutory marriage aligns with international human rights standards, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹¹⁴, which Nigeria has ratified.

One of the key features of statutory marriage is the equal right to property ownership and management. Both spouses have the legal right to acquire, own, and manage property during the marriage¹¹⁵. In the event of a divorce, the Matrimonial Causes Act provides clear guidelines for the equitable distribution of marital property. For instance, in the case of *Akinloye v. Akinloye*¹¹⁶, the court emphasized the principle of fairness in the division of

¹¹⁴ United Nations General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <https://www.un.org/womenwatch/daw/cedaw/> [accessed 12th March].

¹¹⁵ E S Nwauche, "The Constitutional Challenge of the Integration of Customary Law into the Nigerian Legal System," *Journal of African Law* Volume 52, No. 1 (2008), pp. 170-192.

¹¹⁶ *Akinloye v. Akinloye* [2001] 12 NWLR (Pt. 728) 566.

property, ensuring that both parties received a just share of the marital assets. This case highlighted the importance of statutory law in protecting the rights of spouses, particularly women, who might otherwise be disadvantaged under customary practices. Similarly, in *Oke v. Oke*¹¹⁷, the court ruled that a wife who contributed financially to the acquisition of property during the marriage was entitled to a fair share upon divorce, reinforcing the principle of equality in statutory marriages.

Inheritance rights are another critical area where statutory marriage provides robust protections for spouses. Under the Administration of Estates Law, a surviving spouse is entitled to inherit from the deceased partner's estate, ensuring financial security and stability. This is particularly important for women, who often face significant challenges in asserting their inheritance rights under customary law. For example, in *Mojekwu v. Mojekwu*¹¹⁸, the court upheld the right of a widow to inherit her husband's property under statutory law, rejecting the customary practice that excluded women from inheritance. This landmark case underscored the role of statutory law in promoting gender equality and protecting the rights of women in marital relationships.

Statutory marriage also provides clear legal protections in cases of divorce. The Matrimonial Causes Act allows either spouse to initiate divorce proceedings and provides for the payment of maintenance or maintenance to support the financially dependent spouse. This ensures that both parties are treated fairly and that the economic impact of divorce is equitably managed. In *Olabimtan v. Olabimtan*¹¹⁹, the court awarded maintenance to a wife who had been financially dependent on her husband during the marriage, emphasizing the importance of statutory law in addressing economic disparities between spouses.

¹¹⁷ *Oke v. Oke* [1974] 1 All NLR 443

¹¹⁸ *Mojekwu v. Mojekwu* [1997] 7 NWLR (Pt. 512) 283.

¹¹⁹ *Olabimtan v. Olabimtan* [2001] 12 NWLR (Pt. 727) 328.

4.2.2 Inheritance and Property Rights of Spouses

The inheritance and property rights of spouses in Nigeria are deeply influenced by the legal framework governing the marriage, whether statutory or customary. These rights are not only a reflection of the legal system but also of the philosophical and cultural values that underpin Nigerian society¹²⁰. Statutory marriage, governed by the Marriage Act of 1914 and related legislation, emphasizes equality, mutual respect, and the protection of individual rights. In contrast, customary law marriage, rooted in the traditions and practices of Nigeria's diverse ethnic groups, often prioritizes communal harmony and patriarchal authority, frequently at the expense of women's rights. These differences have significant implications for the economic security and stability of spouses, particularly in the event of death or divorce.

Under statutory law, the rights of spouses to property and inheritance are clearly defined and protected. Both parties are considered equal partners in the marriage, with equal rights to own, acquire, and manage property. The Matrimonial Causes Act provides guidelines for the equitable distribution of marital property in the event of a divorce, ensuring that both spouses are treated fairly. For example, in *Akinloye v. Akinloye*¹²¹, the court emphasized the principle of fairness in the division of property, ensuring that both spouses received a just share of the marital assets. Similarly, in *Oke v. Oke*¹²² the court ruled that a wife who contributed financially to the acquisition of property during the marriage was entitled to a fair share upon divorce, reinforcing the principle of equality in statutory marriages. In cases of inheritance, the Administration of Estates Law guarantees the right of a surviving spouse to inherit from the deceased partner's estate. This was highlighted in *Mojekwu v. Mojekwu*¹²³, where the court

¹²⁰ J C Efe., and E E Oghenerioborue . "Property rights of Nigerian Women at Divorce: A Case for a Redistribution Order." *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* Volume 23, No. 1 (2020).

¹²¹ *Akinloye v. Akinloye* [2001] 12 NWLR (Pt. 728) 566.

¹²² *Oke v. Oke* [1974] 1 All NLR 443

¹²³ *Mojekwu v. Mojekwu* [1997] 7 NWLR (Pt. 512) 283.

upheld the right of a widow to inherit her husband's property under statutory law, rejecting the customary practice that excluded women from inheritance.

