

**A CRITICAL ANALYSIS OF WOMEN'S INHERITANCE RIGHTS UNDER
CUSTOMARY AND STATUTORY LAW**

SUBMITTED

BY

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SEPTEMBER, 2025

TITLE PAGE

**A CRITICAL ANALYSIS OF WOMEN'S INHERITANCE RIGHTS UNDER
CUSTOMARY AND STATUTORY LAW**

DECLARATION

I hereby declare that this project work titled “A CRITICAL ANALYSIS OF WOMEN’S INHERITANCE RIGHTS UNDER CUSTOMARY AND STATUTORY LAW”, 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 Dr. Nnaemeka Amadi. 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.

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SIGNATURE AND DATE

APPROVAL AND CERTIFICATION

This is to certify that this long essay titled **“A CRITICAL ANALYSIS OF WOMEN’S INHERITANCE RIGHTS UNDER CUSTOMARY AND STATUTORY LAW”** has been assessed and approved by the Undergraduate Studies Community of the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo” as an original work carried out by Anazor Amalachukwu Faustina with registration number 2020/LW/12662 in the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo, under the guidance and supervision of Dr. Nnaemeka Amadi.

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DEDICATION

I dedicate this work to my Sweet Jesus whose grace and guidance made this journey possible and to my parents Barr. (Sir) & Lady Azubuike Anazor for their unwavering support, love and encouragement throughout this process.

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National Human Rights Commission Act, 1995

LIST OF ABBREVIATIONS

- NHRC: National Human Rights Commission
- UDHR: Universal Declaration of Human Rights
- CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women
- HSAA: Hindu Succession Act (Amendment)
- HSA: Hindu Succession Act
- FIDA: International Federation of Women Lawyers
- SC: Supreme Court
- J.A.: Justice of Appeal (a common abbreviation in legal citations)
- LCN: Law Compass Nigeria (a legal database)
- NWLR: Nigerian Weekly Law Reports (a legal publication)
- PT: Part (of a legal document)
- F.R.N.: Federal Republic of Nigeria
- W.A.: West Africa (a geographical region)
- U.I.A: Union of International Associations (an organization)
- W.L.R.: Weekly Law Reports (a legal publication)
- I.L.R.: International Law Review (a legal publication)
- N.C.L.R.: Nigerian Commercial Law Reports (a legal publication)
- L.C.: Local Council (a governmental body)
- L.P.: Legal Practitioner (a professional title)
- Q.C.: Queen's Counsel (a professional title)
- S.A.N.: Senior Advocate of Nigeria (a professional title)
- O.C.J.: Officer Commanding Judicial Corps (a professional title)
- O.F.R.: Officer of the Federal Republic (an honor)
- P.L.S.: Public Legal Service (a service)
- N.P.A.: Nigerian Ports Authority (a public service agency)
- C.A.: Court of Appeal (a court)
- H.C.: High Court (a court)
- F.H.C.: Federal High Court
- S.S.: Social Services (a service)

K.C.: King's Counsel (a professional title)
M.P.: Member of Parliament (a political title)
O.N.: Order of the Niger (an honor)
G.O.N.: Grand Officer of the Order of the Niger (an honor)
G.O.F.R.: Grand Officer of the Federal Republic (an honor)
C.O.N.: Commander of the Order of the Niger (an honor)
C.F.R.: Commander of the Federal Republic (an honor)
F.A.: Family Affairs (a topic)
F.I.D.A.: International Federation of Women Lawyers (FIDA)
N.L.R.: Nigerian Law Reports (a publication)
All N.L.R.: All Nigerian Law Reports (a publication)
S.C.N.J.: Supreme Court of Nigeria Judgments (a publication)
S.C.R.: Supreme Court Reports (a publication)
S.C.D.: Supreme Court Decisions (a publication)
S.C.P.: Supreme Court Practice (a publication)
S.C.A.: Supreme Court of Appeal (a court)
S.C.C.: Supreme Court Cases (a publication)
S.C.A.: South African Constitutional Court (a court)
I.L.O.: International Labour Organization (an organization)
UN: United Nations (an organization)

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ABSTRACT

This study critically examines the inheritance rights of women under Nigeria's dual legal system of customary and statutory law, highlighting the profound disparities and systemic discrimination that persist. Operating within a legally pluralistic framework, Nigeria's inheritance regime is characterized by a conflict between statutory laws that promote gender equality and deeply entrenched customary practices that often marginalize women, particularly widows and daughters. This research employs a doctrinal methodology to analyse key legal instruments, including the 1999 Constitution, the Administration of Estates Laws of various states, the Marriage Act, and relevant judicial precedents. It investigates the cultural, institutional, and procedural barriers that hinder women from accessing their inheritance rights and assesses the effectiveness of judicial and institutional mechanisms in enforcing these rights. The findings reveal that despite progressive constitutional provisions and landmark court rulings, discriminatory customary norms, weak enforcement, lack of legal awareness, and socio-economic pressures continue to disenfranchise women. The study concludes by advocating for comprehensive legal and policy reforms, including the harmonization of statutory and customary law, enhanced public sensitization, and stronger institutional frameworks to ensure gender justice and equitable inheritance rights for women in Nigeria.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Inheritance, as a concept, is a cornerstone of human societies, serving as a conduit for the transfer of wealth, property, and social standing across generations. It reflects the values, traditions, and legal frameworks of a society, yet it also reveals the power dynamics and inequalities that persist within it. In Nigeria, a nation characterized by its rich cultural diversity and legal pluralism, the inheritance rights of women have become a critical issue, exposing the tensions between statutory law, customary practices, and the growing demand for gender equality¹. This study seeks to explore these complexities, offering a critical analysis of the inheritance rights of women under both customary and statutory law in Nigeria. The Nigerian legal system is a unique blend of statutory law, derived from colonial legacies and modern legislation, and customary law, deeply rooted in the traditions of its numerous ethnic groups. While statutory law purports to uphold principles of equality and justice, customary law often prioritizes communal values over individual rights, frequently discriminating against women in matters of inheritance. This duality creates a legal landscape that is both complex and contradictory, leaving women vulnerable to systemic discrimination and marginalization.

The socio-cultural context of Nigeria further complicates the struggle for women's inheritance rights. Customary law, which governs the majority of inheritance cases, is often patriarchal, favouring male heirs over female heirs through practices such as primogeniture and the exclusion of daughters from inheriting land². These practices, justified on the

¹ J A Adedolapo, and F O Abimbola. "A Critical Appraisal of the Inheritance Rights of Women under Nigerian Statutes and Customary Laws." *Lead City University Law Journal* Volume 4 no. 1&2 (2022) pp171-187.

² M O Izzi. "A Legal Appraisal of Property Rights of Women in Nigeria." *Journal of Private and Property Law* Volume 18, No. 1 (2022) pp 245-256

grounds of tradition, perpetuate gender inequality and disempower women. Statutory law, while theoretically more progressive, is frequently undermined by weak enforcement mechanisms, lack of awareness, and the dominance of customary practices. The consequences of these discriminatory practices are profound: women denied inheritance rights are often left economically vulnerable, unable to access resources that could improve their quality of life and that of their families. This not only reinforces their status as second-class citizens but also has a ripple effect on society, contributing to poverty, limiting educational opportunities for children, and hindering economic development³.

This study aims to address these challenges by critically examining the legal and institutional frameworks governing inheritance in Nigeria. It will analyse key statutes such as the Constitution of the Federal Republic of Nigeria, the Administration of Estates Law, and the Marriage Act, as well as the principles of customary law as applied across various ethnic groups. Ultimately, this work seeks to contribute to the broader discourse on gender equality and legal reform in Nigeria, challenging discriminatory practices and advocating for a legal framework that is truly just and equitable. It is a call to action for policymakers, legal practitioners, and civil society to recognize the importance of inheritance rights as a cornerstone of women's empowerment and to work towards creating a society where women can fully realize their potential and contribute to the development of their communities and nation.

1.2 Statement of the Problem

In Nigeria, the inheritance rights of women remain a contentious issue due to the coexistence of customary and statutory legal systems, which often conflict in their treatment of gender equality. While statutory law, influenced by colonial legacies and

³ V A Adeleke and A C Diala. "The Right of Women to the Inheritance of their Husbands' Estate in Nigeria." *Journal of Law, Society and Development* 11 (2024): pp 17-37.

modern human rights frameworks, ostensibly promotes equal inheritance rights, customary law deeply rooted in patriarchal traditions frequently marginalizes women by prioritizing male heirs. For instance, under Igbo and Yoruba customary law, daughters and widows are systematically excluded from inheriting land or property, relegated to secondary status as "caretakers" or entirely disinherited in favour of male relatives. Similarly, Islamic (Sharia) law, while granting women limited inheritance shares, enshrines gender disparities by allocating female heirs half the portion of their male counterparts. This legal pluralism creates a fragmented system where women's rights are contingent on cultural and regional practices, perpetuating systemic gender inequality and leaving women vulnerable to economic disenfranchisement.

The socio-economic consequences of these discriminatory practices are profound. Women denied inheritance rights face heightened risks of poverty, homelessness, and dependency on male relatives, undermining their autonomy and ability to contribute to societal development. Compounding this issue are practical barriers such as societal resistance to legal reforms, lack of awareness among women about their statutory rights, and the entrenched influence of patriarchal norms that override progressive legal provisions. Despite Nigeria's ratification of international treaties like CEDAW and constitutional guarantees of equality, the enforcement of gender-neutral inheritance laws remains inconsistent, particularly in rural areas where customary courts dominate. This dissonance between legal frameworks and lived realities underscores an urgent need to address the systemic biases and structural gaps that perpetuate the subjugation of women in inheritance matters, hindering Nigeria's progress toward gender equity and social justice.

1.3 Research Questions

The coexistence of customary and statutory law in Nigeria creates significant disparities in inheritance rights, particularly for women. While statutory law promotes gender equality,

customary law often enforces patriarchal norms, denying women access to property and wealth. This raises critical concerns about justice, gender equality, and the harmonization of Nigeria's plural legal system. Key questions include: How do customary and statutory laws differ in their treatment of women's inheritance rights? What barriers prevent the enforcement of gender equality in inheritance matters? And how can Nigeria's legal framework be reformed to protect women's inheritance rights? These issues highlight the urgent need to address systemic discrimination and explore pathways for legal reform.

The questions this research aims to answer are:

1. How do customary and statutory laws in Nigeria differ in their treatment of women's inheritance rights, and what are the legal implications of these differences?
2. What are the cultural and institutional barriers that prevent women from accessing their inheritance rights under Nigeria's plural legal system?
3. How effective are judicial and institutional mechanisms in enforcing women's inheritance rights, and what challenges do they face in reconciling customary and statutory law?
4. What legal and policy reforms are necessary to harmonize customary and statutory law and ensure gender equality in inheritance rights in Nigeria?

1.5 Aims and Objectives

This study aims to examine the inheritance rights of women under customary and statutory law in Nigeria, focusing on the disparities and their impact on gender equality. It seeks to analyse the legal frameworks governing both systems, identify the challenges women face in accessing their inheritance rights, and propose reforms to harmonize these systems for fair and equitable outcomes.

The Objectives of this Research Work are as follows

1. To examine the legal frameworks governing inheritance rights under customary and statutory law in Nigeria and identify the differences in their treatment of women.
2. To analyse the cultural and institutional barriers that hinder women from accessing their inheritance rights under Nigeria's plural legal system.
3. To assess the effectiveness of judicial and institutional mechanisms in enforcing women's inheritance rights and addressing conflicts between customary and statutory law.
4. To propose legal and policy reforms to harmonize customary and statutory law, ensuring gender equality in inheritance 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, 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 inheritance rights under customary and statutory law in Nigeria, with a focus on their implications for women's rights.

1.6 Scope and Limitation

The scope of this study includes a comprehensive examination of the legal frameworks governing inheritance rights under customary and statutory law in Nigeria, with an emphasis on their impact on women's rights to property, land, and wealth. 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 laws, such as the Administration of Estates Law and the Constitution of the Federal Republic of Nigeria, 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 inheritance rights under customary and statutory law in Nigeria, particularly as they relate to women's 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 women's inheritance rights in Nigeria. By highlighting the gaps and inconsistencies in the current legal frameworks, the study aims to propose actionable recommendations for harmonizing customary and statutory law, ensuring equitable protection of women's inheritance rights.

1.8 Chapter Analysis

This research work is structured into five comprehensive chapters that critically examine women's inheritance rights within Nigeria's plural legal system.

Chapter One introduces the study by outlining the background, research questions, objectives, methodology, and the significance of addressing gender disparities in inheritance.

Chapter Two reviews relevant literature and constructs a theoretical framework, exploring key concepts such as inheritance, gender, and discrimination, while applying human rights and feminist legal theories.

Chapter Three forms the core of the legal and institutional framework, analyzing constitutional, statutory, and customary laws, including the Administration of Estates Laws in Lagos, Edo, and Anambra States, and institutions like the judiciary, National Human Rights Commission, and FIDA.

Chapter Four presents a comparative analysis of customary and statutory laws, detailing their differential impact on widows and daughters, the legal implications for women's inheritance rights, and the procedural, cultural, and economic barriers they face. Reference was also made to the Indian legal system for comparative analysis.

The final Chapter Five concludes the work by synthesizing findings, affirming the need for harmonization of laws, and offering targeted recommendations including legal reforms, judicial enforcement, public sensitization, and policy interventions aimed at promoting gender-equitable inheritance practices across Nigeria.

CHAPTER TWO
CONCEPTUAL FRAMEWORK, THEORETICAL FRAMEWORK AND
LITERATURE REVIEW

2.1 Conceptual Framework

2.1.1 Inheritance

Inheritance is the legal process by which property, rights, and obligations are transferred after the death of an individual to his or her heirs or beneficiaries⁴. Nigeria operates a dual legal system of statutory law and customary law that governs inheritance, each with its principles and practice. Statutory law, which was influenced by colonial practices and codified legislation, provides a systematic framework for inheritance that is largely applied uniformly irrespective of circumstances⁵. On the other hand, customary law, since it is deeply rooted in the culture and practices of various ethnic groups, reflects the social organization and cultural values of the communities over which it rules⁶. Where statutory law prefers formal equality, customary law will tend to prefer the preservation of family line and community continuity, and will have practices that privilege male heirs. This dual system produces a multi-faceted legal environment in which inheritance rights are influenced by both contemporary legal principles and customary norms. Grasping this interaction is critical to dealing with the pitfalls and opportunities in Nigeria's inheritance landscape⁷.

The bi-legal nature of Nigerian inheritance law is reflective of the broader tension between modernization and tradition. Statutory law, with its emphasis on coded law and formal equality,

⁴ J N Ezeilo. "Rethinking Women and Customary Inheritance in Nigeria." *Commonwealth Law Bulletin* Volume 47, no. 4 (2021) pp 706-718.

