

**COMBATING GENDER-BASED VIOLENCE THROUGH  
EFFECTIVE LAW IN NIGERIA**

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**BEING A LONG ESSAY IN PARTIAL FUFILLMENT OF THE REQUIREMENT FOR  
THE AWARD OF BACHELORS OF LAWS (LL.B HONS) SUBMITTED TO THE  
FACULTY OF LAW OF THE UNIVERSITY OF BENIN, BENIN CITY, NIGERIA.**

**APRIL, 2024**

## **CERTIFICATION**

I, **Obiageli Philomena EGBOH**, with Matriculation Number: **LAW1805919**, hereby certify that apart from reference to other people's work which have been duly certified, the entire work is a product of my personal research and that this project has neither in whole or in part been presented for another degree elsewhere.

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## APPROVAL

We certify that this project was completed by **Obiageli Philomena EGBOH**, with Matriculation Number: **LAW1805919**, in partial fulfilment for the award of the degree of bachelor of laws (LL.B)

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Signature & Date

## **DEDICATION**

This project work is dedicated to God Almighty.

## **ACKNOWLEDGEMENT**

I wish to express my profound gratitude to God, for His protection over my life throughout my years in the university. I am eternally grateful to all the members of my family, who continue to shower me with love and care.

To my loving Dad and Mum, DR. & MRS EGBOH, I love you both very much. Thank you for all you have done for me, for always being there for me, for your love and encouragement everyday.

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Sex Discrimination Act 1975 and 1986 (United Kingdom)

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Trafficking in Persons Prohibition Law Enforcement and Administration Act 2003 (as amended)

Violence Against Women's Act, 1994 United States

Widows and Widowers Fundamental Rights Law, No. 3 of Enugu state

## TABLE OF ABBREVIATIONS

ADS	Acquired Immuno Deficiency Syndrome
All ER	All England Reports
ANLR	All Nigerian Law Report
AU	African Union
Cap	Chapter
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CRA	Child's Rights Act
EHRR	European Human Rights Report
FGM	Female Genital Mutilation
GBV	Gender-based Violence
HIV	Human Immuno-deficiency Virus
ICCPR	International Covenant on Economic, Social, Cultural and Political Rights
IOM	International Organization for Migration
IRLR	Industrial Relations Law Report
NAPTIP	National Agency for the Prohibition of Trafficking in Persons
NDLEA	National Drug Law Enforcement Agency
NGOs	Non-Governmental Organizations



NWLR	Nigerian Weekly Law Report
NYS	New York Supplement
QB	Queens Bench
SCNLR	Supreme Court Nigerian Law Report
SMC	Supreme Court
STD	Sexually transmitted Disease
TIP	Trafficking in Persons
UN	United Nations
UNICEF	United Nations International Children's Emergency Fund
USAID	United States Agency for International Development
USLWR	United States Law Weekly Report
VVF	Vesico Vagina Fistula
WACA	West African Court of Appeal
WHO	World Health Organization
WHRC	Women Human Right Council

## **ABSTRACT**

Gender based violence is the general term used to capture violence that occurs as a result of the normative role expectations associated with each gender, along with unequal power relationship between two genders within the context of a specific society. While women, girls, men and boys can be victims of gender-based violence, the main aim of this research package is on violence against women and girls. This is not to say that gender-based violence against men does not exist. For instance men can become targets of physical or verbal attacks for transgressing predominant concepts of masculinity. Men can also become victims of violence in the family -by partners or children. However it has been widely acknowledged that the majority of persons affected by gender-based violence are women and girls as a result of unequal distribution of power in the society between women and men. Women and girls, victims of violence suffer specific consequences as a result of gender discrimination. This research paper draws together existing data on the dimensions of violence against women worldwide and reviews available literature on the health, emotional, physical effects and consequences of abuse. It argues that the government, health, educational and other sectors in the society has a role to play in combating violence against women through increased research, screening and referral of victims and behavioural interventions. This research paper in its bid to confront violence addresses the root causes of abuse in addition to meeting the immediate needs of victims by challenging the social attitudes and beliefs that condone men's violence and renegotiating the balance between women and power at all levels of society. The purpose of his research work is to evaluate the existing laws at the international and national level regulating gender-based violence, examine its shortcomings and recommend solutions and effective laws to be adopted by the society and government that would contribute to the efficient and maximum reduction in the violence against women and girls and would lead to a safe, conducive and better environment for women and girls. The method used in this research was conceptual and analytical examination of legislative provisions concerning gender-based violence, trials, conviction obtained within and outside Nigeria. Reliance was placed on case law, books, scholarly journals, articles, treaties, conventions, customs. This study examined the nature of gender-based violence causes and effects. It also analyzed the Nigerian and international extant legal framework enacted in response to gender-based violence leading to the discovery of the inadequacy of Nigeria extant laws in curing causes and discussed possible approaches towards the identified problems especially as it relates to the legal framework and administration of the criminal justice system.