The inheritance and property rights of spouses in Nigeria present a complex legal landscape characterized by significant disparities between statutory and customary law frameworks. Under statutory law, particularly the Marriage Act and various state level administration of estate laws, spouses in formally registered marriages enjoy relatively robust protections. For instance, the Administration of Estates Law of Lagos State 2015¹²⁴ provides clear guidelines for intestate succession, recognizing the surviving spouse as a primary beneficiary with substantial entitlements to the deceased's estate¹²⁵. This statutory framework establishes a principle of equitable distribution that acknowledges the partnership nature of marriage, ensuring that widows and widowers maintain financial security after their partner's death. Similarly, the Matrimonial Causes Act recognizes both financial and non-financial contributions to marital property, enabling courts to make fair distribution orders upon divorce or death.¹²⁶ These statutory provisions reflect a modern understanding of spousal rights that aligns with constitutional guarantees of equality and human dignity, offering a protective shield against arbitrary dispossession.

However, the reality for most Nigerians remains starkly different due to the predominance of customary law marriages and their traditional inheritance practices. Customary law, which governs a majority of marriages in Nigeria, varies significantly across ethnic groups but generally operates on patrilineal principles that systematically disadvantage widows and female heirs.¹²⁷ Among the Igbo people, for example, the principle of primogeniture dictates

¹²⁴ Administration of Estates Law of Lagos State, 2015.

¹²⁵ "The Legal Rights of Spouses in Marriage Under Nigerian Law"

Law Pavilion June 19, 2023. Retrieved from <https://lawpavilion.com/blog/the-legal-rights-of-spouses-in-marriage-under-nigerian-law/> visited: 28/08/2025.

¹²⁶ *Ibid*

¹²⁷ A C Diala & V Adeleke "The Right of Women to the Inheritance of their Husbands' Estate in Nigeria" *Journal of Law, Society and Development*. (2024) Vol.4(2) p78

that only male children can inherit property, with the eldest son typically assuming control of the entire estate to the exclusion of both the widow and female children. The widow is often considered part of the property to be inherited rather than a rightful heir, frequently granted only usufructuary rights (right of use) to the marital home without ownership rights. Similarly, in Yoruba custom, while female children may inherit under the "ori ojori" system of equal distribution, widows themselves are generally excluded from inheriting their husband's property unless specifically gifted during his lifetime¹²⁸. These customary practices persist despite constitutional provisions prohibiting discrimination based on gender, creating a fundamental tension between cultural traditions and modern rights-based frameworks.

The coexistence of these parallel legal systems creates significant confusion and inequality in spousal property rights, particularly for women in customary marriages. Many women find themselves in a precarious legal limbo where their marital status determines their economic security, with those in customary marriages facing potential dispossession upon their husband's death.¹²⁹ This discriminatory application of customary law has been challenged in Nigerian courts, with some landmark decisions declaring certain customs unconstitutional. In the groundbreaking case of *Ukeje v Ukeje*¹³⁰, the Supreme Court declared the Igbo custom that disinherits female children unconstitutional, affirming that no matter the circumstances of birth, a female child is entitled to inherit from her father's estate. Similarly, in *Mojekwu v Mojekwu*¹³¹, the Court of Appeal held that customs denying women inheritance rights were repugnant to natural justice, equity, and good conscience. Despite these progressive judicial

¹²⁸ Ibid

¹²⁹ M C Cookey & M O Izzi, "A Legal Appraisal of the Inheritance Rights of Women in Nigeria. *International Journal of Law, Social Sciences and Society*, (2023) Vol. 2(4), p28.

¹³⁰ *Ukeje v Ukeje* (2014) 11 NWLR (PT.1418) 384.

¹³¹ *Mojekwu v Mojekwu* (1997) 7 NWLR (Pt. 512) 283

decisions, enforcement remains inconsistent, and many women continue to face dispossession due to limited legal awareness, social pressure, and the financial burden of pursuing litigation. In contrast, customary law often restricts women's rights to property and inheritance, reflecting a communal philosophy that prioritizes the interests of the family and community over those of the individual¹³². Under customary law, property is often considered family or communal property, with the husband typically holding authority over its management and control. Women, particularly in polygamous marriages, may have limited rights to own or manage property. For example, in many Nigerian cultures, a widow's right to inherit her husband's property is often subject to the approval of his family, and she may be required to marry a male relative to retain her rights. This practice, known as levirate marriage, was challenged in *Nzekwu v. Nzekwu*¹³³, where the court rejected the customary practice of excluding widows from inheriting their husband's property, emphasizing the need to align customary practices with constitutional guarantees of equality.