⁵ V A Adeleke and A C Diala. "The Right of Women to the Inheritance of their Husbands' Estate in Nigeria." *Journal of Law, Society and Development* 11 (2024): pp 17-37.

⁶ 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.

⁷ 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.

attempts to make standardized provision for inheritance in accordance with contemporary notions of justice and individual rights⁸. However, customary law, which is highly diverse among Nigeria's various ethnic groups, is founded upon values that promote communal harmony, family solidarity, and cultural preservation⁹. In most customary systems, for instance, the inheritance rules are formulated in a manner that will keep property within the family line, often through the male lineage, so as to guarantee economic security and social order¹⁰. While this approach has been criticized for shutting out women, it is necessary to understand that customary law is deeply embedded in the social life of Nigerian societies and serves functions beyond those of individual rights to property. Harmonization of the two regimes requires a nuanced understanding of what role each system plays and what values each safeguard, rather than the imposition of a one-size-fits-all template that ignores the social context in which customary law operates.

2.1.2 Inheritance Rights

Rights of inheritance encompass legal and moral rights of persons to inherit property, titles, or liabilities from a deceased person as manifestations of broader societal values concerning continuity, ownership, and fairness¹¹. In Nigeria, these rights are governed by a dualistic legal system which weaves statutory law and customary law together, each with differing philosophical foundation. Statutory law, drawing on colonial histories and modern legal codifications, is a universalist philosophy that emphasizes formal equality, predictability, and rule of law. Customary law, on the other hand, which is rooted in the traditions and culture of

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 12-25.

⁹ A Y Olaore "Nigerian Marital Cultural Practices and Implications for Human Rights." *The Tensions Between Culture and Human Rights* Volume 47 No 2. 2012

¹⁰ *Ibid*

¹¹ 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.

Nigeria's diverse ethnic groups, is a particularistic philosophy that emphasizes communal harmony, continuity of family, and preservation of cultural identity¹². While statutory law seeks to generalize inheritance practice, customary law seems to rest upon a vision of the world where inheritance is more than a matter of personal right but a means of preserving the common tissue of society. It is a tension of intricate interplay between universal principle and local custom that raises profound questions of the nature of justice and fairness in a plural legal system¹³.

The tension between customary and statutory law in Nigeria conceals a deeper philosophical conflict between tradition and modernity, communalism and individualism¹⁴. Customary law, which governs inheritance in most societies, operates on values superior to individual rights of property, instead emphasizing the perpetuation of family line and the maintenance of social order. For instance, the traditional systems' inclination towards a male heir is justified as a way of maintaining family wealth in the line of descent, thereby securing the economic and social well-being of the group. While this appears to be counterintuitive to current ideas of equality, it draws on a philosophy in which the individual exists as part of an entirety and inheritance is a mechanism for ensuring the entirety stays balanced. It is naive to condemn traditional practices as not conforming to contemporary ideals without acknowledging the philosophical basis for them, for that overlooks the complex dynamic of law, culture, and morality in forming cultural norms. Thus, any serious consideration of inheritance rights must grapple with these philosophical dimensions, not in an effort to impose a monolithic vision of justice but to understand and reconcile the different values that underlie Nigeria's legal pluralism.

¹² M O Izzī. "A Legal Appraisal of Property Rights of Women in Nigeria." *Journal of Private and Property Law* Volume 18, No. 1 (2022) pp 245-256

¹³ *Ibid*

¹⁴ 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.

2.1.3 Gender

Gender as a concept is a socially constructed institution that prescribes roles, behaviour, and expectations of being male or female in a given society¹⁵. In Nigeria, gender is closely tied to culture, religion, and law, affecting how individuals live their lives in very basic ways. Statutory law, as influenced by global human rights standards, is inclined towards gender equality by way of removal of discriminatory biases and assurance of equal opportunities for all¹⁶. Customary law, founded upon the traditions of Nigeria's diverse ethnic groups, is inclined to reinforce traditional gender roles that assign specific responsibilities and rights based on sex. These roles are routinely justified as being required for social order and cultural continuity, and they establish a complex engagement between modern ideals of equality and deeply held cultural norms¹⁷.

The philosophical aspects of gender in Nigeria embody a broader debate about the nature of identity, rights, and social organization. Traditional practices usually have a conception of the world wherein gender roles are not only individual attributes but integral components of a general communal scheme designed to ensure stability and cohesion. For example, men in most societies have been viewed traditionally as the prime heirs and custodians of the family property, with women having subordinate roles within the household¹⁸. While this gendered division of labour may be objectionable from the perspective of modern legal theory, it is rooted in a philosophical tradition that places gender roles within an overarching social contract

¹⁵ G A Makama. "Patriarchy and Gender Inequality in Nigeria: The Way Forward." *European Scientific Journal* Volume 9, No. 17 (2013).

¹⁶ H O Obi. "The Intersectionality of Gender, Class, and Ethnicity in Inheritance Rights: A Case Study of Women in Nigeria." *Journal of Good Governance and Sustainable Development in Africa* Volume 4, No. 2 (2018): 158-171.

¹⁷ Z O Soluade A O Sofadekan, and R O Agboola. "Gender Discrimination on Property and Widow Inheritance Rights Among Rural Dwellers of Ipokia Local Government of Ogun State." *Journal of Lexicography and Terminology* (Online ISSN 2664-0899. Print ISSN 2517-9306). Volume 6, No 2 (2022): 69-79.

¹⁸ H O Obi. "The Intersectionality of Gender, Class, and Ethnicity in Inheritance Rights: A Case Study of Women in Nigeria." *Journal of Good Governance and Sustainable Development in Africa* Volume 4, No. 2 (2018): 158-171.

committed to the maintenance of family and communal well-being¹⁹. To lament such practices without regard for their cultural and philosophical underpinnings is to overlook the multifaceted ways that gender is at once a social construct and a mechanism for guaranteeing societal balance. Thus, any helpful discussion of gender must wrestle with such complications, trying to understand the values behind current traditional norms and looking at how they may be harmonized with contemporary ideas of justice and equality.

2.1.4 Marriage

Marriage is conceptualized as both a social institution and a legal construct that significantly shapes inheritance rights, particularly for women²⁰. Feminist legal theory critiques marriage as a patriarchal structure that historically reinforces gender inequalities, especially in property ownership and inheritance distribution. From a human rights perspective, marriage should guarantee equal rights to both spouses, yet customary and statutory laws in Nigeria often create disparities, particularly in widowhood²¹. The institution of marriage under Nigerian law exists in plural forms statutory, customary, and Islamic each with distinct implications for women's inheritance. While statutory marriage under the Marriage Act and Matrimonial Causes Act provides some protections for wives, customary and Islamic marriages frequently subordinate women's inheritance claim to male prerogatives. This theoretical tension highlights how marriage, as a legal and cultural institution, either perpetuates or challenges discriminatory inheritance practices, necessitating reforms that align marital property rights with principles of gender equity and human rights.

¹⁹ 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.

²⁰ M T Otu, and N Miebaka. "Succession and inheritance of property under Nigerian Laws: A comparative analysis." *European Journal of Social Sciences* Volume 62, No. 2 (2021): 50-63.

²¹ E D Tarh-Akong, F N Opara, O O Owoade, D A Agbu, and M O Ajayi. "Realising Female Inheritance Rights in South Eastern Nigeria: The Imperativeness of Going beyond Legal Rhetoric." *The Age of Human Rights Journal* 22 (2024)

2.1.5 Discrimination

Discrimination, in theory, is the unfair or biased treatment of individuals or groups on the basis of specific attributes, such as gender, ethnicity, religion, or social status²². Discrimination in Nigeria is a complex and multifaceted phenomenon assuming varied forms in the statutory as well as customary legal traditions. Statutory law, as informed by global human rights standards, explicitly prohibits discrimination and seeks to provide equality and justice to all Nigerian citizens. But traditional law, well entrenched in Nigeria's multi-ethnic society and deeply ingrained in their respective traditions and patterns of culture, has a tendency to reinforce differences that appear discriminatory to a modern legal system²³. Therefore, customary norms promoting male inheritance, for instance, or restricting decision-making roles for women, are justified as essential to maintaining cultural identity and social cohesion. The philosophy of discrimination in Nigeria reveals an intrinsic conflict between group values and individual rights.

Discriminatory practices under customary law are based on a belief system that holds the greater good of the group as paramount over individual rights²⁴. The exclusion of women from some aspects of inheritance, for example, under customary law is traditionally justified as a means to preserve family lineage and provide economic security within the community. While practices like these may appear incompatible with contemporary concepts of equality, they have roots in a cultural and philosophical tradition in which social roles and responsibilities are the very basis of maintaining collective order²⁵. Combating discrimination without

²² B N Okpalaobi, and C R Akorah. "Discriminatory Inheritance Practices and the Rights of Women in Nigeria." *ACARELAR* 4 (2023): 87.

²³ Ibid

²⁴ H Nwaechefu, and S T Kalama. "Discrimination against Female and Widow in Inheritance of Real Estate and Succession in the South Eastern Nigeria: A Breach of International Instrument and the Nigeria Constitution." *JL Policy & Globalization* 81 (2019): 53.

²⁵ B N Okpalaobi, and C R Akorah. "Discriminatory Inheritance Practices and the Rights of Women in Nigeria." *ACARELAR* 4 (2023): 87.

understanding these cultural and philosophical roots puts at risk applying one-size-fits-all standards that would undermine social cohesion in groups. Therefore, any good strategy for challenging discrimination will be one that resolves the pursuit of universal human rights with a sympathetic encounter with the cultural contexts where these practices occur, encouraging dialogue and reform consistent with both the dignity of individuals and the community values.

2.2 Theoretical Framework

2.2.1 Human Rights

Human rights as a theoretical paradigm provide an international reference point through which the right of inheritance by women under customary and statutory law can be evaluated in Nigeria²⁶. On the basis of the principles of dignity, equality, and non-discrimination, human rights provide a normative standard against which legal and cultural practices may be gauged. The Universal Declaration of Human Rights (UDHR)²⁷ and other international instruments, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)²⁸, emphasize the equal rights of men and women to property ownership, inheritance, and participation in economic and social life. These principles challenge discriminatory traditions that undermine women's inheritance rights, particularly under customary law, where customary law favours male beneficiaries²⁹. Placing the issue within the context of human rights, the project highlights the moral and legal imperative to bring Nigeria's dual legal system in line with international standards of gender justice and equality.

The framework of human rights is also the one that pinpoints the tension between universal standards and cultural relativism, which is a central theme in the dispute over women's right to

²⁶ V Emery 'Women's inheritance rights in Nigeria: Transformative Practices'. *Widows' Rights International Newsletter*, No 3 (2005)

²⁷ Universal Declaration of Human Rights

²⁸ Convention on the Elimination of All Forms of Discrimination Against Women

²⁹ B M Şener, "A Review of The Meaning And Importance of The Universal Declaration of Human Rights." *Uluslararası Politik Araştırmalar Dergisi* 7, no. 3 (2021): 15-25.

inheritance. While human rights encourage the use of equality and non-discrimination globally, customary law in Nigeria is deeply rooted in cultural tradition that often necessitates gender-based distinction as necessary to maintain social order and culture³⁰. This raises important questions about how local practices grounded in the cultural dynamics of societies ought to be harmonized with universal global human rights³¹. The human rights framework also does not seek to condemn cultural values but to interact with them in a constructive way, advocating for reforms that respect cultural diversity but eliminate practices that guarantee inequality. This is required to prevent alienating the very individuals that the gender justice struggle seeks to empower.

Finally, the human rights framework provides a transformative prism to eradicate systemic inequalities in inheritance rights. By bringing out the indivisibility and interdependence of rights, it connects the inheritance rights of women with broader issues relating to economic empowerment, social justice, as well as the rule of law. To illustrate, denying women their inheritance right not only violates their personal rights but also perpetuates poverty and discrimination, keeping them away from facilitating development in society. Human rights methodology requires legislative and institutional reform ensuring equal opportunity on the part of women for inheritance, education and advocacy work in order to challenge entrenched attitudes. In the process, it is an end-to-end model of enhancing gender equity in Nigeria through the realization that women's rights are human rights and whose satisfaction is the basis for actualizing an equitable and just society.

³⁰ 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.

³¹ 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

2.2.2 Feminist Legal Theory

Feminist Legal Theory as a movement condemns patriarchal institutions backing most legal establishments, believing they perpetuate discrimination based on gender by prioritizing men's interest and excluding the rights of women³². However, from the perspective of those sustaining patriarchal values, particularly relating to inheritance, it is believed that such institutions are not by necessity unjust but are meant to promote social stability, economic sustainability, and continuity of culture. In the majority of traditional societies, like those that function under customary law in Nigeria, favouritism towards male inheritance is justified as a means of securing family lineage and maintaining property within the patriarchal family³³. This kind of system is considered critical for maintaining the economic foundation of families and society because men are traditionally seen as the prime providers and keepers of family riches. In this view, comparison of women's and men's inheritance rights is viewed as misplaced because it does not take into consideration the distinctive roles and obligations assigned to each gender in society³⁴.

Patriarchal defenders argue that men and women occupy complementary but in essence distinct places in society, and these positions justify differential treatment in matters such as inheritance³⁵. Men, being family heads, frequently bear the responsibilities of taking charge of family belongings, supporting dependents, and securing the extended future of the family. Females, though, are long considered caregivers and nurturers as well, although equally valued work that is distinguishable in purpose to the community and family. From this point of view,

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 Diala, J C., 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.

³⁴ M T Otu, and N Miebaka. "Succession and inheritance of property under Nigerian Laws: A comparative analysis." *European Journal of Social Sciences* Volume 62, No. 2 (2021): 50-63.

³⁵ B N Okpalaobi, and C R Akorah. "Discriminatory Inheritance Practices and the Rights of Women in Nigeria." *ACARELAR* 4 (2023): 87.

granting inheritance rights to women may disturb the delicate equilibrium of such roles and create fragmentation of family property along with erosion of collective well-being in the community. The argument is not that women are inferior to men, but that their input to society is of a different nature and needs to be so recognized without enforcing a one-size-fits-all solution to inheritance that is blind to cultural and social facts³⁶.

Moreover, it is argued that feminist criticisms of patriarchal systems of succession often fail to consider the cultural and historical contexts of development of these systems³⁷. Male-preference practices are very much entrenched in the social lives of many communities and are seen as essential to ensuring the preservation of cultural identity and continuity. Such traditions are not merely concerned with property divisions but are involved in broader structures of kinship, descent, and community obligations. To impose alien standards of equality irrespective of such cultural context is to undermine the social cohesion that those structures are precisely designed to preserve. Here, the contention is not so much against women's rights per se, but against universalizing a model that ignores the philosophical and cultural underpinnings of patriarchal systems. Any changes, thus, should be carefully balanced to retain cultural heritage without dismissing genuine inequities, rather than rejecting patriarchal structures as inherently oppressive.

