

AN APPRAISAL OF SOME NIGERIAN LAWS AND CULTURAL PRACTICES DISCRIMINATORY TO  
WOMEN'S RIGHTS\*

**Abstract**

*Every human irrespective of their sex, race, language, social settings, origin, discipline and background deserves to be treated equally in the society. Women are generally seen as vulnerable part of the society compared with the male counterpart, and the patrilineal nature of the society, especially in Africa coupled with religious and cultural factors which make the rights of women to be given little or no attention. The resulting effect of this is that the dignity of womanhood and right to self-determinism of a woman is often eroded, thereby making majority of women live their lives in abuse, discrimination and molestation. There is therefore a need for change and women should have full right and sense of belonging. Discrimination simply means treating some people differently from others. Sequel to these cankerworms, the aim of this article was to appraise some of the legal provisions inimical to the rights of women in Nigeria. The research methodology was doctrinal approach, using expository and analytical research design. The main sources of data collection were various legal literatures, both from the physical library and the e-library. It was recommended among others that these discriminatory laws ought to be expunged and most laws amended to accommodate the protection of women's rights and should be adequately enforce. Finally, this article was made to be significant to all stakeholders in human right and feminism.*

**Keywords:** Nigerian Laws, Cultural Practices, Discrimination, Women's Rights

**1. Introduction**

The term Discrimination against women means any distinction, exclusion or restriction made on the basis of sex which has effect of purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, social, economic, cultural, religious, civil or any other field.<sup>1</sup> Discrimination means 'any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effect compromises or destroy the recognition, enjoyment or exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life'.<sup>2</sup> Discrimination means differential treatment and its verbs and infinite form, discriminate, to discriminate have the corresponding signification.<sup>3</sup> Generally, many laws discriminate against women in Nigeria. Some of these laws include some aspects of The Constitution of Federal Republic of Nigeria 1999 (As Amended), The Labour Act, The Police Act, The Criminal Code, The Penal Code, The Marriage Act, Evidence Act, The National Drug Enforcement Order 2002, Customary law practices etc.

**2. The Constitution of Federal Republic of Nigeria 1999**

Whereas the constitution claims to guarantee a citizen's freedom from discrimination in section 42, some of its provisions are discriminator. For instance, in section 17(2) of the Constitution provide that 'every citizen shall have equality of rights, obligations and opportunities before the law' while section 17(3) (e) stipulates that 'there is equal pay for equal work without any discrimination on account of sex, or any other ground whatsoever'. These provisions indicate an intention to protect women's human right against all forms of discrimination but in reality however, the provisions are not justiciable because section 6(6)(c) of the Constitution does not extend judicial powers of the Courts to 'any issue or questions as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principle of State Policy set out in Chapter II of this Constitution'.<sup>4</sup> Section 25 of the Constitution confers equal right to citizenship by birth to both men and women without discrimination but the same equality rights is missing in section 26 dealing with citizenship by registration. Section 26(2) allows the following person to apply for citizenship by registration: a) Any woman who is or has been married to a citizen of Nigeria; or b) Every person of full age and capacity born outside Nigeria any of whose grandparents is a citizen of Nigeria. The implication of section 26(2) (a) is that a Nigerian man can confer citizenship of the country on his foreign wife whereas a Nigerian woman cannot citizenship of the country on her foreign husband.

Another form of discrimination is noticeable in the provisions of section 29 which deals with renunciation of citizenship. By section 29(1) 'any citizen of Nigeria of full age who wishes to renounce his Nigerian citizenship shall make a declaration in the prescribed manner of renunciation'. The term 'full age' is defined as 'the age of eighteen years and above'<sup>5</sup> while 'any woman who is married shall be deemed to be of full age.'<sup>6</sup> Thus, a woman who is below the age of eighteen is allowed to renounce her

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<sup>1</sup> Convention on Elimination of All Forms of Discrimination against Women, 1979 (CEDAW), Article 1.