4.2.3 Divorce and Child Custody Under Statutory and Customary Law in Nigeria

Under statutory law, divorce is governed by the Matrimonial Causes Act of 1970¹³⁴, which provides clear guidelines for the dissolution of marriage and the equitable distribution of marital property. The Act allows either spouse to initiate divorce proceedings on grounds such as adultery, desertion, or irreconcilable differences, reflecting a modern, egalitarian philosophy that prioritizes individual autonomy and fairness. In cases of divorce, the welfare of the child is the paramount consideration in determining custody, as emphasized in *Williams v. Williams*¹³⁵, where the court ruled that the best interests of the child must guide custody

¹³² E S Nwauche, "The Constitutional Challenge of the Integration of Customary Law into the Nigerian Legal System," *Journal of African Law* Volume 52, No. 1 (2008), pp. 170-192.

¹³³ *Nzekwu v. Nzekwu* [1989] 2 NWLR (Pt. 104) 373.

¹³⁴ Matrimonial Causes Act 1970 Cap M7 Laws of the Federation, 2004.

¹³⁵ *Williams v. Williams* [1987] 2 NWLR (Pt. 54) 66.

decisions. Statutory law also provides for the payment of maintenance or maintenance to support the financially dependent spouse, ensuring that both parties are treated fairly. For example, in *Olabimtan v. Olabimtan*, the court awarded maintenance to a wife who had been financially dependent on her husband during the marriage, highlighting the role of statutory law in addressing economic disparities between spouses.

In contrast, customary law often provides limited protections for women in cases of divorce and child custody, reflecting a communal philosophy that prioritizes the interests of the family and community over those of the individual. Under customary law, divorce is often informal and subject to the approval of family elders, with women facing significant challenges in initiating divorce proceedings. Child custody is typically awarded to the father, as children are often considered part of the paternal lineage. For example, in *Eze v. Eze*¹³⁶, the court highlighted the challenges faced by women in customary marriages, particularly in asserting their rights to custody of their children. Similarly, in *Nzekwu v. Nzekwu*¹³⁷, the court rejected the customary practice of excluding widows from inheriting their husband's property, emphasizing the need to align customary practices with constitutional guarantees of equality. These cases underscore the limitations of customary law in protecting the rights of women and children in cases of divorce and custody.

4.3 Challenges of Dual Marriage Systems in Nigeria

The coexistence of statutory and customary marriage systems in Nigeria presents a unique set of challenges, reflecting the broader philosophical and cultural tensions between modernity and tradition, individualism and communalism, and equality and hierarchy. While statutory marriage, governed by the Marriage Act of 1914, emphasizes equality, mutual respect, and

¹³⁶ *Eze v. Eze* [2001] 12 NWLR (Pt. 726) 1.

¹³⁷ *Nzekwu v. Nzekwu* [1989] 2 NWLR (Pt. 104) 373.

the protection of individual rights, customary marriage, rooted in the traditions and practices of Nigeria's diverse ethnic groups, often prioritizes communal harmony and patriarchal authority. This duality creates a legal pluralism that is both a source of richness and a cause of significant tension, particularly in matters of spousal rights, gender equality, and the administration of justice¹³⁸.

One of the primary challenges of the dual marriage system is the conflict between statutory and customary laws, particularly in cases involving inheritance, property rights, and divorce¹³⁹. For example, while statutory law guarantees equal property and inheritance rights for both spouses, customary law often restricts these rights for women, particularly in polygamous unions. This conflict was highlighted in *Mojekwu v. Mojekwu*¹⁴⁰, where the court upheld the right of a widow to inherit her husband's property under statutory law, rejecting the customary practice that excluded women from inheritance. Similarly, in *Nzekwu v. Nzekwu*¹⁴¹, the court rejected the customary practice of excluding widows from inheriting their husband's property, emphasizing the need to align customary practices with constitutional guarantees of equality. These cases underscore the challenges of reconciling statutory and customary laws, particularly in cases where the rights of women are at stake.

Another significant challenge is the lack of awareness and enforcement of statutory laws, particularly in rural areas where customary practices dominate¹⁴². Many Nigerians, particularly women, are unaware of their rights under statutory law and may face significant barriers in accessing the formal legal system. This lack of awareness is compounded by the

¹³⁸ J O Asein "The Nigerian Legal System and the Challenges of Legal Pluralism," *Journal of African Law*, Vol. 45, No. 1 (2001), pp. 1-20.

¹³⁹ *Ibid.*

¹⁴⁰ *Mojekwu v. Mojekwu* [1997] 7 NWLR (Pt. 512) 283.

¹⁴¹ *Nzekwu v. Nzekwu* [1989] 2 NWLR (Pt. 104) 373.