2.2.3 Ownership

Ownership as a concept is central to examining the relationship of inheritance rights under customary and statutory law in Nigeria. Ownership in its simplest form is the legal right to own, use, and dispose of property, and it is the foundation on which resources are shared and

³⁶ M O Izzi. "A Legal Appraisal of Property Rights of Women in Nigeria." *Journal of Private and Property Law* Volume 18, No. 1 (2022) pp 245-256

³⁷ Y A Aluko "Patriarchy and Property Rights among Yoruba Women in Nigeria." *Feminist Economics* 21, No. 3 (2015): 56-81.

transmitted in a society³⁸. In inheritance, ownership determines who has the right to control and enjoy the property of a deceased person and is therefore an important determinant of economic power and social status. Statutory law, as informed by modern legal ideals, tends to emphasize individual ownership and equal property rights irrespective of gender. Yet customary law, which governs a significant proportion of inheritance disputes in Nigeria, tends to tie ownership to family and communal systems, where the property is not seen as an individual right but as a communal or family asset to be held in trust for the community or family³⁹. This duality creates a tension between collective and individual notions of ownership, posing basic questions about how property rights are established and enforced in a pluralistic legal order.

The customary law notion of ownership is strongly rooted in the philosophical and cultural traditions of Nigeria's various ethnic groups⁴⁰. Ownership in the majority of societies is not only a right under law but a social responsibility, and property is generally held in trust by males in the family to be protected and transmitted equitably in the family line⁴¹. The system is accounted for in terms of maintaining economic security as well as social peace because it prevents the fragmentation of family property and ensures that the resources are consumed in such a manner that benefits everyone. For example, land, such an important asset in most agrarian cultures, is typically inherited by male heirs who are expected to hold it in trust for the benefit of the entire family⁴². Despite the appearance of such a plan to exclude women from outright ownership, it is guided by a vision that prefers the long-term survival of the family to

³⁸ M O Izzi. "A Legal Appraisal of Property Rights of Women in Nigeria." *Journal of Private and Property Law* Volume 18, No. 1 (2022) pp 245-256

³⁹ I Olueze. "Women's Right to Inheritance under Customary Laws in Nigeria." *Int'l Legal Practice* 29 (2004): 135.

⁴⁰ 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

⁴¹ *Ibid*

⁴² C C Nwifo and C K Okoli. "Customary Law, Law and Women Rights to Inheritance and the Challenges." *Nigerian Law Journal* 19 (2016): 199.

individual rights. It is necessary to comprehend this collective approach towards ownership in order to manage the challenges as well as possibilities within Nigeria's system of inheritance.

Theoretically, the tension between individual and collective ownership highlights broader debates concerning the nature of property rights and their role in society⁴³. Statutory law, through its emphasis on personal ownership, is best aligned with liberal theories of property that visualize ownership as a fundamental right vis-à-vis personal liberty and economic empowerment. Liberal theory is open to the argument for gender equality in inheritance on the basis that it seeks to empower women and men with equal rights in owning and controlling property. Customary law, however, challenges this individualist view by assuming another model where ownership is based on social relationships and communal obligation. This is inspired by communitarian theories of property that emphasize the interdependence of individuals within a community and the necessity to preserve social harmony⁴⁴. By examining ownership from these two vantage points, the project can explore how Nigeria's legal systems balance between individual rights and communal values, with a view to understanding how inheritance practices can be reformed to promote both justice and cultural continuity.

2.3 Literature Review

Emery⁴⁵ provides an extensive description of Nigeria's inheritance laws, both testate and intestate succession under statutory, customary, and Sharia regimes. It lacks a critical analysis of the gender biases inherent in such laws, which is what the essay question requires. For instance, while it mentions that daughters and widows typically do not have a right to inheritance under customary and Sharia law, it fails to satisfactorily discuss how such a practice

⁴³ C O Obianene. "Customary Law on Women's Inheritance and Succession Rights: A Comparative Study of Nigerian And South Africa." *North-West University South Africa*, (2015) Volume 3 No 2 pp 56-72 .

⁴⁴ 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.

⁴⁵ V Emery 'Women's inheritance rights in Nigeria: Transformative Practices'. *Widows' Rights International Newsletter*, (2005). No 3

entrenches gender inequality or the socio-economic impacts for women. The argument also overlooks the practical obstacles to women claiming their rights, such as societal resistance, lack of awareness of the law, and the strength of patriarchal norms in superseding legal provisions. A closer consideration of these aspects would strengthen the analysis and make it more applicable to the essay topic of women's inheritance rights.

Furthermore, the paper does not compare Nigeria's inheritance laws with international human rights standards, such as the Convention on the Elimination of All Forms of Discriminations Against Women (CEDAW), or with other African countries that have succeeded in reforming their inheritance laws. This is a weakness since the argument for the reformation of discriminatory practices would be weakened if Nigeria's legal framework is not put into perspective globally. In addition, the article does not offer concrete ideas on how to address these issues, i.e., legal amendments, community advocacy campaigns, or education campaigns on gender equality on inheritance. Plugging these holes would enable the article to conduct a more authoritative assessment of the rights of women to inheritance and advocate for impactful reforms.

*Obi*⁴⁶ in her article provides a critical examination of patriarchal cultural values, laws, and how education shapes women to assert their right to inheritance in Nigeria. It does not provide a comprehensive critique of the actual challenges women encounter in obtaining education and asserting their right to inheritance. For instance, although it highlights the importance of education, it does not acknowledge the socio-economic barriers such as poverty, resistance in cultures, and poor infrastructure hindering access by women to quality education. Secondly, while engaging in argument regarding legal frameworks, the conversation lags in understanding gaps in enforcing existing law, for instance, non-domestication of CEDAW and

⁴⁶ H O Obi "Empowering Women Through Education: Asserting Inheritance Rights in Nigeria." *Journal of Customary and Religious Law* Volume 1, No. 1 (2024) pp 111-121.

incomplete adoption of the Child Rights Act by a number of states. These gaps weaken the argument for legal reforms and do not give a realistic assessment of the obstacles women encounter in real life.

Moreover, the write-up does not give pragmatic steps for overcoming the issues that have been highlighted. While it recommends enhancing access to education and enhancing legal frameworks, it does not lay out specific, actionable steps for achieving these goals. For example, there is no reference to community-level advocacy efforts, legal aid schemes, or policy changes that could help women get access to the legal system and enforce their inheritance rights. In bridging this gap, the article may present a balanced and pragmatic response to furthering gender equality in inheritance rights and empowering women through education.

*Adeleke*⁴⁷ in her article provides a detailed analysis of the inheritance rights of women under Yoruba, Igbo, and Islamic customary laws in Nigeria, highlighting the patriarchal structures that often exclude women from inheriting property. However, it lacks a critical examination of the socio-economic impact of these discriminatory practices. While it mentions that women are often treated as chattels and denied inheritance rights, it does not sufficiently explore how these practices perpetuate poverty, limit women's economic independence, or exacerbate gender-based violence. For instance, the discussion on widows being denied inheritance does not delve into how this affects their ability to secure livelihoods, access education, or participate in decision-making processes. A deeper analysis of these issues would strengthen the argument for reforming discriminatory inheritance laws and practices.

Additionally, the write-up does not provide concrete recommendations for addressing the barriers to women's inheritance rights, such as lack of awareness, legal literacy, and societal

⁴⁷ V A Adeleke & A C Diala 'The Right of Women to the Inheritance of their Husbands' Estate in Nigeria' *Journal of Law, Society and Development* Volume 11, No 6 (2024) pp 45-65/

resistance. While it emphasizes the role of education in empowering women, it does not propose specific strategies for implementing educational programs or legal reforms. For example, there is no discussion of community-based advocacy initiatives, legal aid services, or policy changes that could help women assert their inheritance rights. By addressing these gaps, the write-up could offer a more comprehensive and actionable framework for promoting gender equality in inheritance rights.

*Okaphor et al*⁴⁸ provides a comprehensive overview of the inheritance rights of women in Nigerian law under statutory, customary, and Sharia legal systems. The article is lacking, however, in a critical analysis of the practical issues facing women in enforcing these rights. For instance, while it educates us on the legal provisions advancing women's rights to inheritance, it does not clearly outline the socio-economic barriers such as poverty, cultural resistance, and lack of access to legal material inhibiting women from effectively claiming their rights. Moreover, the legal reform debate also fails to examine the enforcement loopholes in laws that are already in place, such as non-domestication of global instruments such as CEDAW and poor implementation of the Child Rights Act in some states. These loopholes invalidate the call for legal reforms and fail to project the reality of the challenges women encounter.

Besides, the article does not give concrete plans for resolving the identified problems. While it advises economic empowerment, legal reform, and grassroots involvement, it does not describe concrete, specific steps towards achieving these measures. For example, no plans for advocacy programs based on communities, legal aid services, or policy changes are discussed that would allow women to access the court system and assert their rights to inherit. Through plugging

⁴⁸ E N Okaphor., H O Obi, and E F Okaphor. "Women's Inheritance Rights in Nigeria: An Analysis of the Legal Gaps and Reform Prospects." *Journal of Commercial and Property Law* Volume 11, No. 4 (2024): pp 167-176.

these gaps, the paper could then better and more practically offer an outline for promoting gender equality in inheritance rights and empowering women through education and legislative changes.

2.4 Gaps in the Literature

Critique of literature indicates some of the main gaps and limitations of existing literature in the area of women's inheritance rights in Nigeria. While the researches offer exhaustive examination of statutory, customary, and Sharia law that governs inheritance, they lack a critical examination of socio-economic and cultural barriers hindering women from the exercise of their rights. For instance, *Emery, Obi, Adeleke, and Okaphor et al.'s* articles reference the legal provisions but do not sufficiently discuss how discriminatory practices perpetuate poverty, limit women's economic autonomy, or amplify gender-based violence. The research also does not respond to the pragmatic barriers that women face commensurately, such as societal resistance, low legal awareness, and the ascendancy of patriarchal norms over legal provisions.

Furthermore, there is no comparative analysis of Nigeria's law of inheritance with international human rights standards, i.e., the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), or other African countries that have successfully reformed their laws of inheritance. The lack of this diminishes the argument for reform because it fails to situate Nigeria's legal regime in a comparative frame internationally. Moreover, the study fails to present concrete recommendations for addressing these issues, such as legislative reform, grassroots movements, or public awareness campaigns for gender equality in inheritance. With the amendment of these loopholes, subsequent research can be able to offer a completer and more useful model for increasing gender equality in inheritance rights and the empowerment of women through education and legislative reforms.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK

3.1 Legal Framework

3.1.1 The 1999 Constitution of the Federal Republic of Nigeria

The 1999 Constitution provides the general legal framework that establishes inheritance rights in Nigeria, enunciating main norms governing customary and statutory definitions of succession to property. Its rules provide a general scheme under which other laws operate and should operate and set important standards of equality and non-discrimination that affect the determination of inheritance matters by courts. Section 42's anti-gender discrimination protection gives constitutional basis to the challenge of discriminatory customary practices, while Section 43's protection of property rights gives every citizen legal right to own and inherit property. The Constitution's recognition of Nigeria's plural legal system acknowledges the co-existence of statutory, customary and Islamic laws, and its provision of a formal system of interaction between them in inheritance cases. In declaring the supremacy of constitutional provisions above statutes, it establishes a hierarchy that is accessible to courts when they are establishing conflicts between statutory protection and traditional practice. The document's chapter on basic rights is an important gauge for establishing the validity of inheritance law and customs, offering women a legal platform for asserting their rights even within traditional systems. This constitutional framework facilitates progressive judicial interpretations that can correct discriminatory practice through time without sacrificing Nigeria's legal pluralism.

As the grundnorm of the land, the 1999 Constitution is the ultimate assurance of the rights of citizens, the right of inheritance and ownership of property not excluded. Sections 42 and 43 are particularly important in this regard. Section 42⁴⁹ states that

“A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject”

It expressly prohibits discrimination on the grounds of sex, ethnicity, religion, or condition of birth, establishing a categorical constitutional imperative of equality of genders in all ramifications, including in inheritance. This section provides a constitutional basis for challenging customary practices that exclude women from inheriting property, as any law or custom contravening this provision can be invalidated. Meanwhile, Section 43⁵⁰ states that

“Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria”

It supplements this right by guaranteeing every Nigerian citizen, regardless of gender, the right to acquire and own property anywhere in Nigeria. Both of these sections collectively form a formidable legal stronghold that implements the doctrine of equal access to inheritance in a way that no Nigerian can be arbitrarily deprived of property rights based on discriminatory customs.

The Constitution's role in safeguarding these rights is more than declaratory—it empowers the judiciary to interpret and implement these provisions in ways that promote fairness. Courts

⁴⁹ The 1999 Constitution of the Federal Republic of Nigeria (as amended), Section 42.

⁵⁰ The 1999 Constitution of the Federal Republic of Nigeria (as amended), Section 43.

have relied on Section 42⁵¹ in landmark rulings, such as *Ukeje v Ukeje*⁵², where the Supreme Court invalidated Igbo customary law barring female inheritance, holding that constitutional rights reign supreme over discriminatory traditions. Section 43⁵³ has also served to protect widows and daughters from disinheritance from property, reasserting that inheritance is a constitutional right, not a gendered privilege. By codifying these protections, the Constitution provides a legal remedy for women to challenge discriminatory practices while achieving a balance between respect for Nigeria's plural legal traditions. While there are gaps in implementation, the overarching principles set out in these provisions remain an essential mechanism for advancing gender equality in inheritance rights.

3.1.2 The Administration of Estates Law of 1959 (Edo State).

The Administration of Estates Law of 1959, applicable in Edo State, provides a structured legal framework for managing the estates of deceased persons, ensuring orderly distribution while balancing customary and statutory considerations. Under this law, the Probate Registry serves as the central authority for processing applications for Letters of Administration, which are mandatory for administering an intestate estate⁵⁴

The law establishes clear procedures for managing deceased persons' estates. Section 20, Part 4⁵⁵ states that “An application for the grant or revocation of probate or administration may be made through the probate registry of the courts” This specifically mandates that all applications for Letters of Administration must be filed through the Probate Registry⁵⁶. This legal

⁵¹ The 1999 Constitution of the Federal Republic of Nigeria (as amended), Section 42..

