

Customary Law Marriage among Igede People: Women and Human Rights

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Abstract— Generally, marriage can be defined as a voluntary union between a man and a woman (or women in the case of customary marriage) for life to the exclusion of any other. In other words, it is a legal union which exists between a man and a wife or wives. The phrase is acceptable world over and it is usually legally recognised. In Nigeria, although there exists statutory marriage which is monogamous in nature, the most prevalent type of marriage is customary marriage. This marriage is practiced among all the tribes in Nigeria including the Igede people despite the fact that there exists statutory marriage. One thing that is pertinent here is that the practice of this customary marriage in Nigeria especially among the Igede people has violated the human rights of women to marriage. Women in customary law marriage in Igede land have not enjoyed their human rights. This is due to the practice of certain customs and traditions which form great inhibition. Among the few of them are: undue reliance on parental consent before a marriage can take place, compulsory genital mutilation for the marriage, not having the right to bring an action for the dissolution even if the other party commits adultery, and not having the right to plant certain crops unlike the male counterpart. As a result of the above (and even many more) an Igede woman is deprived of her human rights as soon as she is married. This work seeks to examine these practices which stand as hindrance to the rights of a married woman in Igede land and therefore suggests that Igede women should be allowed to enjoy their basic human rights (even as married women) just like their male counterparts. And also, the practice in other climes where women enjoy their human rights within Nigeria and outside Nigeria should be imbibed in Igede land.

Keywords: Customary Law Marriage; Igede People; Women's Rights; Human Rights; Nigeria.

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INTRODUCTION

Marriage is recognised as a union between a man and a woman (or women in appropriate cases). This presupposes a union between persons of the opposite sex. This means that there cannot be a legal marriage between persons of the same sex. In the old popular English case of *Corbett v Corbett* [1970] 2 All ER 33, the petitioner and respondent went through a ceremony in September 1963. The petitioner knew that the respondent had been registered at birth as a male in 1960, undergone an operation for the removal of the testicles, most of the scrotum, and the construction of an artificial vagina. Since the operation, the respondent had lived as a woman. In December 1963, the petitioner filed a petition for a declaration that the marriage was null and void because the respondent was a person of the male sex or, alternatively, for a decree of nullity on the ground of either incapacity or wilful refusal to consummate the marriage. It was held per Ormrod J. that the respondent had remained at all times a biological male and that accordingly, the so-called marriage was void (*Corbett v Corbett* [1970] 2 All ER 33).

In Nigeria, just like any other jurisdiction, there are basically two types of marriages: statutory and customary (Islamic and non-Islamic). The former, which is monogamous in nature, has been defined by Lord Penzance in *Hyde v Hyde* (1866) LR 1 P&D 130 to be a voluntary union for life of one man and one woman to the exclusion of all others. The latter, which is customary, can be defined as a voluntary union for life of one man and one woman (or many women as the case may be) to the exclusion of all others. Although the two marriages are practiced in Nigeria, this work seeks basically to examine the practice of customary law marriage vis-a-vis the human rights of women in such marriage in Igede land and juxtapose it with practice in other jurisdictions.

THE IGEDE PEOPLE

Geographically, Igede people occupy the south-central part of Benue State of Nigeria, comprising the whole of Oju and Obi Local Government Areas as well as part of Gwer East and Konshisha Local Government Areas of Benue State, Nigeria. The people are also found in Yala Local Government Area of Cross River State, Nigeria. Historically, the people are said to have migrated from somewhere around Sabon-gida area in the present-day Edo State of Nigeria in the late 17th century. They sojourned for several years meeting various obstacles ranging from wars, diseases, inter-personal conflicts among others before they finally arrived at their present-day settlement. The event that led to their migration from the said place (the present Owan West Local Government Area of Edo State) has various versions.