¹⁴² A I Imiefoh and I J Andrew-Imiefoh, 'A Comparative Analysis of Customary Law and English Law Marriages in Nigeria.' *East African Journal of Law, Policy and Globalization* Vol 1, no. 2 2024. pp 12-16.

high costs and complexities associated with statutory marriage, which often make it inaccessible to many Nigerians¹⁴³. As a result, customary marriage remains the preferred option for many, perpetuating practices that disadvantage women and children. For example, in *Eze v. Eze*¹⁴⁴, the court highlighted the challenges faced by women in customary marriages, particularly in asserting their rights to custody of their children. These challenges underscore the need for legal reforms that promote awareness and accessibility of statutory laws, particularly for vulnerable groups.

The dual marriage system also poses challenges for the administration of justice, particularly in cases where statutory and customary laws conflict. The judiciary is often tasked with reconciling these conflicts, balancing the need to respect cultural traditions with the imperative to protect individual rights. This balancing act is particularly challenging in cases involving gender equality, where customary practices often perpetuate patriarchal norms. For example, in *Williams v. Williams*¹⁴⁵, the court emphasized the importance of prioritizing the welfare of the child in custody decisions, highlighting the need to balance cultural traditions with modern principles of justice. Similarly, in *Olabimtan v. Olabimtan*¹⁴⁶, the court awarded maintenance to a wife who had been financially dependent on her husband during the marriage, underscoring the role of statutory law in addressing economic disparities between spouses. These cases highlight the challenges of administering justice in a plural legal system, particularly in cases where cultural traditions conflict with modern principles of equality and justice.

¹⁴³ *Ibid*

¹⁴⁴ *Eze v. Eze* [2001] 12 NWLR (Pt. 726) 1.

¹⁴⁵ *Williams v. Williams* [1987] 2 NWLR (Pt. 54) 66.

¹⁴⁶ *Olabimtan v. Olabimtan* [2001] 12 NWLR (Pt. 727) 328.

4.4 Comparative Analysis with Other Jurisdictions

4.4.1 Ghana

In Ghana, the coexistence of statutory and customary law marriages within a plural legal system presents a unique legal landscape, each governed by distinct frameworks and cultural practices. Statutory marriages are regulated by the Marriage Act of 1884 (as amended)¹⁴⁷, which is modelled after English common law. These marriages are strictly monogamous and require formal registration, adherence to specific legal procedures such as the issuance of a marriage license, and solemnization by a licensed officiant. Statutory marriages provide a clear legal framework that defines the rights and obligations of spouses, particularly in areas such as inheritance, property ownership, and child custody¹⁴⁸. This system is often preferred in urban areas and among educated elites due to its structured and predictable nature. However, its formal requirements, including the cost and bureaucratic processes involved, can be inaccessible to many Ghanaians, particularly those in rural areas or with limited financial resources. As a result, a significant portion of the population opts for customary marriages, which are more flexible and culturally resonant¹⁴⁹.

Customary law marriages in Ghana are deeply rooted in the traditions and practices of the various ethnic groups across the country. These marriages are often polygamous and do not require formal registration, relying instead on community recognition and adherence to cultural rites, such as the payment of bride price and the performance of traditional ceremonies. Customary marriages are widely practiced, particularly in rural areas, where they are seen as a reflection of cultural identity and communal values. However, they often perpetuate patriarchal norms that disadvantage women, particularly in matters of inheritance,

¹⁴⁷ Marriages Act, 1884 (as amended), CAP 127 Laws of Ghana.

¹⁴⁸ N A Ollennu, *Principles of Customary Land Law in Ghana* (Ghana Publishing Corporation, 1962).

¹⁴⁹ G K Agbango, *Issues and Trends in Ghana's Marriage Laws* (Accra: Woeli Publishing Services, 2005).

property rights, and decision-making within the household. For instance, under customary law, widows may be disinherited or subjected to harmful practices such as widowhood rites, while women may have limited control over marital property. These disparities highlight the tension between cultural preservation and the need for gender equality in Ghana's legal system. Despite these challenges, customary marriages remain an integral part of Ghanaian society, reflecting the country's rich cultural heritage and communal way of life¹⁵⁰.

The coexistence of statutory and customary law marriages in Ghana creates a complex legal landscape, with significant implications for spousal rights and gender equality. While statutory law provides a more equitable framework for protecting the rights of spouses, particularly women, customary law often reinforces systemic inequalities. This duality has prompted calls for legal reforms to harmonize these systems and ensure that all spouses, regardless of the type of marriage, are afforded equal rights and protections. The Ghanaian judiciary has played a crucial role in addressing these disparities, with courts often invoking constitutional provisions to strike down discriminatory customary practices. For example, in the landmark case of *Mensah v. Mensah*¹⁵¹, the court upheld the rights of a widow to inherit her husband's property, challenging customary practices that disinherited women. Similarly, in *Quartey v. Martey*¹⁵², the court emphasized the need to reconcile customary practices with constitutional principles of equality and justice. Despite these judicial efforts, significant gaps remain in the enforcement of spousal rights, particularly in rural areas where customary practices dominate.