## **CHAPTER ONE**

### **GENERAL CONCEPT OF GENDER - BASED VIOLENCE**

#### **1.1 Introduction**

Gender-based violence can be used interchangeably with Violence Against Women. Gender-based violence violates human rights and presents a significant public health challenge with civic, social, political and economic consequences for individuals, communities and the society. Different forms of gender-based violence cause physical and mental harm, limit access to education, incur medical and legal costs, reduce productivity and lower income. Gender-based violence undermines the safety, dignity, health and human rights of the millions of individuals who experience it and the public health, economic well-being and security of nations.<sup>1</sup>

Gender-based violence is a violation of human rights. This is reflected in international agreements such as the Convention On The Elimination Of All Forms Of Discrimination Against Women [CEDAW] Declaration on the discrimination of violence against women was emphasized in the UN fourth World Conference On Women In Beijing in "Gender – based violence is preventable . Also under the Nigeria Legal System Gender-based violence is a criminal offence under VAPA (Violence Against Persons Act) and under section 42 of the 1999 Nigerian Constitution.<sup>2</sup>

Violence Against Women is a persistent and universal problem occurring in every culture and social group. Around the world at least one in every three woman has been beaten, coerced

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<sup>1</sup> USAID, <http://www.usaid.com> accessed March 14 2024

<sup>2</sup> Section 42 (2) LFN, Constitution of the Federal Republic of Nigeria 1990- No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

into sex or otherwise abused in her lifetime - most often by someone she knows, including a member of her own family, an employer or co-worker. Violence against women has been called the most pervasive yet least recognized human right abuse in the world." Accordingly, the Second World Conference On human Rights In Vienna in 1993 and the Fourth World Conference On Women in 1994 gave priority to this issue which jeopardizes women's lives, bodies, psychological integrity and freedom. Violence against Women is often known as Gender-based Violence.<sup>3</sup>

Violence against Women can be traced to the pre-colonial period and even to the biblical period. For instance in Luke 18, the judge refused to avenge the woman of her adversary possibly because she was a woman and widow for that matter, until the judge became weary of the woman's persistent cry to him.<sup>4</sup>

Gender-based violence is a form of discrimination which is illegal under International Human Rights Law. In *Opuz v Turkey*,<sup>5</sup> the court recognized that there was a "general and discriminatory passivity in Turkey".<sup>6</sup> Violence against Women was internationally recognized as a violation of Women's human rights and fundamental freedoms for the first time in the early 1990's. In 1992, the Convention On The Elimination On Forms of Discrimination Against Women recognized that Gender-based violence is a form of discrimination which is illegal under International Human Rights Law.<sup>7</sup> This chapter seeks to

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<sup>3</sup> "Violence Against Women" <http://www.winrock.org/GENERAL/publications/Dos-manual.pdf> accessed June 14, 2024.

<sup>4</sup> Luke 18:1-8, King James Version.

<sup>5</sup> No. 3.33401/02, Eur. Ct.H.R., June 9, 2009.

<sup>6</sup> "Right to Life" <http://www.blogs.lse.ac.uk/landmark.cases.equality>. Accessed 10<sup>th</sup> February, 2024.

<sup>7</sup> *Opuz v Turkey*, No 3.33401/02, Eur.Ct.H.R., June 9, 2009.

examine the concept of Gender –based violence, the definition of terms in Gender-based violence, the historical development and the nature and scope of Gender-based violence.