<sup>2</sup> Protocol to African Charter on Human and People's Rights on the Rights of Women in Africa 2003 (Maputo Protocol) Article 1.

<sup>3</sup> Discrimination Against Persons with Disability (Prohibition) Act, 2018, s.1

<sup>4</sup> C P Iloka, 'Affirmative Action and the Role of Lawyers in Fostering Women's Participation in Election Processes in Nigeria: A Critical Analysis' (2023) (4) (11) *African Customary and Religious Law Review, ACARELAR*, 15; also available at *Google Scholar* <<https://scholar.google.com/scholar?oi=bibs&cluster=14738547023638795274&btnI=1&hl=en>> accessed 20 December 2024.

<sup>5</sup> The Constitution of Federal Republic of Nigeria 1999 (as amended), s. 29(4)(a)

<sup>6</sup> Ibid, s.29(4)(b)

Nigerian citizenship if she is married. There is no similar provisional requirement for the man. In this way, the Constitution inadvertently encourages child marriage since a woman is presumed to be of full age once she is married meanwhile the constitutional voting age is also 18 years and such girls that may become victims of early marriage that are deemed to be of full age in that section will still not be able to perform the most important civic responsibility of voting.<sup>7</sup> So what is the real intention of the drafters of the 1999 Constitution? The issues of equality of rights of citizenship are of great importance to the pursuit of an egalitarian society which many countries including Nigeria aspire to become, accordingly, the provisions of the Constitution dealing with citizenship must be interpreted by the courts in a manner that eliminates rather than promotes discrimination.<sup>8</sup>

### **3. Labour Act Cap. L1, Laws of the Federation of Nigeria 2004**

One of the social objectives of the State as entrenched in the Constitution is to ensure that all citizens have equal opportunity to secure adequate means of livelihood as well as adequate opportunities to secure suitable employment.<sup>9</sup> There are wonderful provisions of the Labour Act protecting women's rights and on the other hand, there are sections of the Act that discriminates against women's right for instance<sup>10</sup> Section 34(1) of the Act states that the wife or wives and children below 16 years of age are allowed to accompany a male employee in the public service to his place of posting. There is no corresponding provision in favour of a female employee. Section 55(1) of the Act provides that no woman shall be employed on night work in a public or any agricultural undertaking except she is a nurse or is employed within the management cadre and not engaged in manual labour. Section 56(1) provides that no woman may engage or enter into any contract of employment to work underground in the mine except she is a nurse or is employed within the management cadre and not engaged in manual labour. This provision with due respect is discriminatory on the basis of sex contrary to the constitutional provision and so should be void to the extent of its inconsistency. Women should be treated the same as men and be placed on equal status and given equal opportunity. There should be no justification for instance, for a situation where a woman with a degree in Mining Engineering would be disqualified but the job given to a man merely because she is not a male which contradicts section 42 of the Constitution and amounts to a denial of one's right to work and freely choose a profession, women do not need protection that smacks of discrimination affects their economic status rather what women need is a safe working environment not prohibition from either working at night or underground in the mining sector, thus I recommend that this provision be expunged. There is also a provision that 'no employer shall be liable in his capacity as an employer to pay any medical expenses incurred by a woman during or on account of her pregnancy or confinement contrary to Article 5 of CEDAW that urged state parties to see maternity as a social function and to ensure women appropriate services in connection to pregnancy as in the case of *Mrs Folarin Oreka Maiya v Incorporated Trustees of Clinton Health Access Initiative Nigeria*<sup>11</sup> where the applicant was discriminated against on account of current or future pregnancy, the Court held inter alia, that no woman shall be subjected to any form of disability otherwise, it will amount to breach of such woman's fundamental right to freedom from discrimination on account of sex.<sup>12</sup>

### **4. Police Act Cap.P19, Laws of the Federation of Nigeria 2004 (now the Nigeria Police Force (Establishment) Act 2020 and Other Similar Para-Military Services in Nigeria)**