Addressing these challenges requires a multifaceted approach, including legislative reforms, public education, and increased access to legal resources. The 1992 Constitution of Ghana provides a strong foundation for promoting gender equality and protecting human rights, but

¹⁵⁰ J. A. Yakubu, *Gender and Land Rights in Ghana: Issues for Policy Consideration* (Accra: Friedrich Ebert Stiftung, 2005).

¹⁵¹ *Mensah v. Mensah* [1998] SCGLR 492.

¹⁵² *Quartey v. Martey* [2012] SCGLR 1077.

its provisions must be effectively enforced to address the disparities in the plural legal system. Legislative reforms, such as the Intestate Succession Law (PNDC Law 111)¹⁵³, have sought to address some of the inequalities in inheritance rights, but more needs to be done to harmonize statutory and customary laws. Public education campaigns are also essential to raise awareness about the rights of spouses and the legal remedies available to them. Additionally, increasing access to legal resources, particularly in rural areas, can empower individuals to challenge discriminatory practices and seek redress. By strengthening the legal framework and promoting gender equality, Ghana can ensure that its plural legal system protects the rights of all spouses, regardless of the type of marriage they enter into.

4.4.2 South Africa

In South Africa, the coexistence of statutory and customary law marriages within a plural legal system reflects the country's diverse cultural heritage and complex legal landscape. Statutory marriages are governed by the Marriage Act of 1961¹⁵⁴, which is based on Western legal traditions and provides for monogamous unions. These marriages require formal registration, adherence to specific legal procedures, and solemnization by a licensed marriage officer. Statutory marriages offer a clear legal framework that defines the rights and obligations of spouses, particularly in areas such as inheritance, property ownership, and child custody. This system is often preferred in urban areas and among those who seek the legal protections and predictability it provides. However, its formal requirements can be inaccessible to many South Africans, particularly in rural areas or among those who prioritize cultural practices over formal legal processes. As a result, customary marriages remain widely practiced, particularly among indigenous African communities.

¹⁵³ Intestate Succession Law (PNDC Law 111), 1985.

¹⁵⁴ Marriage Act, No 25 of 1961, South Africa.

Customary law marriages in South Africa are recognized under the Recognition of Customary Marriages Act (RCMA) of 1998¹⁵⁵, which seeks to formalize and protect marriages conducted according to the traditions and customs of indigenous African communities. These marriages are often polygamous and do not require formal registration at the time of celebration, although registration is encouraged for legal clarity¹⁵⁶. Customary marriages are deeply rooted in cultural practices, such as the payment of lobola (bride price) and the involvement of families in the marriage process. While the RCMA has made significant strides in recognizing and protecting customary marriages, challenges remain in ensuring gender equality. For instance, prior to the RCMA, women in customary marriages were often denied property rights and faced discrimination in matters of inheritance. The RCMA has sought to address these issues by granting women in customary marriages equal status and rights, but enforcement remains inconsistent, particularly in rural areas where traditional practices are deeply entrenched¹⁵⁷.

The coexistence of statutory and customary law marriages in South Africa creates a complex legal landscape, with significant implications for spousal rights and gender equality. While statutory law provides a more equitable framework for protecting the rights of spouses, particularly women, customary law often reflects patriarchal norms that can disadvantage women. This duality has prompted calls for further legal reforms to harmonize these systems and ensure that all spouses, regardless of the type of marriage, are afforded equal rights and protections. The South African judiciary has played a crucial role in addressing these disparities, with courts often invoking constitutional provisions to strike down discriminatory practices. For example, in the landmark case of *Gumede v. President of the Republic of South*

¹⁵⁵ Recognition of Customary Marriages Act 120 of 1998, South Africa.

¹⁵⁶ T W Bennett, *Customary Law in South Africa* (Cape Town: Juta & Co., 2004).

¹⁵⁷ C Himonga and M Bosch, "The Application of African Customary Law under the Constitution of South Africa: Problems Solved or Just Beginning?" *South African Law Journal* Volume 117, No. 2 (2000): 306-341.

*Africa*¹⁵⁸, the Constitutional Court declared certain provisions of the RCMA unconstitutional for failing to protect the property rights of women in customary marriages. Similarly, in *Mayelane v. Ngwenyama*¹⁵⁹, the court emphasized the need for consent from existing wives in polygamous customary marriages, further safeguarding women's rights.