## **1.2 Definition Of Terms**

Certain terms which are peculiar and significant to gender-based violence would be defined under this heading:

### **i. Gender**

It refers to both male and female as well as the culturally ascribed roles performed by each sex.<sup>8</sup> Gender refers to socially constructed roles of women and men ascribed to them on the basis of sex, whereas the term 'sex' refers to biological and physical characteristics.

The term Gender is usually used interchangeably with 'sex'. However, gender indicates the social characteristics that are given to individuals sex, i.e. the specific social identities, circumstances, roles, responsibilities and relationships related to men and women. These circumstances are entrenched in cultures, and that's why they differ. However, individuals acquire them through social upbringing. Many factors come into play defining these characteristics ,such as age (the difference between the concepts of the boy or Girl, adolescent and Man or Woman), national origin (the difference between the Lebanese Woman and the Moroccan Woman, for example) and the social characteristics (the difference between concepts of Women in the city and in the rural areas).<sup>9</sup> Therefore, they are subject to change overtime because they change in response to changes in social, political and cultural environment. Sex on the other hand is fixed and not subject to change. People are born male

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<sup>8</sup> John Ademola Yakubu, Olawale, A. Moronkola and Grace, O. Sokoya: *The Abused And The Society* (Nigeria: Royal People Nigeria Ltd 2007), 53.

<sup>9</sup> Jinan AI Usta, *Working with Gender-based violence Survivors. Reference Training Manual For frontline staff-UN*, [https://www: usaid.com](https://www.usaid.com), accessed 15<sup>th</sup> March,2024.

and female (sex) and learn later how to be Boys and Girls, they then become Men and Women (gender). Giving birth is a function performed by Women on the basis of sex but raising children is a role assignment to Women on the basis of gender.<sup>10</sup>

The Webster 10<sup>th</sup> edition Dictionary defined gender as sex, animate beings are either masculine or feminine, inanimate objects are neuter. The Oxford Advanced Learners Dictionary defined the term 'gender as the fact of being male and female especially when considered with reference to social and cultural differences not differences in biology; issues of class, race and gender.'<sup>11</sup>

#### **a. Gender Equality**

Absence of discrimination in opportunities on the basis of gender in terms of allocation of resources and opportunities or access to or securing services. (WHO, 1998).<sup>12</sup>

#### **b. Gender Socialization**

Socialization is how we (and wider society) teach our male and female children to become Men and Women. It's based on socially prevalent definitions on what it is to be a man or woman. For instance, that men are strong, powerful, lustful, successful and with privileges over women whereas women should be obedient and make sacrifices for the family.<sup>13</sup>

### **ii. Violence**

Violence is defined by the Black 's Law Dictionary as the use of physical force, accompanied by fury or violence or outrage, especially force unlawfully exercised with the intent to harm.

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<sup>10</sup> Ibid

<sup>11</sup> The Oxford Dictionary, 8<sup>th</sup> ed., s. v. "Gender"

<sup>12</sup> Jinan , Working With Gender-based Violence Survivors.

<sup>13</sup> Ibid

Some courts have held that violence in labor disputes is not limited to physical contact or injury but may include picketing conducted with misleading signs, false statements, erroneous publicity and veiled threat by words.<sup>14</sup> Webster Dictionary defined violence as the quality or state of being violent, intensity; fury, also an instant violent action. Law: physical force unlawfully exercised or overawe by causing apprehension or bodily injury.<sup>15</sup> Violent behavior that is intended to kill or hurt somebody; crime, acts, threats of violence- Oxford Advanced Learners Dictionary.<sup>16</sup>

American Psychological Association (APA),1996 defined violence as physical, sexual and psychological maltreatment a person in an intimate relationship uses against another to gain unfair power, maintain and control authority. Violence is generally considered to be a violation of certain rights that every human being should have -namely;, the right to life, right to security, right to dignity, right to physical and psychological well-being.<sup>17</sup>

According to the 2002 World Health Organization World Report On Violence and Health, violence' is defined as the intentional use of physical force or power, threatened or actual, against oneself, another person or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation.(Krug et. al 2002.5).