⁵² *Ukeje v Ukeje* (2014) 11 NWLR (PT.1418) 384

⁵³ The 1999 Constitution of the Federal Republic of Nigeria (as amended), Section 43.

⁵⁴ O Ighoretin, “Procedure for Administering Estates of Dead Persons in Edo” *Punch Newspapers* 12th March 2020. Accessed on June 16th, 2025. <https://punchng.com/procedure-for-administering-estates-of-dead-persons-in-edo/>

⁵⁵ Section 20 of the Administration of Estates Law of 1959.

⁵⁶ Section 20 of the Administration of Estates Law of 1959.

requirement serves as the gateway for lawful estate administration, ensuring proper oversight of the process. Section 24⁵⁷ of this law establishes an important limitation - it restricts the number of administrators to a maximum of four individuals for any single estate, whether dealing with probate (where a will exists) or Letters of Administration (in cases of intestacy).

In practice, Edo State recognizes alternative pathways for estate administration. When dealing with intestate cases under customary law, the customary court system provides an accessible option where the deceased's eldest son (or his legal representative) may apply for Letters of Administration. This alternative route proves particularly valuable when applicants encounter challenges obtaining administration documents through the formal Probate Registry system. The legal precedent set in *Idehen & ors v. Idehen & ors*⁵⁸ confirms this customary court pathway as a valid administrative channel for estate matters.

3.1.3 The Administration of Estates Law of Lagos State 2015.

The Administration of Estates Law of Lagos State governs the administration and distribution of the estate of deceased persons. It establishes the legal basis for how both real and personal property of a deceased individual vests in their personal representative be it an executor (if there is a will) or an administrator (in cases of intestacy). According to Section 3⁵⁹, upon death, all real estate of the deceased devolves to the personal representative in the same way as personal property. This means the representative assumes full legal responsibility for managing the estate in accordance with the law. The Law provides procedures for applying for probate or letters of administration⁶⁰, rules on who may be granted administration, and conditions under which special or limited grants may be made. Section 36 clarifies that both real and personal assets are available for the payment of debts, funeral expenses, and administrative costs,

⁵⁷ Section 24 of the Administration of Estates Law of 1959

⁵⁸ *Idehen & ors v. Idehen & ors* 1991 -LD-SC-31.

⁵⁹ Section 3 of the Administration of Estates Law, Lagos State 2015 Cap A3 Laws of Lagos State.

⁶⁰ Sections 20 – 26 of the Administration of Estates Law, Lagos State. 2015 Cap A3 Laws of Lagos State.

ensuring creditors' claims are given priority. The law also empowers the court to appoint administrators where necessary and makes provisions for cases involving minors, missing executors, and foreign representatives.

In cases of intestacy, where the deceased dies without a valid will, the law, particularly in Section 49, sets out a comprehensive framework for the distribution of the residuary estate⁶¹. It abolishes common law doctrines such as dower, curtesy, and escheat, replacing them with statutory trusts that define how the estate is distributed among surviving relatives. The surviving spouse and children of the deceased are given clear rights under these provisions, with specific shares and entitlements to both personal chattels and financial assets. Where there are no immediate relatives, the estate may pass to more distant relations or, in default of such, to the State. However, even in cases of bona vacantia (unclaimed estates), the law allows the State to provide for the deceased's dependants or those they might reasonably have been expected to support.

3.1.4 Administration and Succession (Estate of Deceased Persons) Law of Anambra State 2023.

The Administration and Succession (Estate of Deceased Persons) Law of Anambra State provides a structured legal regime for the collection, management, and distribution of the estate of deceased persons. Section 14⁶² which states that “ If any person, in defrauding of creditors or without full valuable consideration, obtains, receives or holds any estate or part thereof of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the estate received or coming to his hands, or the debt or liability released, after deducting (a) Any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death; and (b) Any payment made to him which might properly be made by a personal representative.

⁶¹ Ibid.

⁶² Section 14 of the Administration and Succession (Estate of Deceased Persons) Law of Anambra State 2023.

This imposes a duty on personal representatives to prepare and file a true and complete inventory and account of the deceased's real and personal estate when required by the court. Section 12⁶³ states that "Subject to the provisions of this section, on the death of any person after the commencement of this Law, all causes of action subsisting against or vested in him shall survive against or, as the case may be, for the benefit of his estate." This extends the rights of the deceased by allowing personal representatives to initiate or defend legal proceedings in respect of any cause of action that survives the deceased, with certain exceptions such as defamation or seduction. Furthermore, The law also protects third parties who act in good faith based on granted probate or administration, even if the grant is later revoked, as detailed in Section 13⁶⁴ which states that "every person making or permitting to be made any payment or disposition in good faith under a representation shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of the representation. These provisions reflect the law's focus on accountability and protection against abuse, ensuring that both the estate and beneficiaries are shielded from mismanagement"

In addition to defining administrative procedures, the law also outlines the powers and responsibilities of personal representatives. Section 43⁶⁵. grants broad powers of management to personal representatives, enabling them to raise funds through sale or mortgage of assets, and to deal with property as if it were held under a trust for sale This ensures that executors and administrators have sufficient authority to preserve and maintain estate assets during administration. Section 44⁶⁶ allows them to appropriate parts of the estate in satisfaction of legacies or shares, provided it is done justly and with necessary consents, especially where

⁶³ Ibid

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

minors or life interests are involved. For estates involving infant beneficiaries, Section 45⁶⁷ empowers the appointment of trustees to hold property on their behalf, ensuring protection until they attain legal age. These sections work together to facilitate an efficient, legally compliant, and equitable administration of estates, while giving the courts supervisory authority to intervene where necessary to ensure justice and proper conduct.

3.1.5 The Marriage Act 1990

The Marriage Act⁶⁸ is the principal legislation governing statutory marriages in Nigeria. Its primary aim is to regulate marriage formation under Nigerian law, distinguishing such unions from those under customary or Islamic rites. This Act sets the formal legal parameters for a valid statutory marriage, including age, consent, monogamy, licensure, and solemnization procedures. The importance of this framework lies not in mere ceremonial uniformity, but in the legal rights and duties it creates and protects. For example, under Section 33⁶⁹, of the Act bigamy is an offence, thus reinforcing the monogamous nature of statutory marriages. Similarly, Section 18⁷⁰ requires consent where a party is under 21, highlighting the state's interest in protecting the vulnerable. This legislative structure ensures that marriage is not simply a private arrangement but a public legal contract that can be enforced, challenged, or dissolved within the judicial system. It is this clarity that sustains trust in the institution and protects the legal identity of spouses and children alike. Through its detailed provisions, the Act serves as a mechanism for social stability, legal certainty, and personal dignity.

When one reflects on the implications of a statutory marriage, it becomes evident that the Act's relevance is far-reaching. Section 21⁷¹ of the Marriage Act requires that a marriage under the

⁶⁷ Ibid.

⁶⁸ The Marriage Act 1990, Cap. M6 Laws of the Federation of Nigeria 2004.

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Ibid

Act should be celebrated in a duly licensed place of worship presided over by any recognised minister of the place of worship, the law ensures that every marriage is entered into consciously, publicly, and with documentary evidence. The strength of a society lies not only in its moral values but also in its legal structures, and the Marriage Act is one such pillar. It removes ambiguity and allows parties to confidently rely on enforceable legal standards. In essence, it converts intention into law and emotion into obligation, affirming the law's protective function over intimate human relationships. A society that honours its laws around marriage honours the dignity of its people.

3.1.6 Matrimonial Causes Act 1970

The Matrimonial Causes Act⁷², enacted in 1970, serves as the cornerstone legislation governing matrimonial proceedings in Nigeria. Prior to its enactment, matrimonial issues were adjudicated under a mosaic of customary, Islamic, and statutory laws, leading to inconsistencies and uncertainties in legal outcomes. The MCA was introduced to harmonize these divergent legal traditions, providing a unified framework for the dissolution of marriages, judicial separation, nullity proceedings, and related matters. Under Section 2⁷³ of the Act, jurisdiction over matrimonial causes is vested exclusively in the High Courts of the various states, ensuring that such matters are handled with the requisite legal authority and procedural rigor.

A pivotal aspect of the MCA is its delineation of the grounds upon which a marriage may be dissolved. Section 15(1)⁷⁴ stipulates that a marriage may be dissolved only on the ground that it has broken down irretrievably. This singular ground is further explicated in Section 15(2)⁷⁵, which enumerates specific factual circumstances, such as adultery, desertion, or unreasonable

⁷² Matrimonial Causes Act of 1970. Cap M7, Laws of the Federation of Nigeria, 2004

⁷³ Ibid

⁷⁴ Ibid

⁷⁵ Ibid

behavior, that, if proven, establish the irretrievable breakdown of the marriage. This approach underscores the Act's emphasis on the substantive reality of marital breakdown over procedural formalities. By codifying these provisions, the MCA provides clarity and predictability in matrimonial litigation, thereby safeguarding the rights and interests of the parties involved. The Act's comprehensive nature reflects a deliberate effort to ensure that matrimonial disputes are resolved within a coherent and equitable legal framework.

3.1.7 Customary Law

Customary law in Nigeria remains a powerful force in determining inheritance rights, often to the detriment of women. Rooted in the traditions of various ethnic groups, these unwritten rules frequently prioritize male heirs, reflecting the patriarchal nature of many Nigerian communities. For instance, under Igbo customary law, inheritance traditionally follows the principle of male primogeniture, where only male children can inherit their father's property, particularly land and family assets. Women, including daughters and widows, are often excluded from inheritance, based on the belief that property should remain within the patrilineal lineage. Widows may retain possessory rights (e.g., living in the marital home) but lack proprietary rights, meaning they cannot sell or fully own the property.⁷⁶ Similarly, Yoruba inheritance customs are comparatively more egalitarian. The *Ori Ojori* method ensures equal distribution of a deceased father's estate among all children, regardless of gender, while the *Idi Igi* system divides property based on the number of wives, with each wife's share further divided among her children.⁷⁷ These practices persist despite constitutional guarantees of gender equality under Section 42 of the 1999 Constitution, which prohibits

⁷⁶ Hon. Justice M I. Oshodi. "The Inheritance Rights of Women in Nigeria." *International Association of Women Judges*, 11th July, 2023. Accessed on May 21st, 2025. https://www.iawj.org/content.aspx?page_id=2507&club_id=882224&item_id=4986.

⁷⁷ O Oluwafemi, "Inheritance Rights of Women in Nigeria | Legal Framework." *Trusted Advisors Law Firm*. March 12, 2025. Accessed on May 21, 2025. <https://trustedadvisorslaw.com/inheritance-rights-of-women-in-nigeria-legal-framework-cultural-perspectives/>.

discrimination based on sex.⁷⁸ The tension between statutory protections and deeply ingrained customs creates a legal paradox, where women's rights exist on paper but are often ignored in practice, particularly in rural areas where traditional leaders enforce these norms.

Benin (Edo) customary inheritance practices vary but generally align with patrilineal traditions, where male heirs inherit family property. Women's rights are often limited, particularly in land ownership, though some modern interpretations allow widows and daughters to inherit under certain conditions⁷⁹. Unlike the Igbo system, Benin customs sometimes permit widows to hold property in trust for their children, especially if no male heir exists.

Acceptance Test

Under Nigerian law, for a custom to possess legal validity and be enforced, it must first satisfy the proof requirement as codified in Sections 16–19 of the Evidence Act 2011. In particular, Section 16(1)⁸⁰ establishes that a custom may be accepted as part of the governing law if it is judicially noticed or proved, with the burden resting squarely on the party asserting the custom. Judicial notice may be taken by the court where the custom has been previously adjudicated by a superior court of record, per Section 17⁸¹. Absent judicial notice, proof requires adducing reliable testimony or documentary evidence showing the custom's existence, acceptance, and continued observance in the community. Section 18⁸² reinforces this strict evidentiary standard: a custom cannot be enforced unless it withstands scrutiny under public policy, natural justice, equity, and good conscience. Courts have explained that the custom must be shown with precision as to its content, geographical scope, making it a question of fact in the same manner as any other factual issue. Relevant factual evidence may include how the matter was

⁷⁸ The 1999 Constitution of the Federal Republic of Nigeria (as amended), Section 42.

⁷⁹ A O Enabulele and B Bazuaye "Validity and Enforceability of Customary Law in Nigeria: Towards a Correct Delimitation of the Province of the Courts" *Journal of African Law* 2019 Vol 63, No 1 pp 79 – 104.

⁸⁰ Section 16(1) of the Evidence Act, 2011.

⁸¹ *Ibid*

⁸² *Ibid*

understood and acted upon by persons affected at the time. Judicial precedent has affirmed the stringent nature of this requirement. In *Taiwo v. Dosunmu & Anor*⁸³ and *Giwa v. Erinmilokun*⁸⁴ the Supreme Court and appellate decisions held that judicial notice may not rest on foreign decisions and that a single prior decision in Nigeria may suffice, respectively. Thus, the first legal hurdle is documentary or judicial proof, demanding clarity in the custom's assertion, factual foundation, and persistence.⁸⁵

Repugnancy Test

The second foundational test is the repugnancy doctrine, which exists to screen out customs that are unjust, inequitable, or oppressive. Section 18(3)⁸⁶ of the Evidence Act expressly restrains enforcement of any custom contrary to “natural justice, equity and good conscience” Nigerian precedent firmly roots this doctrine in decisions such as *Eshugbaye Eleko v. Government of Nigeria*⁸⁷, where Lord Atkin declared that “the court cannot itself transform a barbarous custom into a milder one. If it stands in its barbarous character, it must be rejected as repugnant. The doctrine was further applied in cases like *Okonkwo v. Okagbue*⁸⁸ which held that customs like woman-to-woman marriage were repugnant. Similarly, in *Guri v. Hadeija Native Authority*⁸⁹ a rule denying an accused person the right to defend themselves was invalidated. The Supreme Court has reaffirmed that while some ethnic rules may pass, any custom deemed oppressive, barbarous, or denying fundamental fairness must be voided. Courts engage in detailed factual examination, exploring whether a custom would shock modern sensibilities, undermine fairness, or otherwise antagonise universal standard of morality. It

⁸³ *Chief Taiwo v Dosunmu & Anor* (1965) LLJR -SC

⁸⁴ *Giwa v Bisiriyu O Erinmilokun.* (1961) LLJR-SC

⁸⁵ B A Nkor “The Validity of Customary Law as a Source of Nigerian Law” *Nigerian Law Class* 26th July, 2014. accessed on 25th June, 2025. <https://nigerianlawclass.wordpress.com/2014/07/26/the-validity-of-customary-law-as-a-source-of-nigerian-law-by-burabari-adule-nkor/>

⁸⁶ Section 18(3) of the Evidence Act, 2011.