Despite these judicial efforts, significant gaps remain in the enforcement of spousal rights, particularly in rural areas where customary practices dominate. Addressing these challenges requires a multifaceted approach, including legislative reforms, public education, and increased access to legal resources. The South African Constitution of 1996¹⁶⁰ provides a strong foundation for promoting gender equality and protecting human rights, but its provisions must be effectively enforced to address the disparities in the plural legal system. Legislative reforms, such as the RCMA, have sought to address some of the inequalities in customary marriages, but more needs to be done to harmonize statutory and customary laws. Public education campaigns are also essential to raise awareness about the rights of spouses and the legal remedies available to them. Additionally, increasing access to legal resources, particularly in rural areas, can empower individuals to challenge discriminatory practices and seek redress¹⁶¹. By strengthening the legal framework and promoting gender equality, South Africa can ensure that its plural legal system protects the rights of all spouses, regardless of the type of marriage they enter into.

4.4.3 United Kingdom

In the United Kingdom, the legal framework for marriage is predominantly governed by statutory law, with limited recognition of customary or religious marriages. Statutory

¹⁵⁸ *Gumede v. President of the Republic of South Africa* [2008] ZACC 23.

¹⁵⁹ *Mayelane v. Ngwenyama* [2013] ZACC 14.

¹⁶⁰ Constitution of the Republic of South Africa, 1996.

¹⁶¹ S B Burman and W M Schärf, "Creating People's Justice: Street Committees and People's Courts in a South African City," *Law & Society Review* Volume 24, No. 3 (1990): 693-744.

marriages in the UK are regulated by the Marriage Act of 1949¹⁶², which outlines the formal requirements for a valid marriage, including the need for a marriage license, solemnization by an authorized officiant, and registration with the relevant authorities. These marriages are strictly monogamous and provide a clear legal framework that defines the rights and obligations of spouses, particularly in areas such as inheritance, property ownership, and child custody. The UK's statutory marriage system is designed to ensure legal certainty and uniformity, making it the most widely recognized and practiced form of marriage in the country¹⁶³. However, the rigidity of statutory law can sometimes conflict with the cultural and religious practices of minority communities, leading to calls for greater recognition of alternative forms of marriage.

Customary and religious marriages, such as those conducted under Islamic or Hindu traditions, are not formally recognized under UK law unless they comply with the requirements of the Marriage Act¹⁶⁴. For example, a Nikah (Islamic marriage) or a Hindu wedding ceremony must be conducted in a registered venue and accompanied by civil registration to be legally recognized¹⁶⁵. Failure to meet these requirements can result in the marriage being considered void or non-existent under UK law, leaving spouses, particularly women, without legal protections in areas such as divorce, inheritance, and property rights. This lack of recognition has significant implications for minority communities, as many individuals may believe they are legally married when, in fact, they are not. This issue has been highlighted in cases such as *Akhtar v. Khan*¹⁶⁶, where the court grappled with the legal status of an Islamic marriage that had not been registered under UK law.

¹⁶² Marriage Act 1949, United Kingdom.

¹⁶³ R. Probert, *The Changing Legal Regulation of Cohabitation: From Fornicators to Family, 1600–2010* (Cambridge University Press, 2012).

¹⁶⁴ S. Shah-Kazemi, *Untying the Knot: Muslim Women, Divorce, and the Shariah* (London: Nuffield Foundation, 2001).

¹⁶⁵ *Ibid*

¹⁶⁶ *Akhtar v. Khan* [2018] EWFC 54.

The UK's legal system has faced criticism for its failure to adequately address the needs of culturally diverse communities, particularly in relation to customary and religious marriages¹⁶⁷. While statutory law provides a robust framework for protecting spousal rights, it often fails to accommodate the cultural and religious practices of minority groups. This has led to calls for legal reforms to recognize and regulate customary and religious marriages, ensuring that all spouses, regardless of their cultural or religious background, are afforded equal rights and protections. For instance, the Law Commission of England and Wales has proposed reforms to modernize marriage law, including the recognition of religious marriages conducted outside of registered venues. These proposals aim to strike a balance between respecting cultural diversity and ensuring legal protections for all spouses.

Despite these challenges, the UK judiciary has played a crucial role in addressing the gaps in the legal framework through case law. In cases such as *Al-Saedy v. Musawi*¹⁶⁸, the courts have sought to provide remedies for individuals in unregistered religious marriages, particularly women who may be left vulnerable in the event of a divorce or separation¹⁶⁹. However, these judicial interventions are often limited in scope and do not address the systemic issues arising from the lack of recognition of customary and religious marriages. To address these challenges, a comprehensive approach is needed, including legislative reforms, public education, and increased access to legal resources. By modernizing its marriage laws and recognizing the diversity of its population, the UK can ensure that its legal system protects the rights of all spouses, regardless of the type of marriage they enter into.

¹⁶⁷ A. Bano, *Muslim Women and Shari'ah Councils: Transcending the Boundaries of Community and Law* (London: Palgrave Macmillan, 2012)

¹⁶⁸ *Al-Saedy v. Musawi* [2010] EWHC 3293

¹⁶⁹ R. Deech, "The Case Against Legal Recognition of Cohabitation," *International Journal of Law, Policy and the Family* Volume 14, No. 2 (2000) 117-136.