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<sup>14</sup> Ibid

<sup>15</sup> The Webster Encyclopaedic Edition, 10" ed., s.v. "violence"

<sup>16</sup> The New Oxford Advanced Learners Dictionary, 8" ed., s.v "violence"

<sup>17</sup> Julia Sloth Nielsen, Children's Right in Africa- A legal perspective, (Ashgate Publishing Lid, 2008), 165-166.

## **ii. Perpetrator**

A person, group or institution that commits violence or supports its commission or assists other forms of abuse against others, in support of or against freewill.

## **iv. Victim**

The person directly affected by violence (Domestic Violence Law, 1997). However, the term "direct victim" is applied to the direct recipient of violence, while the "indirect victim" is the person affected by violence without receiving it, such as those affected by watching violence on television or children witnessing violence by their parents.<sup>18</sup>

## **v. Survivor**

The person who reacts actively and effectively towards the violence he or she is subject to. For the secondary survivor, he or she is the person affected by the experience of violence committed against a survivor. The secondary survivor may be a family member or someone close to the survivor. The word victim implies pity and surrender while the word "survivor" implies strength and persistence.<sup>19</sup>

## **vi. Exploitation**

Taking advantage of a person in an unjust and harsh manner. This includes a social relationship where some persons are mistreated unfairly, usually for personal reasons.<sup>20</sup>

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<sup>18</sup> Ibid

<sup>19</sup> Jinan, Working with Gender-based violence survivors, 4.

<sup>20</sup> Ibid



## **vii. Abuse**

Whether physical, sexual, emotional, economic or a combination of these which may cause death of serious and psychological harm to a person. (Protection To Persons In The Care Movement).

## **viii. Femininity**

The features of women or the ideal characteristics and behavior which they must exhibit in a certain social framework .and what it means to be a woman' in various cultural frameworks around the world. These characteristics may change from one place to another and with the passing of time.<sup>21</sup>

## **ix. Gender-Based Violence/ Violence against Women**

Any act of violence directed at women because they are women which leads or may lead to physical, sexual, psychological harm or pain. This includes the threats to commit such acts arbitrary deprivation whether in public or private life.<sup>22</sup>

Gender-based violence is defined as any act of which leads to or may lead to physical, sexual or psychological harm against a person on the basis of gender or social role in a society or culture including threats, beatings, violence related to dowry, non-marital violence rape, sexual related exploitation, sexual harassment and intimidation in the workplace or school, trafficking in women, sexual exploitation and forced prostitution.<sup>23</sup>

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<sup>21</sup> Jinan, Working with Gender-based violence Survivors, 4.

<sup>22</sup> Ibid

<sup>23</sup> Ibid

U.S Strategy To Prevent And Respond To Gender-based Violence defines "gender-based violence as violence that is directed at an individual based on his or biological sex, gender identity, or perceived adherence to socially defined norms of masculinity and femininity."<sup>24</sup> CEDAWW defined violence against women as violence that is directed against a woman because she's a woman or that affects women disproportionately.

In 1995 the UN expanded the definition to include violations of the rights of women in situations of Armed Conflict, including systematic rape, sexual slavery and forced pregnancy, forced sterilization, forced abortion and coerced or forced use of contraceptives and parental sex selection and female infanticide.<sup>25</sup>

### **1.3 Historical, Development Of Gender-Based Violence**

The history of violence against women remains vague in scientific literature. This is because many kinds of violence against women (specifically rape, sexual assault and domestic violence are under reported often due to societal norms, taboos, stigma and the sensitive nature of the subject. It's widely recognized that even today, a lack of reliable and continuous data is an obstacle to forming a clear picture of violence against women.

Although, the history of violence against women is difficult to track, it's clear that much of the violence was accepted, condoned and even legally sanctioned, examples include that Roman law gave men the right to chastise their wives even to the point of death, the burning of witches, which was condoned by both the church and the state. Violence against women can be traced to the bible: sexual violence against Dinah (Genesis 34), sexual violence against

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<sup>24</sup> GBV and HIV: 4 program Guide For Integrating (Gbv, Prevention and Response in PEPEAR Programs [http://www. Gender bused violence. com](http://www.Genderbusedviolence.com) accessed March 5<sup>th</sup>, 2024

<sup>25</sup> Gender-based violence, <http://www,UNIPA.org> gender violence html accessed 15<sup>th</sup> March, 2024)