Provisions of section 42(1) of the Constitution is a clear intention to abolish all forms of discrimination in Nigeria including sex discrimination but this must not been taken for granted in the light of the qualifications to the provisions contained in section 42(3) which provides that 'nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or a member of the Nigeria Police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria'.<sup>13</sup> Under the Police Act for instance, Section 118 (a)- (f) listed the prescribed qualifications for a woman seeking enlistment in the police force which comprises of age, height, physical fitness, education level, character, financial status but the straw that broke the camel's back is subsection (g) that prohibits the enlistment of a married woman into the Police force but no similar qualification for men.<sup>14</sup> Section 121 provides that women police officers shall as a general rule be employed on duties which are only connected to women and children whereas there is no similar provision for men. Section 122 provides that women police officers recruited to the General duties in order to relieve male police officers from these duties be employed in clerical duties, telephone duties and office orderly duties. Section 123 provides that no woman police officer

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<sup>7</sup> C P Iloka, 'Rights of Women to Participate in Elections vis-à-vis the Electoral Act 2022: Myth and Reality' (2022) (4) *IRLJ*, available at *Google Scholar* <<https://scholar.google.com/scholar?oi=bibs&cluster=15592696692094605432&btnI=1&hl=en>> accessed 10 December 2024.

<sup>8</sup> C P Iloka, 'Hurdles to Women Political Participation and Advancement in Nigeria: The Legal Leeway' (2021) (2) *LASJURE*, available at *Google Scholar* <<https://scholar.google.com/scholar?oi=bibs&cluster=10722832475668997951&btnI=1&hl=en>> accessed 10 December 2024.

<sup>9</sup> The Constitution of Federal Republic of Nigeria 199, s.17 (3)(a) (h).

<sup>10</sup> C P Iloka, 'Employment Rights of Women and the Disabled: Curbing Workplace Discrimination' (2023) (3) (1) *De Juriscope Law Journal*, available at *Google Scholar* <<https://scholar.google.com/scholar?oi=bibs&cluster=1052668594549252264&btnI=1&hl=en>> accessed 20 December 2024.

<sup>11</sup> [2012] 27 NLLR (Pt.76) 110.

<sup>12</sup> C P Iloka, 'The Jurisprudence behind International Legal Framework on the Rights of Women and Children: An Appraisal' (2022) (3) *International Journal of Law and Clinical Legal Education, IJOLACLE*, 89; also available at *Google Scholar* <<https://scholar.google.com/scholar?oi=bibs&cluster=14908986982353941386&btnI=1&hl=en>> accessed 20 December 2024.

<sup>13</sup> C P Iloka, 'Discriminatory Practices and Policies Inimical to Women's Right in Nigeria' (2021) (3) (1) *Chukwuemeka Odumegwu Ojukwu University Journal of Commercial and Property Law journal*, 106; available at *Google Scholar* <<https://scholar.google.com/scholar?oi=bibs&cluster=16417092559272951671&btnI=1&hl=en>> accessed 10 December 2024.

<sup>14</sup> C P Iloka, 'Factors That Escalate Gender-Based Violence in Nigeria: A Critical Analysis' (2022) (4) *International Review of Law and Jurisprudence, IRLJ*, 68; also available at *Google Scholar* <<https://scholar.google.com/scholar?oi=bibs&cluster=4752988172140500143&btnI=1&hl=en>> accessed 20 December 2024.