CHAPTER FIVE

SUMMARY, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

During the course of this work, my findings revealed that:

- i. Statutory marriages provide stronger legal protections for spousal rights, while customary marriages often perpetuate gender inequalities.
- ii. Nigeria's dual legal system creates conflicts, with customary law frequently overriding constitutional guarantees of gender equality.
- iii. Courts have inconsistently enforced gender-equitable rulings, leaving many women in customary marriages vulnerable.
- iv. Lack of harmonization between statutory and customary laws results in unequal access to inheritance and property rights.
- v. Legal reforms such as mandatory registration of customary marriages and stricter enforcement of CEDAW are needed to protect spousal rights.

5.2 Recommendations

This study examines the legal implications of statutory and customary law marriages in Nigeria, focusing on their impact on spousal rights, gender equality, and access to justice. The research identified significant disparities between the two systems, particularly in the protection of women's rights under customary law. To address these challenges and align with the study's objectives, the following recommendations are proposed:

- i. Amend marriage laws to prohibit discriminatory customs while preserving valid traditions, ensuring equal spousal rights under all marital systems.

- ii. Implement mandatory marriage registration nationwide to guarantee legal recognition and protection for all unions.
- iii. Establish specialized family courts with gender-trained judges to fairly adjudicate marital disputes across both legal systems.
- iv. Conduct public legal education and expand free legal aid to empower spouses, particularly women, to claim their rights effectively.

5.3 Contributions to Knowledge

This study makes several important contributions to the body of knowledge on marriage law, gender equality, and legal pluralism in Nigeria.

Firstly, it provides a comprehensive analysis of the coexistence of statutory and customary marriage laws within Nigeria's plural legal system. By examining the tensions and overlaps between the Marriage Act, the Matrimonial Causes Act, and customary practices, this research deepens understanding of how legal pluralism operates in practice. It highlights how statutory law often offers stronger protections for spousal rights, while customary law though culturally entrenched sometimes perpetuates inequality, particularly against women.

Secondly, the study contributes to knowledge by exposing the shortcomings in the enforcement of statutory protections. While Nigerian law formally recognizes gender equality under the Constitution, the reality on the ground often differs due to weak institutions, lack of awareness, and the persistence of discriminatory customs. This research, therefore, bridges the gap between legal theory and lived realities by showing how laws that exist on paper do not always translate into protection in practice.

Thirdly, the study enriches the discourse on human rights and family law by situating Nigeria's plural marriage system within international frameworks such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the African

Charter on Human and Peoples' Rights. By assessing Nigeria's compliance with these instruments, the research contributes to the understanding of how international standards interact with domestic law and customary practices.

Fourthly, the work advances policy-oriented recommendations for law reform. It identifies specific gaps and suggests practical measures such as the mandatory registration of all marriages, the establishment of specialized family courts, and community-based legal literacy programs. In doing so, it moves beyond abstract critique to provide actionable strategies that can guide legislators, policymakers, and advocacy groups in addressing the persistent clash between statutory and customary systems.

Fifthly, this study contributes to the comparative body of scholarship by situating Nigeria's experience within a broader African and global context. It highlights similarities and differences with other plural legal systems, thereby offering useful insights for scholars, practitioners, and reformers interested in cross-border solutions to challenges of gender inequality in marriage law.

Finally, the study adds value to the jurisprudential discourse by linking law, culture, and morality. It demonstrates that while law is often seen as an instrument of justice, in plural legal societies it also functions as a negotiator between modern constitutional ideals and deep-rooted cultural traditions. This contribution enriches theoretical debates on the role of law in shaping social behavior, protecting rights, and balancing tradition with progress.

5.4 Areas for Further Studies

Although this study has addressed the relationship between statutory and customary marriage laws in Nigeria, several areas remain open for further inquiry.

First, future studies could examine the extent of judicial intervention in reconciling statutory and customary marriage practices. While case law such as *Mojekwu v. Mojekwu* and *Nzekwu*

v. Nzekwu shows how the courts strike down discriminatory customs, more empirical research is required to evaluate whether these decisions lead to meaningful social change at the grassroots level. This will help measure the gap between legal pronouncements and societal practices.

Second, there is a need to investigate the role of economic empowerment in the enforcement of spousal rights. Many women remain disadvantaged within customary marriage systems because of economic dependence. Future studies could focus on how poverty alleviation, access to education, and social welfare programs interact with marriage laws to advance gender equality.

Third, further research should look into the impact of legal literacy and public awareness campaigns on transforming entrenched customary practices. Laws often fail in practice when citizens are unaware of their rights or lack access to enforcement mechanisms. Exploring how legal education, NGOs, and media advocacy influence attitudes towards marriage, inheritance, and custody will provide valuable insights.