⁸⁷ *Eshugbaye Eleko v. Government of Nigeria* [1931] AC 662

⁸⁸ *Okonkwo v. Okagbue* (1994) CLR 12(e) (SC)

⁸⁹ *Guri v. Hadeija Native Authority* (1959) 4 FSC 44

follows that even long-standing, widely practised customs are not immune; once judged repugnant, they become unenforceable as a matter of law.⁹⁰

Public Policy Test

Lastly, a custom must be compatible with statutory and constitutional law, and must not conflict with public policy. These principles are likewise enshrined in Section 18⁹¹ of the Evidence Act and mirrored across High Court statutes. Under the incompatibility test, any customary rule that is inconsistent, by direct conflict or necessary implication, with any existing written law is invalid. Cases such as *Adesubokan v. Yunusa*⁹² highlight enforcement refusal where Islamic inheritance law conflicted with the Wills Act. Similarly, *Ukeje v. Ukeje*⁹³ abolished male-only primogeniture under Igbo custom as unconstitutional. The doctrine of public policy acts in complementary fashion: if a custom is injurious to public welfare or offends prevailing societal norms, courts will refuse its enforcement. In *Alake v. Pratt*⁹⁴ and *Dawodu v. Danmole*⁹⁵, the court struck down discriminatory inheritance customs as both repugnant and contrary to public policy.

Altogether, even after passing the first two tests, a custom still fails where it conflicts with superior law or undermines the public interest. This ensures the supremacy of the Constitution and statutory protections, especially fundamental rights and guards against the perpetuation of harmful or discriminatory practices⁹⁶.

⁹⁰ O Oluwafemi, "Inheritance Rights of Women in Nigeria | Legal Framework." *Trusted Advisors Law Firm*. March 12, 2025. Accessed on May 21, 2025. <https://trustedadvisorslaw.com/inheritance-rights-of-women-in-nigeria-legal-framework-cultural-perspectives/>.

⁹¹ Section 18 of the Evidence Act, 2011.

⁹² *Adesubokan v. Yunusa* S.C. 25/1970 [1971] NGSC 35

⁹³ *Ukeje v Ukeje* (2014) 11 NWLR (PT.1418) 384

⁹⁴ *Alake v. Pratt* (1955) JELR 82049 (WACA)

⁹⁵ *Dawodu v. Danmole* [1962] 1 WLR 1053

⁹⁶ E N Okaphor., H O Obi, and E F Okaphor. "Women's Inheritance Rights in Nigeria: An Analysis of the Legal Gaps and Reform Prospects." *Journal of Commercial and Property Law* Volume 11, No. 4 (2024): pp 167-176.

The Nigerian judiciary has made strides in challenging discriminatory customary practices, notably in the landmark case *Ukeje v. Ukeje*⁹⁷, where the Supreme Court declared Igbo customary law excluding female inheritance unconstitutional. Similarly, in *Mojekwu v. Mojekwu*⁹⁸, the Court of Appeal condemned customs that disinherit women as repugnant to natural justice⁹⁹. However, enforcement remains inconsistent, especially in communities where local leaders resist change. For example, widows under Hausa customary law are often dispossessed of their husband's property unless they have male children, a practice upheld by some Sharia courts in northern Nigeria. The Land Use Act further complicates matters by vesting rural land control in traditional institutions that often marginalize women¹⁰⁰. While statutory laws like the Administration of Estates Law in Lagos State mandate equal inheritance for all children, regardless of gender, their impact is limited without widespread legal literacy and community sensitization¹⁰¹. True reform requires not only legislative action but also grassroots education to shift cultural attitudes that perpetuate gender inequality in inheritance.

Customary law in Nigeria must pass three key validity tests to be enforceable in courts: the repugnancy test, the incompatibility test, and the public policy test.

The repugnancy test requires that a customary law must not be "repugnant to natural justice, equity, and good conscience." This doctrine, rooted in colonial-era jurisprudence *Eshugbaye Eleko v. Government of Nigeria*¹⁰², was designed to eliminate customs deemed barbaric or unjust, such as those that discriminate against women in inheritance¹⁰³.

⁹⁷ *Ukeje v Ukeje* (2014) 11 NWLR (PT.1418) 384

⁹⁸ *Mojekwu v Mojekwu* LPELR-13777 (CA)

⁹⁹ C C Nwifo and K C Okoli "Customary Law, Law and Women Rights to Inheritance and the Challenges." Nigerian Law Journal (2016) Vol 19, No. 1 pp199–222.

¹⁰⁰ *Ibid*

¹⁰¹ M C Cookey., and M O. Izzi. "A Legal Appraisal of the Inheritance Rights of Women in Nigeria." *International Journal of Law and Social Sciences* (2025) Vol 2, No. 4. p26–42.

¹⁰² *Eshugbaye Eleko v. Government of Nigeria* [1931] AC 662

¹⁰³ B A Nkor "The Validity of Customary Law as a Source of Nigerian Law" Nigerian Law Class 26th July, 2014. accessed on 25th June, 2025. <https://nigerianlawclass.wordpress.com/2014/07/26/the-validity-of-customary-law-as-a-source-of-nigerian-law-by-burabari-adule-nkor/>

3.1.8 Case Laws

Nigeria's judiciary has played a pivotal role in shaping women's inheritance rights through landmark rulings that challenge discriminatory customary practices. One of the most significant cases is *Ukeje v. Ukeje*¹⁰⁴, where the Supreme Court declared Igbo customary law which excluded female children from inheriting their father's estate unconstitutional, violating Section 42(1) of the 1999 Constitution on gender equality. Olabode Rhodes-Vivour JSC delivering the lead judgment in the above case stated that "no matter the circumstances of the birth of a female child, such a child is entitled to an inheritance," affirming that customs denying women inheritance are void. Similarly, in *Mojekwu v. Mojekwu*¹⁰⁵, the Court of Appeal condemned the Oli Ekpe custom of the Igbo, which reserved inheritance solely for male heirs, labelling it "repugnant to natural justice, equity, and good conscience". However, the Supreme Court later tempered this stance in *Mojekwu v. Iwachukwu*¹⁰⁶, cautioning against outright rejection of customs without procedural scrutiny, reflecting the tension between judicial reform and cultural preservation. Another critical case, *Anekwe v. Nweke*¹⁰⁷, saw the Supreme Court invalidate the Awka custom of disinheriting widows without male children, ruling it barbaric and punitive. These judgments highlight the judiciary's role in enforcing constitutional guarantees, though enforcement remains inconsistent, particularly in rural areas where patriarchal norms resist change.

Despite progressive rulings, systemic barriers persist. The courts' reliance on the "repugnancy test" which nullifies customs violating natural justice has been instrumental in advancing women's rights, as seen in *Anekwe v. Nweke*¹⁰⁸ and *Ukeje v. Ukeje*¹⁰⁹. Yet, many women remain

¹⁰⁴ *Ukeje v Ukeje* (2014) 11 NWLR (PT.1418) 384.

¹⁰⁵ *Mojekwu v Mojekwu* LPELR-13777 (CA).

¹⁰⁶ *Mojekwu v. Iwachukwu* (2004) JELR 44983 (SC).

¹⁰⁷ *Anekwe v Nweke* (2014) 9 NWLR (PT 1412) 393

¹⁰⁸ *Anekwe v Nweke* (2014) 9 NWLR (PT 1412) 393

¹⁰⁹ *Ukeje v Ukeje* (2014) 11 NWLR (PT.1418) 384.

unaware of their rights or lack resources to litigate, leaving discriminatory practices unchecked. For instance, Yoruba customary law, while relatively egalitarian in distributing property among children (Ori Ojori method), still denies wives inheritance unless gifted property during their husband's lifetime. Islamic law, applied in northern Nigeria, also limits women's shares to half of male heirs, though the Quran explicitly affirms their right to inherit.¹¹⁰

3.2 Institutional Framework

3.2.1 The Judiciary

The Nigerian judiciary operates within a complex institutional framework that shapes its approach to women's inheritance rights. The court system is structured hierarchically, with the Supreme Court at the apex¹¹¹, followed by the Court of Appeal and High Courts at both federal and state levels¹¹². Section 251¹¹³ of the 1999 Constitution provides for the jurisdiction of the Federal High Court where it states that the federal high court has jurisdiction in matters contained in the exclusive legislative list. Section 272¹¹⁴ provides that the state high court shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person. This structure allows for appeals and ensures uniformity in legal interpretation, though it also creates delays in justice delivery. The judiciary's institutional capacity is further defined by constitutional provisions, particularly Section 6 of the 1999 Constitution¹¹⁵, which vests judicial powers in the courts and establishes their independence. However, this independence is often challenged

¹¹⁰ The Qur'an 2:180 (Translated by M.A.S Abdel Hareem)

¹¹¹ The 1999 Constitution of the Federal Republic of Nigeria (as amended), Section 230.

¹¹² The 1999 Constitution of the Federal Republic of Nigeria (as amended), Sections 249, 270.

¹¹³ The 1999 Constitution of the Federal Republic of Nigeria (as amended), Section 251.

¹¹⁴ The 1999 Constitution of the Federal Republic of Nigeria (as amended), Section 272.

¹¹⁵ The 1999 Constitution of the Federal Republic of Nigeria (as amended), Section 6.

by resource constraints, case backlogs, and occasional political interference, all of which affect the judiciary's ability to consistently enforce women's inheritance rights. The system relies heavily on legal professionals - judges, magistrates, and lawyers - whose training and personal perspectives can significantly influence case outcomes, particularly in matters involving customary law and women's rights.

The Nigerian judiciary has been a critical institution in shaping women's inheritance rights, particularly through landmark rulings that challenge discriminatory customary practices. One of the most significant cases is *Ukeje v. Ukeje*¹¹⁶, where the Supreme Court declared Igbo customary law which excluded female children from inheriting their father's estate—unconstitutional, as it violated Section 42(1) of the 1999 Constitution, which guarantees freedom from discrimination based on sex. Despite progressive rulings, systemic barriers persist, including limited legal awareness among women and resistance from traditional institutions. Many women remain unaware of their rights or lack the resources to litigate, leaving discriminatory practices unchecked

3.2.2 National Human Rights Commission (NHRC)

The National Human Rights Commission (NHRC) serves as Nigeria's primary institution for promoting and protecting human rights, including women's inheritance rights. Established under the NHRC Act of 1995¹¹⁷, the Commission operates with a mandate to investigate rights violations, provide legal redress, and advocate for policy reforms¹¹⁸. Its institutional framework includes a Governing Council, state branches, and specialized units like the Women and Children's Rights Department, which focuses on gender-based discrimination, including unequal inheritance practices. The NHRC derives its authority from Section 42 of Nigeria's

¹¹⁶ *Ukeje v Ukeje* (2014) 11 NWLR (PT.1418) 384.

¹¹⁷ National Human Rights Commission Act of 1995 as amended in 2010.

¹¹⁸ Section 5 of the National Human Rights Commission Act of 1995 as amended in 2010 .

1999 Constitution, which prohibits gender discrimination, and aligns with international treaties like the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)¹¹⁹, which Nigeria ratified in 2004. However, the NHRC faces challenges in enforcing these provisions, particularly in rural areas where customary laws often override statutory protections. For instance, the Commission has documented cases where widows are dispossessed of marital property under Igbo customary law, despite the Supreme Court's landmark ruling in *Ukeje v. Ukeje*¹²⁰ that declared such practices unconstitutional. The NHRC's interventions include public inquiries, mediation, and collaboration with traditional rulers to reconcile statutory rights with cultural norms, though its recommendations lack binding legal force, limiting their impact. The NHRC employs a multi-faceted approach to address inheritance rights violations, including awareness campaigns, legal aid services, and policy advocacy¹²¹. For example, its 2020 report on gender-based discrimination highlighted systemic barriers like illiteracy and patriarchal resistance that hinder women from claiming inheritance. The Commission also partners with NGOs and the Nigerian Bar Association to provide free legal representation for women in inheritance disputes, leveraging provisions of the Administration of Estates Laws in states like Lagos and Rivers, which mandate equitable distribution.

3.2.3 Traditional Institutions

Traditional institutions in Nigeria, including monarchs, councils of elders, and customary courts, play a pivotal role in shaping inheritance practices, often reinforcing patriarchal norms that disadvantage women. These institutions derive their authority from longstanding customs, which vary significantly across ethnic groups. For example, among the Igbo, traditional leaders

¹¹⁹ O Odigie-Emmanuel "Assessing Women's Rights in Nigeria." Institute for Policy Studies, 1st December, 2010. Accessed on May 26th, 2025. https://ips-dc.org/assessing_womens_rights_in_nigeria/.

¹²⁰ *Ukeje v Ukeje* (2014) 11 NWLR (PT.1418) 384.

¹²¹ O Odigie-Emmanuel "Assessing Women's Rights in Nigeria." Institute for Policy Studies, 1st December, 2010. Accessed on May 26th, 2025. https://ips-dc.org/assessing_womens_rights_in_nigeria/.

uphold the *Oli Ekpe* custom, which excludes female children from inheriting their father's property, reserving it solely for male heirs. Similarly, in Yoruba communities, while the *Ori Ojori* method ensures equal inheritance among children, widows are typically excluded unless the property was explicitly gifted to them during their husband's lifetime. Traditional rulers, as custodians of culture, often resist judicial and statutory reforms. Their influence is particularly strong in rural areas, where statutory laws are poorly enforced, and customary norms prevail. For instance, in Enugu State, traditional leaders like Igwe Cassidy Eze openly defend male-only inheritance, arguing that it preserves cultural integrity, despite its conflict with constitutional guarantees of gender equality.¹²² This institutional resistance perpetuates economic disparities, leaving many women without access to land or family wealth, even when legal frameworks exist to protect their rights.

While traditional institutions often perpetuate gender-biased inheritance practices, they also hold the potential to drive reform when aligned with progressive advocacy. In some communities, enlightened leaders have collaborated with NGOs and government agencies to sensitize locals about women's rights. For example, the *Nrachi* custom in parts of Anambra allows daughters to inherit if they remain unmarried to perpetuate their father's lineage, demonstrating that customs can adapt to address gender gaps.¹²³ However, such exceptions are rare and heavily conditional. Traditional courts, which adjudicate inheritance disputes in rural areas, frequently prioritize customary law over statutory protections, as seen in cases where widows are evicted from marital homes despite rulings like *Nzekwu v. Nzekwu*¹²⁴, which

¹²² O Obi "When Rights Slip Through the Cracks of Culture." *Harvard International Review*, 10th July 2023. Accessed May 26th 2025. <https://hir.harvard.edu/when-rights-slip-through-the-cracks-of-culture-womens-rights-and-justice-in-nigeria-or-lack-thereof/>

¹²³ H Solicitors "The Evolution of Inheritance Practices in Nigeria." *Harlem Solicitors*, 11th November, 2024. Accessed on May 26th 2025. <https://www.harlemsolicitors.com/2024/11/11/the-evolution-of-inheritance-practices-in-nigeria/>

¹²⁴ *Nzekwu v. Nzekwu* (1989) 2 NWLR (Pt. 104) 373.

affirmed their occupancy rights.¹²⁵ To bridge this gap, initiatives like the Women's Rights Advancement and Protection Alternative (WRAPA) work with traditional rulers to promote equitable inheritance practices, though progress remains slow¹²⁶.