But oral history has it that there was a misunderstanding between the Igede people and their Ora neighbour over an earthen water pot belonging to an Igede woman. The pot was broken by an Ora woman in the stream as they went to fetch

water. This incident resulted in a quarrel in which the Ora people agreed to replace the broken pot with a new one, but the Igede people refused, insisting that the same pot be produced. Series of dialogues and negotiations to amicable resolution of the matter failed and at the end it resulted in a communal war between the Igede people and Ora people. Ora people eventually overpowered their Igede neighbour and chased them away which led to their migration from their original home to the present settlement in Benue and Cross River States.

CUSTOMARY LAW MARRIAGE AMONG THE IGEDE PEOPLE

Just like any other ethnic group in Nigeria, Igede people have a system of customary law marriage. The system, which is unique and peculiar, has its own practice among the people which is still practiced till date. Under the customary law marriage, a man is at liberty to marry only one wife or many wives as he desires provided he can take care of them. When a young man is old enough to marry (usually the age of puberty), a lady is recommended for him through a wife in that family who sees the hardworking nature of the young man and feels he will be able to take care of his wife. She may recommend her niece or cousin who is also hardworking and of good character to the young in-law. In another development, the young man and the young woman may meet at any public social place, like the playground, market, etc., where this happens they are to find out about each other such as the village, the parents and even character or other pedigree.

Whichever way the young man and the young woman had met, the courtship may start from there and if all is said and done, marriage takes place and they become man and wife invariably. In the celebration of customary law marriage among the Igede people, a woman is usually escorted to the husband's place by her friends and there must be a gunshot as a mark of marriage. The gunshot marks a binding force in such marriage because it proves that there was a marriage where many people witnessed. As the man and the woman marry, they come to their duties and obligations. These duties and obligations, are they lopsided or in favour of one person at the detriment of the other?

THE HUMAN RIGHTS OF WOMEN UNDER LOCAL AND INTERNATIONAL INSTRUMENTS

(a) The 1999 Constitution of the Federal Republic of Nigeria

The Nigerian Constitution guarantees the fundamental rights to equality and non-discrimination. Section 17(1) under the Fundamental Objectives and Directive Principles of State Policy states that the state social order is founded on ideals of freedom, obligations and opportunities before the law (Constitution of the Federal Republic of Nigeria 1999 (as amended), s 17(1)). Section 42(2) provides for the right

against discrimination, and it states "no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth" (Constitution of the Federal Republic of Nigeria 1999 (as amended), s 42(2)).

(b) The United Nations Charter

The Charter extols the noble attributes on the promotion of respect for human rights and fundamental freedom for all, without distinction, as one of its central purposes. Article 52 of the Charter contains a pledge by all member states to promote respect for human rights and fundamental freedoms for all, regardless of race, sex, language or religion (United Nations Charter 1945, art 52).

(c) Universal Declaration of Human Rights (UDHR)

Article 1 provides that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood (Universal Declaration of Human Rights 1948, art 1). Article 2 further states that everyone is entitled to all rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Universal Declaration of Human Rights 1948, art 2).

(d) African Charter on Human and Peoples' Rights

This also enshrines the principles of rights, equality and non-discrimination. Article 2 provides that every person shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind, such as race, ethnic group, colour, sex, language, religion, political or any other status (African Charter on Human and Peoples' Rights 1981, art 2).

(e) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

This is the legal instrument that calls for the abolition of all forms of inequalities and discrimination against women. Its Articles 1 to 29 discuss fully what discrimination against women means, and how states parties shall do all they can to eliminate it (Convention on the Elimination of All Forms of Discrimination Against Women 1979). Article 16 of CEDAW is particularly relevant to the present study, as it requires states parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, including ensuring the same right to enter into marriage, the same right freely to choose a spouse, and the same rights and responsibilities during marriage and at its dissolution (Convention on the Elimination of All Forms of Discrimination Against Women 1979, art 16).