Fourth, comparative studies with other African and commonwealth jurisdictions could be explored. Countries such as Ghana, Kenya, and South Africa also operate plural legal systems but have made strides in harmonizing statutory and customary laws. A comparative approach would help identify best practices that Nigeria can adopt in balancing cultural recognition with constitutional justice.

Fifth, interdisciplinary studies that integrate law, sociology, and anthropology would enrich understanding of how cultural values interact with legal systems. This would help explain why certain discriminatory customs persist despite statutory and constitutional reforms. Such an approach could also assess the deeper cultural psychology that sustains unequal marital practices.

Finally, there is scope for further studies into the emerging influence of international human rights frameworks on Nigeria's plural legal system. Instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the African Charter on Human and People's Rights place obligations on Nigeria to eliminate discriminatory practices. Future research could investigate how effectively these international standards are being incorporated and enforced within Nigeria's domestic legal system, especially in the context of family law.

5.5 Conclusion

The findings of this research strongly advocate for the necessity for harmonization of Nigeria's two marriage systems, currently existing in tension rather than harmony. Statutory marriage, with its rules controlled by the Marriage Act of 1914 and Matrimonial Causes Act of 1970, establishes a neat system that is gender-emphasizing, rights-focused, and legality-oriented. These laws mandate monogamous unions, involve formal registration procedures, and institute formalized procedures for divorce and property distribution - all of which are stipulated to protect spousal rights equally. But the study illustrates that these protections are largely theoretical to most Nigerians, particularly rural women, due to systemic barriers in the form of complex bureaucratic machinery, expensive ancillaries annexed to them, and poor access to institutions of law. On the other hand, customary marriages, while more culturally acceptable and common, tend to reinforce patriarchal tendencies that consciously discriminate against women. The research documents numerous instances where customary practices openly conflict with constitutional guarantees of equality, particularly in inheritance, where widows are systematically denied their rights, and in polygamous marriage, where women's autonomy is severely restricted. This juridical dualism creates what can only be described as a two-tiered system of protection of rights whereby a woman's access to the courts depends entirely on what

matrimonial regime governs her union. The situation is further aggravated by the lack of clear legal guidance regarding conflict between these systems so that judges have to resolve these on an ad hoc basis, often with unacceptable consequences.

The research discovered that Nigeria's existing approach towards legal pluralism of marriage law falls below international standards of human rights, and in particular those expressed in CEDAW, which has been ratified by Nigeria in 1985. Although the constitution is robust in safeguarding gender equality in theory, in practice guarantees are routinely undermined by the continued recognition of gender discriminatory customary practices. The study identifies several areas where this strain is felt most acutely: in inheritance disputes where courts have to decide between customary practice and statutory protection; in polygynous marriages where women's consent is not generally sought for additional marriages; and in divorce disputes where customary law provides little means of equitable property division. Most troubling, perhaps, is the research finding that even when courts do rule in favour of gender equality - as in the case of *Mojekwu v. Mojekwu*, a landmark case - such rulings have little real impact at the community level, where customary leaders continue to administer justice according to local norms. This gap between law and implementation suggests the need for wider reform that goes beyond legal dicta to alter deep-seated cultural attitudes and power structures. The study also illustrates how economic factors compound these legal disadvantages, as women without independent resources are trapped in abusive marital relationships despite the formal legal protections available.

To address these system challenges, the study proposes a multi-dimensional reform agenda that supports greater cultural diversity while firmly upholding constitutional liberties. To harmonize statutory and customary marriage legislation through comprehensive legislative restructuring is the first and most pressing step. This would involve reform of both the Marriage Act and provisions of applicable customary law so as to eliminate discriminatory practice while

upholding culturally beneficial traditions that are not contradictory to human rights principles. Second, the study recommends compulsory registration of all marriages, formal or customary, so that they are placed within the protective ambit of formal legal institutions. Third, the study emphasizes the need for specialist family courts with jurisdiction over all marital regimes, headed by judges who have undergone training in formal law as well as cultural awareness. Fourth, the study calls for nationwide legal literacy campaigns to educate women on their rights and on the mechanisms for enforcing them. Finally, and perhaps most importantly, the study points out that legal changes alone will not be effective in the absence of concomitant efforts to combat the economic and social determinants perpetuating gender inequality. This includes women's microfinance programs, grassroots level dialogue to initiate patriarchal reform, and greater interaction between formal justice mechanisms and traditional authorities. The future is not the wholesale abandonment of customary systems or blind conformity with statutory formalism, but a thoughtful integration that draws on the strengths of each without preserving their discriminatory aspects. Nigeria is at the crossroads of having to choose between continuing an unequal status quo or taking the lead in developing an African model of marriage law that truly honors cultural heritage along with universal principles of human rights. This study quite strongly sets out the fact that the second choice, though challenging, is a necessary and a viable option with the right level of political will as well as civic engagement.

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