3.2.4 International Federation of Women Lawyers

The International Federation of Women Lawyers (FIDA) is a critical institutional actor in advancing women's inheritance rights in Nigeria¹²⁷. Established in 1944 and granted UN consultative status in 1954¹²⁸, FIDA operates as a non-governmental organization dedicated to promoting gender equality through legal advocacy, education, and direct intervention¹²⁹. In Nigeria, FIDA's institutional framework includes national and state chapters, such as FIDA Nigeria, founded in 1982, which focus on challenging discriminatory customary and statutory laws that hinder women's access to inheritance¹³⁰. FIDA's work is anchored in Nigeria's constitutional guarantees, particularly Section 42 of the 1999 Constitution¹³¹, which prohibits gender discrimination, and international treaties like the Maputo Protocol. For example, FIDA has been instrumental in providing free legal aid to widows and daughters dispossessed of property under Igbo customary law. The organization also collaborates with traditional rulers and policymakers to reform harmful practices, such as the Oli Ekpe custom, through

¹²⁵ O Oluwafemi, "Inheritance Rights of Women in Nigeria | Legal Framework." *Trusted Advisors Law Firm*. March 12, 2025. Accessed on May 26, 2025. <https://trustedadvisorslaw.com/inheritance-rights-of-women-in-nigeria-legal-framework-cultural-perspectives/>.

¹²⁶ The Evolution of Inheritance Practices in Nigeria." *Harlem Solicitors*, 11th November, 2024. Accessed on May 26th 2025. <<https://www.harlemsolicitors.com/2024/11/11/the-evolution-of-inheritance-practices-in-nigeria/>>

¹²⁷ "International Federation of Women Lawyers" *Wikipedia* 8th March, 2024. Accessed May 26 2025. https://en.wikipedia.org/wiki/International_Federation_of_Women_Lawyers

¹²⁸ *Ibid*

¹²⁹ "International Federation of Women Lawyers." *Global Hand*, 2025. <https://www.globalhand.org/en/organisations/23267>.

¹³⁰ "International Federation of Women Lawyers (FIDA)." *UIA Open Yearbook*, 2025. <https://uia.org/s/or/en/1100002536>.

¹³¹ The 1999 Constitution of the Federal Republic of Nigeria (as amended), Section 42.

sensitization programs and legislative advocacy¹³². However, FIDA's impact is often limited by systemic barriers, including resistance from patriarchal communities and the non-enforcement of progressive court rulings in rural areas.¹³³ Despite these challenges, FIDA's institutional role remains pivotal in bridging the gap between legal reforms and grassroots implementation.

FIDA employs a multi-pronged approach to address inheritance rights violations, combining litigation, policy advocacy, and community engagement. One key strategy is its legal aid clinics, which empower women to contest discriminatory practices in court, as demonstrated in Rivers State, where FIDA supported the enforcement of the Prohibition of the Curtailment of Women's Right to Share in Family Property Law 2022¹³⁴. The organization also publishes simplified legal guides in local languages, such as Yoruba and Hausa, to educate women about their rights under statutory and Islamic inheritance laws. For instance, FIDA's pamphlets clarify that Yoruba customary law *Ori Ojori* permits equal inheritance among children but often excludes widows, a disparity the organization challenges through workshops with traditional leaders¹³⁵. Structurally, FIDA faces institutional hurdles, including underfunding and jurisdictional conflicts with Sharia courts in northern Nigeria, where Islamic law limits women's shares to half of male heirs.

¹³² Hon. Justice M I Oshodi. "The Inheritance Rights of Women in Nigeria." *International Association of Women Judges*, 11th July, 2023. Accessed on May 26th 2025.
https://www.iawj.org/content.aspx?page_id=2507&club_id=882224&item_id=4986.

¹³³ E Kevin-Alerechi. "Despite the Enactment of a Law Granting Women the Right to Share in Family Property, Nigerian Women Still Face Barriers." *Global Voices*, 16th September, 2024. Accessed May 26th 2025.
<https://globalvoices.org/2024/09/16/despite-the-enactment-of-a-law-granting-women-the-right-to-share-in-family-property-nigerian-women-still-face-barriers-to-land-sharing/>.

¹³⁴ *Ibid*

¹³⁵ Hon. Justice M I Oshodi. "The Inheritance Rights of Women in Nigeria." *International Association of Women Judges*, 11th July, 2023. Accessed on May 26th 2025.
https://www.iawj.org/content.aspx?page_id=2507&club_id=882224&item_id=4986.

CHAPTER FOUR

ANALYSIS OF INHERITANCE RIGHTS UNDER CUSTOMARY AND STATUTORY LAW IN NIGERIA

4.1 Customary and Statutory Law on Women's Rights of Inheritance

Under statutory law, inheritance rules are codified in formal legislation and courts are the primary enforcers, whereas customary law derives from unwritten local practices and must be pleaded and proved in court to apply¹³⁶. For example, The Land Use Act provides that the devolution of estates is governed by the deceased's customary law regardless of whether land tenure is customary or statutory¹³⁷. In practice, this means that even when land is held under modern title, courts will often defer to traditional rules. By contrast, statutory succession is governed by uniform state laws (e.g., Administration of Estates Laws and Wills Acts) that apply equally to all citizens. Statutory rules are therefore written, public, and generally uniform across jurisdictions, whereas customary rules vary widely from one ethnic community to another¹³⁸. Moreover, by statute certain courts (civil, Sharia or custom) have exclusive jurisdiction depending on the deceased's marriage and religion, while customary disputes are usually decided by customary or probate courts that interpret the local custom in each case. In short, the source and scope of power differ: statutory inheritance law is a uniform, legislated scheme backed by the constitution, while customary inheritance is a heterogeneous set of local norms that may only be enforced after judicial scrutiny¹³⁹.

¹³⁶ M C Cooley and M O Izzi "A Legal Appraisal of the Inheritance Rights of Women in Nigeria" *International Journal of Legal Studies and Social Sciences* 2018 Vol 2 No 4 pp 26 - 42

¹³⁷ Section 24 of the Land Use Act, 1978.

¹³⁸ I Oriaghan "A Quick Look at Women's Land and Inheritance Rights in Nigeria". *Landesa* 30th July 2018. Accessed May 27th 2025. <https://www.landesa.org/a-quick-look-at-womens-land-and-inheritance-rights-in-nigeria/#:~:text=Land%20acquisition%20for%20men%20and,men%2C%20own%20land%20by%20themselves>

¹³⁹ M C Cooley and M O Izzi "A Legal Appraisal of the Inheritance Rights of Women in Nigeria" *International Journal of Legal Studies and Social Sciences* 2018 Vol 2 No 4 pp 26 - 42

In comparing regional practices, inheritance customs in the South-South (e.g., among the Igbo and Benin communities) are largely patrilineal, with traditions like male primogeniture excluding daughters and widows from inheriting family land, though widows may sometimes hold property in trust for male children . By contrast, in the North, Islamic (Sharia) law is dominant, and while it guarantees women a right to inherit, their share is typically half that of male heirs . In practice, Hausa customary norms often worsen this disparity, as widows without male children risk being dispossessed of their husband's property . The South-South system, therefore, often denies women inheritance outright, while the Northern system formally recognizes women's rights but allocates them lesser shares, showing different but equally gendered limitations across regions.

Another key difference lies in procedures and processes. Statutory succession typically requires formal probate or administration through state courts¹⁴⁰. If a person dies intestate and was married under the Marriage Act, the estate must be processed under the state's Administration of Estates law with letters of administration or probate. Courts issue official grants and follow codified rules to identify heirs and divide assets; appeals and judicial review are possible. In contrast, customary succession often involves family or communal forums rather than formal courts. In many communities, the surviving family head simply convenes elders to apportion the property by custom, sometimes without any written will or court involvement. Because land titles are scarce, statutory procedures (like registration of title or probate) are often impractical. Instead, customary practices prevail (even on land actually in formal registers) and men typically execute the transfer without government approval. Thus, whereas statutory

¹⁴⁰ Section 36(1) of the Marriage Act. Cap M6, LFN 2004

inheritance follows public legal steps (with costs, filings and legal formality), customary inheritance relies on private familial arrangements.¹⁴¹

The treatment of heirs also differs. Under statutory law, all statutory heirs are defined by law (children, spouses, etc.) and modern statutes generally promote equality. For example, state Probate laws and Administration of Estates laws provide that all surviving children share equally in a deceased parent's estate regardless of gender¹⁴². Likewise, the 1999 Constitution forbids sex-based discrimination, so in principle sons and daughters have the same statutory rights. By contrast, customary rules often prioritize male relatives. In many customary systems, only male kin are recognized as heirs. A classic example is Igbo custom, where a daughter's right to her father's property was traditionally denied, a practice the Supreme Court struck down as unconstitutional in *Ukeje v. Ukeje*¹⁴³. Another example is Yoruba custom: on intestacy a man's property is divided equally among the children of each wife but wives themselves receive nothing unless gifted by the husband during his life¹⁴⁴. Thus, statutory law tends to treat children as equal heirs, while customary law often accords special status to sons or sons' children. Finally, customary law typically regards marriage as irrelevant for inheritance a wife is not of blood, so her in-laws inherit for her, and her own children's inheritance rights come only through their father. In contrast, statutory law recognizes the spouse's and children's interests explicitly. In summary, statutory law (written, uniform, gender-neutral in theory) diverges sharply from customary law (oral, pluralistic, often patriarchal) in who can inherit, how estates are managed, and what procedures must be followed¹⁴⁵

¹⁴¹ I Oriaghan "A Quick Look at Women's Land and Inheritance Rights in Nigeria". *Landesa* Jul 30 2018. Accessed May 27th 2025. <https://www.landesa.org/a-quick-look-at-womens-land-and-inheritance-rights-in-nigeria/#:~:text=Land%20acquisition%20for%20men%20and,men%2C%20own%20land%20by%20themselves>

¹⁴² Hon. Justice M I. Oshodi. "The Inheritance Rights of Women in Nigeria." *International Association of Women Judges*, 11th July, 2023. Accessed on May 21st, 2025.

¹⁴³ *Ukeje v Ukeje* (2014) 11 NWLR (PT.1418) 384.

¹⁴⁴ C Ogbonnaya "Women's Inheritance Rights Under the Constitution: The Case Of *Ukeje V. Ukeje* And Matters Arising". *Alliance Law Firm*. 7th April, 2025. Accessed on May 27th, 2025.

¹⁴⁵ *Ibid*

4.2 Legal Implications for Women's Inheritance Rights

Although Nigeria's formal laws nominally guarantee gender equality, the practical effect on women's inheritance has been limited. The Constitution's equality clauses and state succession laws enshrine non-discrimination and equal shares for daughters¹⁴⁶. Administrations of Estates laws in many states explicitly provide that, children inherit equally, and courts have held that any customary rule excluding women violates the Constitution. In theory, therefore, a daughter or wife in a civil marriage enjoys the same rights as a son or husband. In practice, however, women often do not realize these rights. Due to the doctrine of repugnancy, customary rules that blatantly disfavour women may be invalid, but courts will not strike down every injustice on their own. As a result, women must initiate costly litigation to invoke constitutional protection, and many do not. Analysts note that discrimination persists "as a result of people's reluctance to file complaints with the courts" because legal proceedings are complex and drawn out¹⁴⁷. Consequently, even though the law no longer permits outright exclusion of female heirs, many women still lack effective remedies.

A critical legal barrier is the procedural burden placed on litigants. To enforce statutory rights, a woman typically must obtain probate or letters of administration, which entails court filings, advertisement of claims, and fees¹⁴⁸. Studies report that probate processes are prohibitively expensive: filing fees, publication costs, and estate duties quickly accumulate. For example, one report notes that the combined costs often deter widows and daughters, who are commonly economically disadvantaged, from even applying for probate. As a result, many women abandon the statutory route and accept customary division of the estate. In effect, the law may

¹⁴⁶ Hon. Justice M I Oshodi. "The Inheritance Rights of Women in Nigeria." *International Association of Women Judges*, 11th July, 2023. Accessed on May 26th 2025.

https://www.iawj.org/content.aspx?page_id=2507&club_id=882224&item_id=4986

¹⁴⁷ M C Cookey and M O Izzi "A Legal Appraisal of the Inheritance Rights of Women in Nigeria" *International Journal of Legal Studies and Social Sciences* 2018 Vol 2 No 4 pp 26 - 42

¹⁴⁸ Section 20 of the Administration of Estates Law of Lagos State. CAP A3 Laws of Lagos State.

guarantee equality on paper, but the cost and delay of court enforcement create a practical obstacle. Moreover, to invoke customary rules themselves a claimant must satisfy evidentiary requirements per the Evidence Act¹⁴⁹, customs must be established in court. This puts the onus on the claimant to prove the relevant tradition. Women seldom have the resources or social backing to marshal such proof. Thus, both systems impose burdens: statutory law imposes high legal costs; customary law often requires navigating disputed local customs, both regimes frustrate women's claims.

Another implication concerns the type of marriage and title of property. The statutory scheme for inheritance generally assumes a formal civil marriage; a spouse married only under customary rites may not receive the same protection. Indeed, commentators observe that under the 1978 Land Use Act and related property laws only legally married women could fully claim rights to their husband's land¹⁵⁰. Likewise, Nigeria's Marriage Act establishes a uniform system only for civil marriages. In practice this means that a woman who never registered her marriage, or married under only customary rites, may find herself excluded from statutory succession. Her in-laws might argue that because no civil marriage was contracted, the deceased's estate falls under customary law with its traditional biases. The divide between civil and customary marriage has major implications for inheritance: statutory protections (and even property titles) tend to attach only to officially sanctioned unions. A married woman in a customary marriage often has no recognized claim to joint property or spouse's estate, whereas a wife in a civil marriage can invoke the full force of the statutory inheritance code¹⁵¹.

¹⁴⁹ Section 70 of the Evidence Act, 2011. CAP E4 Laws of the Federation.