shall be called upon to drill under arms or take part in any baton or riot exercise. Section 124 of the Act provides that a woman police officer desirous of marrying must first apply in writing to the commissioner of police for the state command in which she is serving requesting permission to marry and giving the name, address and occupation of the person she intends to marry and permission will be granted for the marriage if the intended husband is of good character and the woman police officer has served in the force for a period of not less than three years which rules do not apply to male police officers. Section 125 states that no special privileges are to be granted to a married woman police by reason of the fact that she is married and shall be subject of posting and transfer as if she were unmarried. Section 126 provides that a married woman police officer who is pregnant may be granted leave. Section 127 provides that 'an unmarried police officer who becomes pregnant shall be discharged from the force and shall not be re-listed except with the approval of Inspector –General. Section 128 provides that no woman police officer whilst in uniform shall wear face powder or lipstick or wear nail varnish except those of a neutral colour, or wear any article of jewellery other than wedding ring or engagement ring or wrist watch or dress her hair in such fashion... but there are no similar restrictions on male counterpart. Also, Police Regulations allows enlistment of men at the age of 17, while women at 19 and married women are disqualified from enlisting.<sup>15</sup> Again a woman police who is single and wanted to marry must have spent 3 years at service before applying for permission to marry giving particulars of the prospective husband who must be investigated and cleared before permission is granted.<sup>16</sup>

The Nigerian Drug Law Enforcement Agency (NDLEA) Act also accentuates the discrimination of women in some of its regulations. Some examples will suffice. Under Article 5(1) of the NDLEA Order, 2002, 'All female applicants shall be unmarried at the point of entry, and shall upon enlistment remain unmarried for a period not less than two years.' Furthermore Article 5(2) provides, 'All unmarried female members of staff that wish to marry shall apply writing to the Chairman/Chief Executive, asking for permission, stating details of the intended husband.' In addition, the Department of Immigration insists that a married woman must obtain the consent of her husband in writing before she can be entitled to apply for passport which is clearly inconsistent with provisions of the constitution<sup>17</sup> where a Court sitting in Port Harcourt, Rivers State voided this discriminatory Immigration condition for issuing passports to married women. This qualification has had the effect of not only reinforcing and strengthening existing discriminations against women in several statutes but has thrown up another form of discrimination concerning the actual state of origin of a married woman for the purpose of political appointment. This issue of the actual state of origin of a married woman for the purpose of political appointment or standing for an elective office is far from determined. A typical example was the case of Nigeria's former Minister of Finance, Dr Ngozi Okonjo-Iweala whose parents are from Delta State while her husband comes from Abia State. When the then President Olusegun Obasanjo listed her name for appointment as a federal minister, neither Delta nor Abia wanted to fill its quota of federal ministerial appointments. It took the usual doggedness and obstinacy of the President Obasanjo for Dr. Okonjo-Iweala to be a minister under Abia State, her husband's state of origin. Of course, her case was made easier because of her competence, skills and international reputation as the top-notch economist with the World Bank. For some lesser mortals, the nomination and bid for ministerial position would have failed on that account.<sup>18</sup>

## **5. Administrative Bureaucracies**

Another instance of an act of discrimination in administrative bureaucracies includes failure to accept women as sureties for the release of suspects on bail both at the police stations and court.<sup>19</sup> Although there is no law that prohibits women from doing so, the reason usually given for refusal to allow women to stand bail for an accused person is that they would not like to visit the consequences of a forfeited bond on women which is simply a galling irony that smacks the 'protecting women by taking their right of equality with men'.<sup>20</sup>

## **6. The Criminal Code Act Cap.C38, Laws of the Federation of Nigeria, 2004 and The Penal Code Act Cap.P3 Laws of the Federation of Nigeria, 2004**

In spite of the numerous measures in the Criminal Code to protect reproductive rights of women, some provisions of the code, however contravene women's human rights to health, sexual and reproductive rights, particularly right to security of person, bodily integrity and reproductive self-determination. A typical example is prohibition of women from procuring abortion as provided in Section 229 of the Criminal Code which is clearly inconsistent with Article 14 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and Article 16(1)(e) of CEDAW which provides that women has the right to control their fertility, right to decide whether to have children, the number and child spacing and the right to choose any method of contraception.<sup>21</sup>

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<sup>15</sup> Police Act 2020 (Under qualification of women police for enlistment) r. 118.

<sup>16</sup> Police Act, 2020, r. 124 and 125.

<sup>17</sup> *Priye Iyalla Amadi v The Comptroller-General Nigeria Immigration Services and NIS* (Unreported Suit No.FHC/PH/CS/198/2008).