Tamar, the levites concubine (Judges 19), Jephthah's daughter (Judges 11), Esther 1 (the banishment of Queen Vashti from her royal position because she refused to display her beauty in public.<sup>26</sup>

The history of violence against women is closely related to historical view of women as property and a gender role of subservience. Explanations of patriarchy and an overall world system or status quo in which gender inequalities exist and are perpetuated are cited to explain the scope and history of violence against women. The UN Declaration On The Elimination Of Violence Against Women (1993) states, "violence against women is a manifestation of historically unequal power relations between men and women and to the prevention of the full advancement of women and that violence against women is one of the social mechanisms by which women are forced a subordinate position compared with men". According to the UN, "there's no region of the world, no country and no culture in which women's freedom from violence has been secured.

Several forms of violence are more prevalent in certain parts of the world often in developing countries. Certain regions are no longer associated with a specific form of violence, but such violence was common until quite recently in those places; this is true of honor-based crimes in Southern or Mediterranean Europe. In Italy, before 1981, the criminal code provided for mitigating circumstances in cases of killing a woman or her sexual partners for reasons related to honor, providing for a reduced sentence. There has also been a history of recognizing the

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<sup>26</sup> Genesis 34, King James Version, And Jacob heard that he (Shechem) had defiled Dinah his daughter, verse 7. And the sons of Jacob came out of the field when they heard it: and the men were grieved because he had wrought folly in Israel in lying with Jacob's daughter which thing ought not to be done. 2 Samuel 13 v 14 KJV; Howbeit he would not hearken unto her voice, but being stronger than she, forced he and laid with her.

harmful effects of these violence. In the 1870's, the courts in the US stopped recognizing the common law principle that a husband had the right to "physically chastise an errant wife".

In Western history, hierarchy of gender was seen as of the predominant methods of ordering the society Gerda Lerner, for example, posits a "working hypothesis" which explains establishment of patriarchy with the rise of militarism, in the emerging archaic slate system. Then the victorious, usually a small group of male warriors, asserted their dominance over those whom they conquered, consolidating their power through institutions which satisfied their superiority.<sup>27</sup>

Occurring around the third to the second millennium BC, a male dominance began to evolve with the view that those outside the hegemonic male group, the losers (females) were different from and inferior to the victorious males and were as defeated enemy, identified as deviant. It followed therefore that violence and subjugation of deviants would be necessary to maintain a well ordered society. The women who constituted an important part of the newly conquered deviant group and were more easily subdued because of their inferior physical strength and nurturing tasks, they were given the opportunity to protect themselves and their offspring- they obtained protection even if it meant enslavement for themselves and their offspring in return for supplying sex and housekeeping services to their male captors.

Further, according to the bible, God gave his male creation Adam, the power to name all that he, Yahweh, created. An example of biblical patriarchal potency extending first beyond its creation comes from the words of a woman; Shakespeare's Kate who in the last act of "the taming of the shrew" articulated her patriarchal inferiority as a wife a role laboriously learned:

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<sup>27</sup> Vivian C, Fox, "Historical Perspectives on Violence Against Women," *Journal of International Women Studies*, 4, issue I, November (2002), <https://ive.bridge.w.edu>, accessed February 15<sup>th</sup>, 2024.

Thy husband is thy lord, thy life, thy keeper thy head, thy sovereign, one that cares for thee and for thy maintenance, commits his body to painful labor both by sea and land to watch the night in storms, the day in the cold whilst thou liest warm at home, secure and safe.<sup>28</sup>

Another powerful metaphor in the womanhood in the Judeo-Christian religion is the depiction of Eve as temptress, who seduced Adam into eating the forbidden fruit. Eve came to be regarded as a representation of her sex; weak and lustful, thus penalty and prevention dictated that that all women subjugate themselves to wiser and superior figures.<sup>29</sup>

Biblical exegesis of female superiority was supported by a science developed by the Greeks first by Aristotle, then perfected by Galen and confirmed over and over again until the 17<sup>th</sup> century.