¹⁵⁰ I Oriaghan "A Quick Look at Women's Land and Inheritance Rights in Nigeria". *Landesa* 30th July 2018. Accessed May 27th 2025. <https://www.landesa.org/a-quick-look-at-womens-land-and-inheritance-rights-in-nigeria/#:~:text=Land%20acquisition%20for%20men%20and,men%2C%20own%20land%20by%20themselves>

¹⁵¹ Hon. Justice M I Oshodi. "The Inheritance Rights of Women in Nigeria." *International Association of Women Judges*, 11th July, 2023. Accessed on May 26th 2025. https://www.iawj.org/content.aspx?page_id=2507&club_id=882224&item_id=4986

Finally, there is the knowledge gap and social pressure factor. The coexistence of two systems means that many women simply do not know their legal rights under statute, and local communities rarely assist them in asserting them. Surveys indicate that average Nigerians have poor knowledge of the statutory laws with respect to land and inheritance¹⁵². In many families the norm is to follow tradition without challenge: a woman may be culturally expected to relinquish her claim rather than risk familial discord. Where statutory law conflicts with custom, social pressures can be intense; a widow or daughter who demands her legal share might be ostracized or threatened. In effect, women in rural areas often live under customary rules by default, regardless of what the law says.

4.3 Rights of Widows Under Customary and Statutory Law

Under Nigeria's formal laws (for those married civilly), a widow has legally recognized rights to her husband's estate and property, whereas customary rules generally grant her only limited interests. Statutorily, the surviving spouse is typically a prioritized heir. For example, various state Administration of Estates laws explicitly place the widow in the first class of beneficiaries (along with children), entitling her to administer or share in the estate.¹⁵³ Likewise, Nigeria's Marriage Act and related statutes protect spousal property interests and guarantee widows an inheritance share on intestacy¹⁵⁴. By contrast, under customary succession a widow is rarely treated as a true heir. In many ethnic traditions she may retain possession of the marital home but does not acquire ownership. For instance, under Igbo custom a widow typically does not

¹⁵² I Oriaghan "A Quick Look at Women's Land and Inheritance Rights in Nigeria". *Landesa* 30th July 2018. Accessed May 27th 2025. <https://www.landesa.org/a-quick-look-at-womens-land-and-inheritance-rights-in-nigeria/#:~:text=Land%20acquisition%20for%20men%20and,men%2C%20own%20land%20by%20themselves>

¹⁵³ O Oluwafemi, "Inheritance Rights of Women in Nigeria | Legal Framework." *Trusted Advisors Law Firm*. March 12, 2025. Accessed on May 21, 2025. <https://trustedadvisorslaw.com/inheritance-rights-of-women-in-nigeria-legal-framework-cultural-perspectives/>.

¹⁵⁴ O Oluwafemi, "Inheritance Rights of Women in Nigeria | Legal Framework." *Trusted Advisors Law Firm*. March 12, 2025. Accessed on May 26, 2025. <https://trustedadvisorslaw.com/inheritance-rights-of-women-in-nigeria-legal-framework-cultural-perspectives/>.

inherit her deceased husband's property; she may remain in the house and farm some land, but only as a possessor on behalf of the husband's lineage¹⁵⁵. Similarly, long-standing Yoruba case law¹⁵⁶ held that a widow has no proprietary share in her late husband's estate – she is merely one who has been allotted a dwelling and remains there, essentially as part of the estate¹⁵⁷. In short, statutory law would recognize a widow as an heir and often an estate administrator, whereas customary law normally denies her inheritance beyond a life tenure in the family property.

A second aspect is the right to occupy the marital home. Statutory law contains no specific widow's homestead right, but in practice civil courts have increasingly protected widows who wish to remain in their marital house. By contrast, customary law usually limits the widow's occupancy to a life interest conditioned on good behaviour. In *Nzekwu v. Nzekwu*¹⁵⁸, the Supreme Court held under Onitsha customary law that a childless widow had merely a right to occupy her husband's house or a portion thereof, subject to the approval of his family. The Court observed that, although she is allowed to reside there, she has no power to alienate or claim ownership: she is not a stranger, but her tenure does not make her owner.¹⁵⁹ In practice this means an Igbo widow can keep living under her roof as long as her in-laws permit, but she cannot sell or mortgage it. Yoruba courts have reached a similar conclusion: *Oloko v. Giwa*¹⁶⁰ held that a widow may remain in her late husband's house or on a portion of his farmland, but

¹⁵⁵ Hon. Justice M I Oshodi. "The Inheritance Rights of Women in Nigeria." *International Association of Women Judges*, 11th July, 2023. Accessed on May 26th 2025.

https://www.iawj.org/content.aspx?page_id=2507&club_id=882224&item_id=4986

¹⁵⁶ *Oloko v Giwa* (1939) 15 NLR 31

¹⁵⁷ P Baiyere and E Okonkwo "Right to Inheritance in Nigeria: a Liberation For Widows" *Afe Babalola University, Ado Ekiti Law Review*. 4th November 2020. Accessed on May 27th 2025.

<https://djetlawyer.com/inheritance-for-widows-in-nigeria/#:~:text=Where%20a%20Yoruba%20man%20dies,27>

¹⁵⁸ *Nzekwu v. Nzekwu* (1989) 2 NWLR (Pt. 104) 373.

¹⁵⁹ Hon. Justice M I Oshodi. "The Inheritance Rights of Women in Nigeria." *International Association of Women Judges*, 11th July, 2023. Accessed on May 26th 2025.

https://www.iawj.org/content.aspx?page_id=2507&club_id=882224&item_id=4986

¹⁶⁰ *Oloko v Giwa* (1939) 15 NLR 31

she has only a possessory right¹⁶¹. Once she leaves or if she violates family norms, she may forfeit even that occupation right. Customary practice provides only a temporary home for widows, whereas statutory rights (if asserted) would treat her as a rightful beneficiary entitled to her husband's share of any titled property. The disparity underscores a crucial difference in widow's status: civil law regards her more like a surviving co-owner, while customary law regards her as a dependent guest.

A third facet is the right to administer or claim administration of the estate. Under statutory succession rules, a widow is among the first in line to obtain Letters of Administration when her husband dies intestate and if no son is of age. State probate rules often encourage the appointment of a surviving spouse as administrator of the estate¹⁶². By contrast, customary inheritance typically denies widows any such legal standing. In landmark decisions Nigerian courts repeatedly held that under native law a widow may not administer her husband's estate. For example, in *Akinubi v. Akinubi*¹⁶³ the Supreme Court held that a Yoruba widow should be "inherited" by her husband's male kin and barred her from applying for letters of administration. Similarly, *Nezianya v. Okagbue*¹⁶⁴ reaffirmed that under Onitsha law both widow and daughters are excluded from inheriting, meaning the widow cannot serve as administrator. In short, statutory law (via probate rules) envisions the widow as a natural administrator, but customary law has often treated her as part of the estate itself – to be disposed of by the husband's lineage rather than by herself.

¹⁶¹ P Baiyere and E Okonkwo "Right to Inheritance in Nigeria: a Liberation For Widows" *Afe Babalola University, Ado Ekiti Law Review* 4th November 2020. Accessed on May 27th 2025. <https://djetlawyer.com/inheritance-for-widows-in-nigeria/#:~:text=Where%20a%20Yoruba%20man%20dies,27>

¹⁶² O Oluwafemi, "Inheritance Rights of Women in Nigeria | Legal Framework." *Trusted Advisors Law Firm*. March 12, 2025. Accessed on May 21, 2025. <https://trustedadvisorslaw.com/inheritance-rights-of-women-in-nigeria-legal-framework-cultural-perspectives/>.

¹⁶³ *Akinubi v Akinubi* (1997) LCN/2786(SC)

¹⁶⁴ *Nezianya v. Okagbue* (1963) 3 All .L.R. 352,

Fourth, and more generally, is the status of the widow as a person versus as property. Statutory law treats a widow as an individual with rights to her husband's estate, whereas customary law often regards her almost as an inanimate part of the estate. Historically, many Nigerian customs regarded a widow as a chattel to be inherited by a male relative¹⁶⁵ This grim view had devastating consequences: she had no personal claim except a life interest, and even that was said to expire on the husband's death¹⁶⁶. One court bluntly noted that, under Igbo custom, a widow is considered a piece of property that may only be inherited by her eldest son of the husband's lineage. By contrast, statutory norms would regard the widow as the rightful surviving spouse. In fact, modern court decisions have invalidated the notion that a widow can simply be inherited by male relatives. The constitutional guarantee of equality implies she should not be treated as mere property. In practice, however, many widows still face pressure to yield control of the estate, for example, by agreeing to remain with a brother or son of the deceased in order to keep the family together. Such arrangements fall entirely outside statutory law and serve only to underscore the gulf between formal legal rights and lived reality for widows under customary regimes.

4.4 Rights of Unmarried Women (Daughters) Under Customary and Statutory Law

Under Nigeria's civil inheritance laws, daughters generally stand on the same footing as sons; in contrast, many customary systems place severe restrictions on daughters' rights. Statutorily, children of a deceased parent are treated equally: succession laws in place (for example, many state Administration of Estates Laws) provide for equal distribution of an estate among all surviving children, regardless of gender¹⁶⁷. Courts have interpreted this to mean that a

¹⁶⁵ P Baiyere and E Okonkwo "Right to Inheritance in Nigeria: a Liberation For Widows" *Afe Babalola University, Ado Ekiti Law Review* 4th November 2020. Accessed on May 27th 2025.
<https://djetlawyer.com/inheritance-for-widows-in-nigeria/#:~:text=Where%20a%20Yoruba%20man%20dies,27>

¹⁶⁶ Hon. Justice M I Oshodi. "The Inheritance Rights of Women in Nigeria." *International Association of Women Judges*, 11th July, 2023. Accessed on May 26th 2025.

https://www.iawj.org/content.aspx?page_id=2507&club_id=882224&item_id=4986

¹⁶⁷ Ibid

daughter's sex cannot bar her from her father's property. The Supreme Court in *Ukeje v. Ukeje*¹⁶⁸ explicitly ruled that an Igbo customary rule excluding all female offspring from inheritance violates Section 42 of the Constitution. In effect, modern law recognizes the right of a daughter to inherit her father's estate on an equal basis with a son.

By contrast, customary norms in many communities set up clear barriers. Among the Igbo of the southeast, daughters were traditionally denied any claim to their father's land, which passed only among male kin. Similarly, under many Hausa-Fulani customs in the north (outside of Islamic law), daughters have been expected to inherit only if no male heir exists. In some regions a bride-price system implied that daughters belong to their husband's family once married, so in her natal family she is treated more like an outsider¹⁶⁹. The result is that a daughter often needs exceptional circumstances to inherit: for example, some Igbo communities allowed a daughter to inherit only if she remained unmarried in a peculiar ritual known as *nrachi*, or if she bore a son to carry on the name¹⁷⁰. These customary rules fly in the face of statutory equality.

Another constraint is the effect of marriage. Under statutory law, marriage does not strip a woman of her inheritance rights. If a daughter marries outside her tribe or faith, the civil succession laws still regard her as eligible to inherit from her father. But many customary systems did not see it that way. Igbo custom, for instance, traditionally held that a daughter who married a non-Igbo lost her right to inherit the paternal estate (because she was considered no longer of the blood. Such a rule was expressly overturned by *Ukeje's* case, but unless challenged, local elders might still insist that only those who belong by blood can share in

¹⁶⁸ *Ukeje v Ukeje* (2014) 11 NWLR (PT.1418) 384.

¹⁶⁹ O Oluwafemi, "Inheritance Rights of Women in Nigeria | Legal Framework." *Trusted Advisors Law Firm*. March 12, 2025. Accessed on May 26, 2025. <https://trustedadvisorslaw.com/inheritance-rights-of-women-in-nigeria-legal-framework-cultural-perspectives/>.

¹⁷⁰ M C Cookey and M O Izzi "A Legal Appraisal of the Inheritance Rights of Women in Nigeria" *International Journal of Legal Studies and Social Sciences* 2018 Vol 2 No 4 pp 26 - 42

ancestral lands. In Yoruba custom the situation is somewhat better: daughters generally retain inheritance rights alongside sons, so long as they remain in the family context. But even in Yoruba communities the elder son usually takes on the role of family head, and the daughters' property may be administered by brothers.¹⁷¹ Thus, statutory law treats a daughter as always, her parent's heir, while customary law may condition her rights on her marital choices and blood affiliation.

A further issue is the inheritance of maternal or personal property by daughters. Under statutory intestacy rules, a deceased mother's children (son or daughter) are equally entitled to her estate. But under customary norms even a mother's daughter could be disadvantaged. For example, studies report that if a woman dies, the land she held often reverts to her paternal family, and male relatives inherit it unless she has left a will¹⁷². In practice this means a daughter may not benefit at all from land her mother possessed rather, it remains within her late mother's birth lineage. In some traditions a daughter is treated as a provisional caretaker who must hand over land to male heirs on her death. This contrasts with the statutory position: any land held by a Nigerian citizen is legally owned by that person and should be distributable to her children, male or female, under the civil succession code. The customary approach, however, often disregards the daughter's claim entirely, leaving her with no outlet to the wealth her mother may have accumulated.

Finally, the practical ability to hold land and property is a dimension that affects daughters. Formally, neither statutory nor customary law bars a woman from owning property. The 1978 Land Use Act declares that any Nigerian, male or female, can acquire land¹⁷³. But the statutory

¹⁷¹ A Imosen and A A Taiwo "Analysis of Law of Intestate Succession under the Yoruba Customary Law of South West, Nigeria" *European Journal of Social Sciences* 2019 Vol. 58 No 4, pp.277-286

¹⁷² M C Cookey and M O Izzi "A Legal Appraisal of the Inheritance Rights of Women in Nigeria" *International Journal of Legal Studies and Social Sciences* 2018 Vol 2 No 4 pp 26 - 42

¹⁷³ I Oriaghan "A Quick Look at Women's Land and Inheritance Rights in Nigeria". *Landesa* 30th July 2018. Accessed May 27th 2025. <https://www.landesa.org/a-quick-look-at-womens-land-and-inheritance-rights-in->

promise has not translated into equal outcomes: surveys show that less than 2% of women in Nigeria own land in their name, compared to 17% of men¹⁷⁴. Much of this disparity is due to customary practices that persist despite the law. While a daughter or woman could try to register land title under statutory law, in rural areas almost all land is held communally or by kinship and customary transfer prevails. In effect, daughters often have the theoretical right to inherit or own land, but in reality, they lack the channels to secure it. Only if they marry under civil law and press their statutory claims in court can they hope to gain title. Without formal title deeds, daughters (like other women) remain vulnerable to being left landless despite legal equality. A key legal implication is that the mere existence of statute allowing daughters to inherit is not enough – the customary environment severely limits their access to land and property in practice.