<sup>18</sup> C P Iloka, 'Gender Mainstreaming in Digital Legal Education' (2023) (4) *International Journal of Law and Clinical Legal Education, IJOLACLE*, 21; also available at *Google Scholar* <<https://scholar.google.com/scholar?oi=bibs&cluster=10130888051588080947&btnI=1&hl=en>> accessed 20 December 2024.

<sup>19</sup> C P Iloka, 'Employment Rights of Women and the Disabled: Curbing Workplace Discrimination' (2023) (3) (1) *De Juriscope Law Journal*, available at *Google Scholar* <<https://scholar.google.com/scholar?oi=bibs&cluster=1052668594549252264&btnI=1&hl=en>> accessed 20 December 2024.

<sup>20</sup> C P Iloka, 'Advancing the Rights of Women beyond their Challenges in the Nigerian Political Scene: A Focus on the Affirmative Action' (2022) (6) (1) *Chukwuemeka Odumegwu Ojukwu University Law Journal*, 23; also available at *Google Scholar* <<https://scholar.google.com/scholar?oi=bibs&cluster=17742611863979042170&btnI=1&hl=en>> accessed 20 December 2024.

<sup>21</sup> C P Iloka, 'Contemporary Issues on Reproductive and Sexual Health Vis-À-Vis the Rights of Women in Nigeria' (2022) (13) (2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence, NAUJILJ*, 77; also available at *Google Scholar* <[https://scholar.google.com/citations?view\\_op=view\\_citation&hl=en&user=st6bmz4AAAAJ&citation\\_for\\_view=st6bmz4AAAAJ:\\_FxGoFyzp5QC](https://scholar.google.com/citations?view_op=view_citation&hl=en&user=st6bmz4AAAAJ&citation_for_view=st6bmz4AAAAJ:_FxGoFyzp5QC)> accessed 19 December 2024.

Nigeria has ratified the Protocol to the African Charter and is therefore under the obligation to ensure that its municipal laws conform to the Protocol. Section 34(1) of the Nigerian Constitution bestows on an 'individual respect for dignity of his person.' The Penal Code like the Criminal Code also contains provisions which contravene women's rights and tends to perpetuate violence against women. Section 55(1) (d) which permits husbands to chastise their wives for the purpose of correcting his wife and it is not an offence if it does not amount to the infliction of grievous harm upon a person. Thus, under the Penal Code, a husband can beat his wife insofar it does not lead to serious injuries or grievous harm. In essence, the Penal Code condones domestic violence against women which is inconsistent with Article 14 of DEAW that condemns violence against women and urge state parties not to invoke any custom, tradition or religious considerations to avoid their obligations with respect to its elimination.<sup>22</sup> Section 232 of the Penal Code partially complied with the Protocol regarding the rights of women to abortion on health ground or for the purpose of saving lives. However, Article 14(2)(c) the Protocol permits a woman to procure abortion on other grounds including sexual assault, rape and incest. Both the Criminal Code and the Penal Code are silent over what punishment to impose on an offender in case of rape or defilement which results in the death of the victim. Section 357 of the Criminal Code and section 282 of the Penal Code, rape is easily construed to mean the unlawful, non-consensual carnal knowledge of a woman by a man. It can only be committed by a man against a woman and this make it gender oriented offence due to the patriarchal nature of the society until Section 1 of VAPP Act 2015 expanded the definition of Rape to mean that both a man and a woman can commit the offence of rape. Also, in Criminal Code and Penal Code, rape is the penal penetration of the vagina but the VAPP Act expanded the definition to include oral sex, anal sex and the use of any objects. Also, section 357 of Criminal Code and section 282 of Penal Code expressly excludes a man from liability for rape on his wife. Section 353 of Criminal Code states that any person who unlawfully and indecently assaults any male person is guilty of felony and is liable to imprisonment for three years while section 360 of states that any person who unlawfully and indecently assaults a woman or girl is guilty of misdemeanour and is liable to imprisonment for two years. It should be noted that the elements of the two are the same and bothers on indecency but the disparity in punishment is still a mirage and simply points to preference of the male over the female.