THE PROBLEM OF RIGHTS OF WOMEN IN IGEDE LAND

Despite the above national and international instruments bestowing human rights on women, there are situations where an Igede woman has to complain about her rights especially under the customary law marriage.

(a) Consent before Marriage

One of the basic requirements for customary marriage among the Igede people is that of the consent of the parties to the marriage as well as that of the parents especially that of the woman. In Igede land, no matter how old a woman might be, she needs the consent of her parents or guardian before a customary marriage may take place. The absence of which may render the marriage void. The parents may withhold their consents for reasons best known to them and may not be explained to the lady. By this, the right of a woman to choose her spouse is limited by her parents' consent. If and when they refuse to consent, she cannot exercise her rights, meaning her consent, which is an expression of her rights with that of her person, is immaterial. Again in Igede land, there is one barbaric and obnoxious practice of "wife catching" which suggests that a young man may see a young lady on the way and organise to catch her as his wife, whether she accepts or not, whether she likes him or not. This practice deprives a woman of her right of choice and her fundamental rights.

(b) Age of Marriage

Today it is a recognised fact that one must attain the age of marriage before he or she marries. Unfortunately, under Nigerian customary laws of marriage and especially in Igede land, it is not the case. In Igede land under the native law and custom, a girl's marriageable age is the age of puberty. The age of puberty, which is not defined, may mean twelve (12) years for a girl to get married. This is contrary to the statutory age of eighteen (18) years under the Marriage Act and Child Rights Act 2003 respectively (Child Rights Act 2003, s 21). It should be noted that the Child Rights Act 2003 has now been domesticated in all 36 states of Nigeria, with Bauchi State being the last to domesticate it in December 2024 (Federal Ministry of Information and National Orientation, 2024). One unfortunate thing here is that this age, which is below the marriageable age, does not accord the freedom of choice. This is because due to her young age, she does not know much or even have the right of choice. This deprives her of her human rights.

(c) Inheritance

In most customary laws in Nigeria and in Igede land especially, men may have the right to inherit their wives but the corresponding right on the part of the women to

do so is not there. Among the Igede people, the husband in conjunction with his children (male especially) may inherit some of the property of his deceased wife, but that right is not available to the woman in the property of her deceased husband.

(d) Genital Mutilation

Despite the worldwide campaign against women genital mutilation, the practice is still prevalent in some parts of Igede land. In Igede land, a girl child who is attaining the age of puberty is circumcised. This happens not because she consents, but to fulfil the traditional rites. The above scenario has completely deprived her of her human rights.

(e) The Right to Bring an Action for Dissolution of Marriage

In Igede land, the wife does not have the right to bring an action for the dissolution of marriage where her husband commits adultery.

(f) Marital Relations

Also under the Igede customary marriage law, the wife has no right to demand for sex while her husband has the right to demand for sex from his wife or wives anytime. Where there are many wives, the women have to wait for their turn no matter how long.

(g) Agricultural Rights

Furthermore, the woman has no right to plant certain crops such as yam which is regarded as the chief crop and reserved exclusively for the men. Women are only allowed to plant water yam, cocoyam, sweet potatoes and the like. Again these crops, especially water yam, are only planted side by side with the yam in the man's farm, but not separately.

(h) Property Rights

Finally, women are not allowed to own their own personal property. This ranges from plots of land to actual buildings. If a woman has money for such, she must submit the money to her husband to purchase such but not even for her but for her husband. Where she goes to the market to sell something, she is obliged to submit the money to her husband.

THE REPUGNANCY DOCTRINE AND ITS POTENTIAL FOR CHALLENGING DISCRIMINATORY IGEDE CUSTOMS

The repugnancy doctrine has its origins in the colonial era, when customary law was recognised only to the extent that it was **not** repugnant to natural justice, equity

and good conscience (Nwokedi, 2024). The Native Authority Ordinance 1948 provided that customary law would be enforced by the courts if such rules were not repugnant to natural justice, equity and good conscience, and were not contrary to public policy. In *Eshughayi Eleko v Officer Administering the Government of Nigeria* [1931] AC 662, Lord Atkin stated that "a barbarous custom must be rejected on the ground of repugnancy to natural justice, equity and good conscience."