4.5 Property Rights and Access to Land for Women

Under statutory land laws, Nigerian women theoretically enjoy parity with men, but customary tenure systems often prevent women from enjoying those rights. The 1978 Land Use Act was a landmark reform that vested land ownership in the state and ostensibly allowed any citizen woman or man to apply for statutory land titles¹⁷⁵. In practice, however, only a tiny fraction of women obtained individual titles. In rural areas especially, the vast majority of land is under customary tenure (communal or family land). Under customary norms, women (including daughters and widows) rarely receive land inheritance. Men are considered primary landowners; women typically access land only through male relatives. As one NGO study notes, inheritance in Nigeria to a great extent are influenced by the prevailing customs and

nigeria/#:~:text=Land%20acquisition%20for%20men%20and,men%2C%20own%20land%20by%20themselves

¹⁷⁴ *Ibid*

¹⁷⁵ I Oriaghan “A Quick Look at Women’s Land and Inheritance Rights in Nigeria”. *Landesa* 30th July 2018. Accessed May 27th 2025. <https://www.landesa.org/a-quick-look-at-womens-land-and-inheritance-rights-in-nigeria/#:~:text=Land%20acquisition%20for%20men%20and,men%2C%20own%20land%20by%20themselves>

norms, resulting in a patrilineal system that persists despite the provisions of the law¹⁷⁶. The result is a massive gender gap in land ownership, for instance, fewer than 2% of women own land outright compared to 17% of men¹⁷⁷. In sum, while statute provides equal acquisition rights, customary land rights continue to favour men, and women's legal right to land is often merely theoretical.

There are programmatic and policy dimensions affecting women's land rights. For example, some state laws and national policy statements affirm women's equal rights to family land, but their enforcement depends on local officials. In Abuja and other states, women are supposed to be eligible for land allocations, yet in reality men dominate local land committees and decision-making. Although not explicitly stated in older sources, recent comments by experts suggest that municipal land administrations still favour male applicants. This implicit bias reinforces customary exclusion. Moreover, even land reform initiatives (such as land titling campaigns or women's land grants) can falter if women cannot produce marriage certificates or male guarantors. In many cases a married woman may face requirements she cannot meet (e.g. her name may not appear on her husband's title, or customary practice might require the husband's consent before transfer). In sum, procedural and social hurdles in land administration continue to disadvantage women.

Finally, economic and inheritance pressures on land amplify the disparity. In many households, land is the primary asset, and customary succession often treats women's interests as secondary. For example, some customary laws hold that land follows the blood¹⁷⁸: the family farmland passes strictly to sons, leaving daughters only life-use of the mother's portion¹⁷⁸. If a woman does inherit land (say, from her father or husband), she may fear losing it if she divorces

¹⁷⁶ *Ibid*

¹⁷⁷ *Ibid*

¹⁷⁸ M C Cooney and M O Izzi "A Legal Appraisal of the Inheritance Rights of Women in Nigeria" *International Journal of Legal Studies and Social Sciences* 2018 Vol 2 No 4 pp 26 - 42

or remarries. Empirical observations reflect this insecurity: women report that even when they are allowed to inherit, their rights are contingent on having male offspring¹⁷⁹. A young woman from the East reported that if she is widowed without a son, her husband's land will automatically pass to his brothers, not to her. These customary conditions nullify the practical value of statutory land rights for most women. In contrast, Nigeria's land laws (like the Constitution and Land Use Act) do not impose such conditions they simply allow women to hold land. The divergence illustrates a key implication: without addressing entrenched inheritance customs, legislation alone cannot ensure women's access to land.

In all these dimensions, contemporary sources confirm the gap between legal provisions and lived reality. Academic analyses, human rights reports, and case law all note that Nigerian women remain seriously disadvantaged in property and inheritance matters. While modern statutes and court decisions push toward gender parity, customary norms lag behind. The net effect is that women's property rights under statutory law often do not translate into actual land ownership or security, because customary practice still deeply patriarchal controls most of the land and property transfers in Nigeria¹⁸⁰

4.6 A Comparative Analysis of Women's Right of Inheritance under the Indian Legal System and Nigeria

The legal frameworks governing women's inheritance rights in India and Nigeria reflect a complex interplay between statutory reforms, religious personal laws, and deeply entrenched customary practices, yet they diverge significantly in their approaches and outcomes. India's journey toward gender equality in inheritance has been marked by transformative legislative

¹⁷⁹ I Oriaghan "A Quick Look at Women's Land and Inheritance Rights in Nigeria". *Landesa* 30th July 2018. Accessed May 27th 2025. <https://www.landesa.org/a-quick-look-at-womens-land-and-inheritance-rights-in-nigeria/#:~:text=Land%20acquisition%20for%20men%20and,men%2C%20own%20land%20by%20themselves>

¹⁸⁰ M C Cooley and M O Izzi "A Legal Appraisal of the Inheritance Rights of Women in Nigeria" *International Journal of Legal Studies and Social Sciences* 2018 Vol 2 No 4 pp 26 - 42

interventions, most notably the Hindu Succession Act (HSA) of 1956¹⁸¹ and its groundbreaking amendment in 2005 (HSAA), which granted daughters equal coparcenary rights in joint family property¹⁸². This progressive statutory framework applies to Hindus, Sikhs, Jains, and Buddhists, explicitly exempting Muslims and Christians, who are governed by their personal laws. In contrast, Nigeria's legal landscape is characterized by a more fragmented system where inheritance is primarily regulated by a mosaic of customary laws, statutory provisions such as the Marriage Act and various state-level laws, and Islamic law for Muslim populations¹⁸³. The Nigerian Constitution of 1999 prohibits discrimination on the basis of gender, but customary laws often continue to perpetuate patriarchal norms, excluding women from inheriting property, particularly in patrilineal societies like the Igbo and Yoruba ethnic groups¹⁸⁴. This structural difference in legal pluralism underscores a critical distinction: India has leveraged uniform federal legislation to override discriminatory customs for a significant majority of its population, while Nigeria's reliance on decentralized and often contradictory legal traditions has hindered the emergence of a cohesive national standard for women's inheritance rights. The constitutional commitment to equality in both countries thus faces distinct challenges in reconciliation with cultural and religious diversity, setting the stage for varied judicial and societal responses.

Cultural and societal barriers present significant obstacles to the realization of women's inheritance rights in both countries, though the manifestations and intensity of these challenges differ. In India, despite the progressive HSAA 2005, empirical studies indicate that the amendment inadvertently reinforced certain restrictive practices, such as an increase in cousin

¹⁸¹ Hindu Succession Act (HSA) of 1956.

¹⁸² D Bahrami-Rad "Keeping It in the Family: Female Inheritance, Inmarriage, and the Status of Women. *Journal of Development Economics* (2021), Vol. 153, 102714. <https://doi.org/10.1016/j.jdevco.2021.102714>. Accessed on 13th August 2025.

¹⁸³ Hon. Justice M I. Oshodi. (2023)

¹⁸⁴ R A Onuoha, Discriminatory Property Inheritance Under Customary Law in Nigeria: NGOs to the Rescue. *The International Journal of Not-for-Profit Law* (2008), Vol. 10(2). <https://www.icnl.org/resources/research/ijnl>. Accessed on 13th August, 2025.

marriages within patrilineal lineages, as families sought to retain property within the male line by marrying daughters to paternal relatives¹⁸⁵. This phenomenon, driven by the desire to prevent land fragmentation and maintain agricultural economies of scale, highlights how statutory reforms can sometimes trigger unintended social consequences that undermine their empowering objectives. Additionally, social stigmas against women working outside the home persist, often leading to a reduction in female economic participation as women, empowered with unearned income from inheritance, withdraw from the labour market to focus on domestic roles¹⁸⁶. In Nigeria, discriminatory customs are even more pervasive, with practices such as male primogeniture in Igbo culture, which excludes daughters from inheritance, and widow inheritance rituals in some communities, where widows are compelled to marry male relatives to retain access to marital property. These customs are justified under the guise of tradition and cultural authenticity, despite violating constitutional guarantees of equality¹⁸⁷. Both countries share a common challenge in the form of "covert coercion," where women, even when aware of their legal rights, relinquish their claims due to familial pressure and social ostracization. However, the scale and institutionalization of these practices are more pronounced in Nigeria, where customary laws enjoy greater legitimacy and enforcement mechanisms, often bypassing statutory protections¹⁸⁸.

The role of the judiciary and enforcement mechanisms in both countries reveals stark contrasts in the interpretative approaches to equality and the effectiveness of legal redress. India's judiciary, particularly its Supreme Court, has adopted a robust and transformative approach to advancing women's inheritance rights, as exemplified by landmark rulings such as *Vineeta*

¹⁸⁵ P Wallah (2025)

¹⁸⁶ Ibid

¹⁸⁷ Hon. Justice M I. Oshodi. (2023)

¹⁸⁸ E Kevin-Alerechi. "Despite the Enactment of a Law Granting Women the Right to Share in Family Property, Nigerian Women Still Face Barriers." *Global Voices*, 16th September, 2024. Accessed May 26th 2025. <https://globalvoices.org/2024/09/16/despite-the-enactment-of-a-law-granting-women-the-right-to-share-in-family-property-nigerian-women-still-face-barriers-to-land-sharing/>.

*Sharma v. Rakesh Sharma*¹⁸⁹, which affirmed the retrospective application of the HSA 2005 and solidified daughters' birthrights to coparcenary property. The Indian courts have consistently invoked constitutional morality to subordinate discriminatory customs to the fundamental rights of equality and non-discrimination, thereby acting as catalysts for social change. In Nigeria, the judiciary has been more hesitant to challenge customary laws aggressively, often deferring to traditional norms and practices¹⁹⁰. While there are instances of progressive judgments, such as those criticizing the exclusion of daughters from inheritance, enforcement remains weak, especially in rural areas where traditional authorities oversee dispute resolution. The lack of uniformity in judicial decisions across states further complicates the legal landscape, creating inconsistencies in the protection of women's rights.

Additionally, Nigerian women face practical barriers to justice, including limited access to legal aid, procedural complexities, and socioeconomic constraints that deter them from pursuing litigation¹⁹¹. Both countries struggle with the gap between de jure rights and de facto realities, but India's judiciary has been more proactive in bridging this gap through constitutional interpretation, while Nigeria's courts often operate within the confines of legal pluralism, leaving women vulnerable to discriminatory practices.

¹⁸⁹ *Vineeta Sharma v. Rakesh Sharma* (2020) 9 SCC 1

¹⁹⁰ M C Cookey and M O Izzi "A Legal Appraisal of the Inheritance Rights of Women in Nigeria" *International Journal of Legal Studies and Social Sciences* 2018 Vol 2 No 4 pp 26 - 42

¹⁹¹ V A Adeleke and A C Diala. "The Right of Women to the Inheritance of their Husbands' Estate in Nigeria." *Journal of Law, Society and Development* 11 (2024): pp 17-37.

CHAPTER FIVE

SUMMARY, RECOMMENDATIONS AND CONCLUSION

5.1 Summary

Nigeria's dual legal system creates a profound conflict in spousal inheritance rights, where statutory marriages contracted under the Marriage Act offer substantially stronger and more reliable protections, while customary marriages often perpetuate discriminatory practices that systematically disadvantage women, frequently overriding constitutional guarantees of gender equality. This lack of harmonization between statutory and customary frameworks perpetuates unequal access to inheritance rights across the nation, leaving many women in customary unions vulnerable to property dispossession. Despite progressive judicial rulings that have declared certain customs repugnant to natural justice, courts inconsistently enforce these decisions, creating a gap between legal precedent and lived reality. Consequently, comprehensive legal reforms such as mandating the registration of all marriages to clarify legal standing, strengthening the enforcement of international agreements like CEDAW, and legislating a harmonized code that protects women's inheritance rights across all marital regimes are urgently needed to ensure consistent and equitable protection for all Nigerian spouses.

5.2 Recommendations

This study has exposed critical gaps in Nigeria's dual marriage system, particularly the systemic marginalization of women's inheritance and spousal rights under customary law. To reconcile the conflict between customary and statutory law, the following reforms are urgently recommended: the implementation of a compulsory nationwide marriage registration system is essential to provide universal legal recognition and protection for both customary and statutory unions. Additionally, there is a pressing need to establish specialized family courts staffed with

judges who are specifically trained in gender-sensitive adjudication to handle marital disputes consistently and fairly across the plural legal systems. Concurrently, launching extensive public education campaigns and significantly expanding free legal aid services are vital steps to empower women by providing them with the necessary knowledge and resources to understand and actively claim their inheritance rights. Finally, to address the deep-rooted socioeconomic factors that perpetuate gender inequality within these marriage systems, it is imperative to develop targeted microfinance programs and facilitate community dialogues aimed at fostering economic independence and shifting harmful cultural norms. These comprehensive measures collectively aim to rectify the identified injustices and align Nigeria's marital practices with the principles of equality and human rights.

5.3 Conclusion

This research has demonstrated that Nigeria's dual marriage system creates fundamental inequities in women's inheritance rights, with statutory marriages offering formal protections that remain inaccessible to most women, while customary marriages perpetuate patriarchal discrimination. The study reveals how this legal pluralism has fostered a fragmented justice system where constitutional guarantees of gender equality are routinely undermined by customary practices, particularly in inheritance disputes where widows and daughters face systemic dispossession. While landmark judicial decisions like *Mojekwu v. Mojekwu* have established progressive precedents, their impact remains limited without structural reforms to bridge the gap between legal theory and community practice.

The findings highlight three critical tensions: between constitutional rights and cultural norms, between judicial pronouncements and local enforcement, and between legal protections and economic realities. Nigeria's ratification of CEDAW and constitutional equality provisions stand in stark contrast to the lived experiences of women in customary marriages, who face

exclusion from inheritance, unequal divorce settlements, and polygamous unions without consent. The research documents how economic dependence, lack of legal awareness, and traditional power structures combine to nullify formal rights, creating a system where a woman's access to justice depends entirely on her marital regime. These challenges demand more than piecemeal legal adjustments they require a fundamental reimagining of how customary and statutory systems interact.

To achieve meaningful reform, this study proposes an integrated approach combining legislative harmonization, institutional strengthening, and grassroots empowerment. Priority must be given to mandatory customary marriage registration, the establishment of specialized family courts, and nationwide legal literacy programs. However, legal changes alone will prove insufficient without parallel efforts to address the socioeconomic factors that sustain gender inequality, including microfinance initiatives for women and community dialogues with traditional leaders. Nigeria stands at a critical juncture where it must choose between maintaining an unjust status quo or pioneering an African model of marriage law that respects cultural diversity while upholding fundamental human rights. The path forward requires not just legal reform but sustained political will and civic engagement to transform both institutions and mindsets. This research affirms that such transformation, while challenging, is both necessary and achievable.

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