Again, a married woman is not free from criminal responsibility for doing or omitting to do an act merely because the act or omission takes place in the presence of her husband. But a wife of a Christian marriage is not criminally responsible for doing or omitting to do an act which she is actually compelled by her husband to do or omit to do and which is done or omitted to be done in his presence except in the case of an act or omission which would constitute an offence punishable with death or an offence of which grievous harm to the person of another or an intention to cause such harm, is an element in which case the presence of the husband is immaterial<sup>23</sup> The proviso is discriminatory on grounds of religion which is inconsistent with the constitution. There is no similar provision for a wife of Islamic marriage. The law should accord equal recognition to Islamic marriage as well. The provision should be made to be of general application. It should be recalled that common article 2 of CEDAW and the Protocol<sup>24</sup> impose a duty on state parties to repeal all national penal provisions which constitute discrimination against women.

#### **7. Marriage Act Cap. M6 Laws of the Federation of Nigeria 2004**

By virtue of Section 18 of the Marriage Act, a written consent of the father of either party to an intended marriage is required if he or she is under 21 years of age. It is only if the father is dead or of unsound mind or absent from Nigeria that the written consent of the mother may be required.<sup>25</sup> The implication is that a mother's consent is only required if her husband is dead or of unsound mind or out of the country. This is a grave discrimination and contrary to CEDAW which confer to both parents the same equal right and responsibilities as parents, irrespective of their marital status, in matters relating to their children.<sup>26</sup>

#### **8. Evidence Act Cap. E14 Laws of the Federation of Nigeria 2004**

A major hindrance in rape cases in Nigeria is the rules of evidence which are stacked up against the victims in courts. For example, Section 211 of the Evidence Act states that when a man is prosecuted for rape or for attempt to commit rape or for indecent assault, it may be shown that the woman against whom the offence is alleged to have been committed was of a generally immoral character, although she is not cross-examined on the subject; the woman may in such a case be asked whether she has a connection with other men, but her answer cannot be contradicted and she may also be asked whether she had connection on other occasions with the prisoner, and if she denies it may be contradicted.<sup>27</sup> The Evidence Act<sup>28</sup> dealing with compellable and competent witnesses provides that spouses married under statutory law cannot be compelled, nor are they competent to give evidence against their partners unless at the instance of the other. Equally, a party to a marriage by Islamic law cannot be compelled to disclose any communication made to him or her by the other party during such a marriage. Thus, only a wife married under customary law is left without such protection. These provisions were expressly made applicable only to cases of a husband and wife of a monogamous marriage, with the effect that spouses of customary or polygamous marriage would not be entitled to such privileges. It is difficult to understand the rationale for the distinction in law which confers privilege to communication between spouses of monogamous or Islamic marriage but denies it to spouses of other customary law marriage, particularly since both marriages are recognized under the law and this discrimination based on type of marriage contracted extends and are maintained under the Criminal Code, for example, a husband and a wife of a Christian marriage cannot become an accessory after the fact to an offence to which either party is guilty of;<sup>29</sup> or criminally responsible for a conspiracy

<sup>22</sup> C P Iloka, 'Women Perspectives in the Administration of Justice' (2021) (3) (1) *Chukwuemeka Odumegwu Ojukwu University Journal of Private and Public Law*, 62; also available at *Google Scholar* <<https://scholar.google.com/scholar?oi=bibs&cluster=174224816782948544&btnI=1&hl=en>> accessed 10 December 2024.

<sup>23</sup> Criminal Code Act, Cap.C38, Laws of the Federation, 2004, s.33 and s.36

<sup>24</sup> Both the Protocol and Article 2 share similar provisions and that is why we regard it as common article 2

<sup>25</sup> C P Iloka, 'Challenges and Prospects of Child Adoption in Nigeria: A Focus on the Child's Rights Act' (2022) (6) *African Journal of Law and Human Rights*, *AJLHR*, available at *Google Scholar* <<https://scholar.google.com/scholar?oi=bibs&cluster=15249988655557164273&btnI=1&hl=en>> accessed 11 January 2025.