The repugnancy doctrine has been applied by Nigerian courts to strike down discriminatory customary practices. In *Mojekwu v Mojekwu* (1997) 7 NWLR (Pt. 512) 283, the Court of Appeal held that the Nnewi custom of *Oli-ekpe*, under which only male children could inherit their father's property, was discriminatory and unconstitutional. Justice Niki Tobi JCA (as he then was) held that "any form of societal discrimination on grounds of sex is unconstitutional and against the principles of an egalitarian society" (*Mojekwu v Mojekwu* (1997) 7 NWLR (Pt. 512) 283, 305).

This decision was reinforced by the Supreme Court in *Ukeje v Ukeje* (2014) 11 NWLR (Pt. 1418) 384. The Supreme Court held that the Igbo customary law that disentitles a female child from inheriting her father's property is discriminatory and unconstitutional. Rhodes-Vivour JSC, delivering the lead judgment, held that "the law is settled that a female child, whether legitimate or not, is entitled to inherit from her deceased father" (*Ukeje v Ukeje* (2014) 11 NWLR (Pt. 1418) 384, 398).

These cases demonstrate that the repugnancy doctrine, combined with the constitutional guarantee of non-discrimination, provides a powerful legal tool for challenging discriminatory customary practices such as those faced by Iggede women. The courts have shown a willingness to strike down customary practices that violate the constitutional rights of women.

THE PRACTICE IN OTHER JURISDICTIONS

Customary law, as the living law of every land and of the people, is not static. It changes with times. This means that some rules which have failed and cannot survive the test of time have to be discarded and possibly replaced. Because of the adoption of the provisions of international and domestic human rights instruments, many countries have adjusted their human rights practices. Even customary law and traditional practices in some of these countries have started to adjust to the changing times and modern-day realities.

In South Africa, for example, recent case law reviews indicate an evolving new order and judicial thinking. In the South African case of *Mabuza v Mbatha* 2003 (4) SA 218 (C), the SiSwati custom of *ukumekeza* has now evolved and is practiced differently. The custom involved the process of formal integration of the bride into the family of the bridegroom, as one of those requirements for a valid customary law marriage (*Mabuza v Mbatha* 2003 (4) SA 218 (C), para 9). The court held that the former approach, which

recognised African law only to the extent that it was **not** repugnant to the principles of natural justice and public policy, is flawed and unconstitutional. The court said that evolution of African customary law has evolved and is always flexible. It is inconceivable that *ukumekeza* has not evolved and that it cannot be waived by the agreement of the parties or families (*Mabuza v Mbatha* 2003 (4) SA 218 (C), para 35).

Again, in the South African case of *Mabena v Letsoalo* 1998 (2) SA 1068 (T), the long-standing custom that an adult female should require the consent of her parents to marry was challenged. The court held that there is no reason why an independent adult female should require the consent of her parents in order to marry or should not herself negotiate for payment of the *lobola* (*Mabena v Letsoalo* 1998 (2) SA 1068 (T), 1074). Accordingly, if the father of the male is not involved in *lobola* agreements, consent of the male himself and the female's guardian are enough requirements. The court further held that it may traditionally not be possible for the mother of the bride to be her daughter's guardian. However, in practice it is not repugnant to customary law of marriage for a mother, who is the head of the family, to negotiate for and receive *lobola*. The court said such a principle is recognised as valid (*Mabena v Letsoalo* 1998 (2) SA 1068 (T), 1076).

The New Social Order and Legal Thinking

On account of the historical background already established in terms of guaranteeing to everybody fundamental rights including the right to equality and non-discrimination, regardless of race, social origin, status, disability, sex, ethnicity etc., a new wave of social order and legal thinking has emerged with irreversible precedents already set with regards to the protection, fulfilment and enforcement of the fundamental rights of various vulnerable groups including women and children.

Starting from the UN Charter of 1945, followed by the Universal Declaration of Human Rights 1948, and the International Covenant on Civil and Political Rights (ICCPR) 1966 and the other international human rights instruments, one thread and trend of thought that emphasises equality and non-discrimination regardless of any condition or disability runs through. The same thread and trend of thought ran through the thinking of natural rights theorists like Montesquieu, Immanuel Kant, John Locke and others who argued that individuals are endowed by nature with certain claims and rights, among which include the right to life, liberty, freedom and equality. It is the same thread and trend of thought that runs through the 18th century and early 19th century struggle against political absolutism that culminated in the enactment of the Magna Carta of 1215 and the Bill of Rights of 1688. That same thread and trend of thought was embedded within the wave of revolutionary activities that swept through America and France, resulting in the American Declaration of Independence in 1776 and the French Declaration of the Rights of Man and of the Citizen of 1789. The same

thread and trend of thought energised women's demand for rights of equality and non-discrimination, and of which children have also become generous beneficiaries of rights.

In Nigeria, a few ethnic groups, especially the Efiks and Igbo, have one liberation or the other from the bondage under which the women in other parts of the country especially the Igede people are going through. The Efiks especially, women or female children have the rights to inherit their husbands or parents. Among the Igbo, since the Supreme Court decision in *Mojekwu v Mojekwu* (1997) 7 NWLR (Pt. 512) 283 and *Ukeje v Ukeje* (2014) 11 NWLR (Pt. 1418) 384, female children now have the right to inherit property.

CONCLUSION

One cannot outrightly or categorically conclude that there are no skirmishes of human rights of women among the Igede people under the customary law marriage. There are, to a large extent, practices that respect the rights of women. An Igede woman has the right to leave her matrimonial home either in separation or outright divorce where she thinks the marriage is no longer working. Two, she has the right not to remarry or marry any of the relations of her deceased husband, which is the practice on the demise of her husband. Again, she has the right to remain in her late husband's house without even marrying anyone. However, significant gaps remain in the protection of Igede women's rights, particularly in relation to consent, age of marriage, inheritance, genital mutilation, and property rights.

But while not much appears to have been done to reduce gender inequalities in the area of customary law marriage in Igede land, the South African experience and a few practices in other parts of Nigeria is different. South Africa must be commended for actually affecting and putting certain legislations in place to address matters of gender imbalance. In doing so, cognizance has been taken of the forceful and persuasive effects of international and domestic human rights instruments. The recognition of the Customary Marriages Act No 120 of 1998, the Domestic Violence Act No 116 of 1998, and the Prevention of Family Violence Act No 133 of 1993 have some noble legislative hallmarks that are designed to address the rights of women, protect them and other vulnerable victims of the society and resolve issues of gender inequality and discrimination.

In Nigeria generally, there are moves to bring this type of situation home. This is possible seeing the Cross River State Age of Customary Marriage Law 1981 which says: "A marriage or promise or offer of marriage between or in respect of persons either of whom is under the age of sixteen shall be void" (Cross River State Age of Customary Marriage Law 1981, s 2). This means that instead of women marrying early as it is

practiced in Igede land and some other places in Nigeria, the sixteen years as by the Cross River State government has come to save the women. Igede people imbibing this and the practice in South Africa can help in assuaging the rights of women under the customary law marriage in Igede land.

Furthermore, the repugnancy doctrine, as applied in *Mojekwu v Mojekwu* and *Ukeje v Ukeje*, provides a legal avenue for challenging discriminatory Igede customary practices. The courts have demonstrated a willingness to strike down customary practices that violate the constitutional rights of women. Igede women, like all Nigerian women, are entitled to the full protection of the law, and the judiciary must continue to play its role as the guardian of constitutional rights.

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