<sup>26</sup> C P Iloka, 'Analysis of Child Marriage in Nigeria and the Legal Imports' (2021) (2) *Journal LASJURE*, available at *Google Scholar* <<https://scholar.google.com/scholar?oi=bibs&cluster=12120766721555825779&btnI=1&hl=en>> accessed 10 December 2024.

<sup>27</sup> C P Iloka, 'Domestic Violence: Cryptograms, Propellers and Repercussion' (2022) (3) *LASJURE*, available at *Google Scholar* <<https://scholar.google.com/scholar?oi=bibs&cluster=4576645602330523460&btnI=1&hl=en>> accessed 10 December 2024.

<sup>28</sup> Evidence Act, Cap.E14, Laws of the Federation of Nigeria, 2004, s.160-162

<sup>29</sup> Criminal Code Act, Cap.C38, Laws of the Federation, 2004, s.10

between themselves alone.<sup>30</sup> These discriminatory provisions made in the law of evidence and crime based on the type of marriage contracted are startling and makes nonsense of the equality principle entrenched in section 42 of the Constitution and had also attracted a host of criticisms from jurists and academic writers.<sup>31</sup>

## 9. Customary Law and Practices

Undoubtedly, these administrative practices that are discriminatory against women arose from the law status accorded to women under the customary law where women's unequal status with men is strongly manifested. They are treated as chattels to be sold upon payment of bride price and dowry. She may not be in position to inherit from the estate of the deceased husband depending on the kind of marriage contracted: customary, Islamic or statutory marriage.<sup>32</sup> Under customary law marriage, the widows form part of the estate of their deceased husband. In *Suberu v Sunmonu*<sup>33</sup> Jibowu F.J stated: 'it is well settled rule of law and custom of Yoruba people that a wife could not inherit her husband's property since she herself is like a chattel, to be inherited by a relative of her husband'. The same is true of Ibo Customary Law. Thus, in *Onwuchekwe v Onwuchekwe*<sup>34</sup> the Court of Appeal refused to reject as repugnant a custom where a wife is owned with his properties by her husband. Under Islamic law, women's right to property has greater protection than under the customary law, though women do not have equality with men as concerns inheritance.<sup>35</sup> Both wives and daughters have inheritance rights in Islamic law, although a daughter may inherit only half of what a son inherits and a wife or wives inherits one-eighth of the estate if there are children and one-fourth, if there is none. Therefore, the principal concern under the Islamic law is whether a widow had children; if she does, her land rights are defended against all challengers<sup>36</sup> In contrast, under the Ibo law of succession, a widow who has a male child has only the right to occupy her husband's property, but not to dispose of it. The right to occupy is also dependent on her good behavior. This position was reaffirmed in *Nzekwu v Nzekwu*<sup>37</sup> Whereas Yoruba custom deprives a wife of inheritance rights to her deceased husband's estate, it gives the children of the deceased person, both male and female, the right to succeed to his property.<sup>38</sup> Coker has stated 'the distinction between the capacity of a female as a child and her capacity as a wife should always be borne in mind as this affects her proprietary interest in family'. The above custom-based gender differentiations are discriminatory against women on grounds of sex and as such unconstitutional, yet it is still in force, a very illustrative of the gap between 'law in books and law in practice/action'.<sup>39</sup>

## 10. Conclusion and Recommendations

Gender equality of men and women is a way of reducing poverty levels within the society by improving the life standard thereby. Despite the effort of the Nigerian government in promoting gender equality and non-discrimination, there are few laws that protects the rights of women yet contains some discriminatory provisions inimical to women's rights in every field of life hence the government needs to do more towards achieving gender equality which is believed to be the yardstick for economic growth and reduction of poverty among the citizens by providing economic and social security as well as standard education. The provisions of chapter II of the constitution of Nigeria, 1999 (as amended) is a toothless bull dog that cannot bite which has kept on encouraging adverse growth of poverty and widening gap between the rich and the poor. It is hereby recommended that section 6 (6) (c) of the 1999 constitution of Nigeria (as amended) be re-amended by making the chapter II of the constitution justiciable. There should be proper sensitization and creation of awareness of the existence of women right against discrimination. This can be done through formal education and non-governmental organizations by organizing seminars and assisting the citizens to be informed of their rights especially the vulnerable. Repealing all the existing laws that are discriminatory against women at work place in line with international best practices envisaged in the various legal instruments in Nigeria is necessary.<sup>40</sup> Encouragement of enforcement of rights against any form of discrimination in Nigeria is needed. This could be achieved by making the enforcement procedure less formal. Establishment of Commissions or Agencies for such enforcement to assist the victims or the vulnerable who cannot afford the cost of recourse to judicial remedies. There should be enactment of legislation or amendment of the Constitution, Labour Act etc for proper definition of terms especially Discrimination and possible punishment, extent, protection and factors that constitute discriminatory acts against the vulnerable like women and the National Industrial Court (civil procedure) Rules, 2017 to improve on policies and laws that safeguard equal opportunities in the workplace. There is need to creation of enabling environment for creation of more jobs, flexible working arrangements and other policies like working from home. Eradication of all forms of discrimination in all places should be the priority of the government in the country even though the level of it varies from place to place.

<sup>30</sup> Ibid, s.34

<sup>31</sup> T.A. Aguda, 'Law and Practice Relating to Evidence in Nigeria' (London: Sweet and Maxwell, 1980) p.318; F.Nwadialo, 'Modern Nigerian Law of Evidence(Benin: Ethiope Publishers, 1981)p.210

<sup>32</sup> C P Iloka and J A Eze, 'Breaking the Culture of Silence on Rape: A Cry for Justice' (2022) (9) (4) *Journal of Commercial and Property Law, NAUJCPL*, 43; also available at *Google Scholar* <<https://scholar.google.com/scholar?oi=bibs&cluster=1799067546122464513&btnI=1&hl=en>> accessed 19 December 2024.

<sup>33</sup> [1957] 2 F.S.C. 31

<sup>34</sup> [1991] 5 N.W.R.L. (Pt. 197) 379

<sup>35</sup> Qamaraddin Khan, 'Status of Women in Islam' (New Delhi: Sterling Publishers Private Ltd, 1990) p.13

<sup>36</sup> Catherine Coles and Beverly Mack, 'Hausa Women in the Twentieth Century' (London: University Of Winconsin Press, 1991) p.137-138

<sup>37</sup> [1989] 2 NWLR (Pt. 104) 373

<sup>38</sup> *Sungunro-Davies v Sungunro* [1929] 2 NLR (Pt.79) p.80

<sup>39</sup> C P Iloka, 'Affirmative Action and the Role of the Legislature in Promoting Women Participation in Election Processes in Nigeria' (2022) (4) *International Journal of Comparative Law and Legal Philosophy, IJOCLLEP*, 8; also available at *Google Scholar* <<https://scholar.google.com/scholar?oi=bibs&cluster=9692119633994661529&btnI=1&hl=en>> accessed 20 December 2024.

<sup>40</sup> C P Iloka, 'Appraisal of the Legal Framework of the Sexual and Reproductive Health Rights of Women in Nigeria' (2023) (4) (1) *Chukwuemeka Odumegwu Ojukwu University Journal of Private and Public Law*, available at *Google Scholar* <[https://scholar.google.com/citations?view\\_op=view\\_citation&hl=en&user=st6bmz4AAAAJ&citation\\_for\\_view=st6bmz4AAAAJ:hqOjcs7Dif8C](https://scholar.google.com/citations?view_op=view_citation&hl=en&user=st6bmz4AAAAJ&citation_for_view=st6bmz4AAAAJ:hqOjcs7Dif8C)> accessed 19 December 2024.