The Greeks asserted that humans were the most perfect animals and that among humans, men were more perfect than women. The law in Western world played a significant role in articulating and re-enforcing male superiority and domination. Culture dictated patriarchy and patriarchy subordinated women. Under the common law for example, wives were often treated as objects or properties of their husband's inclination.<sup>30</sup>

Patriarchy dominated the economic relationship of the couple as well. The common law allowed a husband to legally control his wife's real property, as well as their personal property acquired during marriage, such as clothes, jewelry and wages. A husband's dominance continued in such other significant areas as decisions of domicile and the duty to correct and chastise his wife physically or verbally should he believe it necessary. The wife on the other hand had no right of veto over her husband's decisions; including those related to her property,

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<sup>28</sup> Ibid

<sup>29</sup> Fox, Historical Perspective of Violence Against Women, 11.

<sup>30</sup> Ibid

nor could she with impunity verbally argue with him, if she tried, she would be regarded as a “scold” and punished.<sup>31</sup>

In Nigeria and Africa as a whole, it's an accepted norm in most African countries and culture that men should have multiple sex partners which puts both the men and men at the risk of infection. The common belief is that men are not able to control their sexuality, hence their demand for extra-marital sex is understandable. Also, in wife inheritance which occurs where widows marry within the deceased, husband's family or ethnic community, often to a man who already has a wife, wives or sexual partners. This practiced deprived a woman of her right to choose her own life after widowhood.<sup>32</sup>

Breast Ironing was also prevalent in some isolated African societies suppressing the growth of breast in young girls with different hot (grinding stone, pestle, wooden spoon, leaves, plantain peelings) or cool (salt, kerosene, breast band e.t.c) objects. It was believed that by ironing breast, the girl will later have plentiful breast milk when she gives birth. Female circumcision was widely practiced and is still practiced especially in the Northern part of Nigeria. This makes them more susceptible to HIV transmission because the female genital that serves as an important defense against heterosexual transmission of HIV. In some societies, traditional culture permits a man to discipline his wife by physical means.<sup>33</sup>

In the 20<sup>th</sup> and 21<sup>st</sup> centuries and in particular since the 1990 's there has been an increased activity on both the national and international levels to research, raise awareness and advocate for the prevention of all kinds of violence against women. Most often violence against women

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<sup>31</sup> Ibid, n. 10

<sup>32</sup> A. Griffiths. “International Human Rights, Women, Gender and Culture: Perspectives From Africa,” *Botswana Law Journal* 8(.8) (2008).

<sup>33</sup> Ibid

has been framed as a public health issue and also as a violation of human rights. A study in 2002, estimated that at least one in five women in the world had been physically and sexually abused by a man sometime in their lives and "gender-based violence accounts for as much death and ill-health in women aged 15-44 years as cancer and is a greater cause of ill-health than malaria and traffic accidents combined. In Nigeria, women now have a claim to their property or husband's property under the Married Women Property Act". Despite the laws placed to curtail violence against women, girls and women continue to face and experience violence all over the world.<sup>34</sup>

#### **1.4. Nature and Scope of Gender-Based Violence**

Violence against women and girls is one of the most prevalent human rights violations in the world. It knows no social, economic or national boundaries. Women and girls are being discriminated against both in the public and private spheres. In 1979, the UN General Assembly adopted CEDAW, Article I of the Convention defines discrimination as;

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose or effect of impairing or nullifying the recognition of enjoyment or exercise by women irrespective of their marital status, on a basis of equality between men and women, of human rights freedoms in the political, social cultural, civil or any other field.<sup>35</sup>

The same Article I clearly provides for the right to be free from all forms of discrimination in pari-materia with section 42 of the 1999 constitution which prohibits discrimination based on sex. CEDAW goes further to say that government must fulfill its obligation to repeal and abolish all laws which discriminate against women. Several Statutes, Laws and Decrees still discriminate against women. For instance, in Nigeria, the language of our constitution which

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<sup>34</sup> Ibid, 12

<sup>35</sup> "Gender-Based Violence" <https://www.UNFPA.org/gender-based-violence>, accessed February 15<sup>th</sup>, 2024.

uses “HE” exclude more than half of the population of which are women from its provisions. The Marriage and Residency Laws, Criminal Law, Revenue Laws, Police and Civil Service Staff Regulations. Similarly, in many cases customary laws and practices discriminate against women by not permitting equal inheritance rights or rights within marriage.

Worldwide an estimated one in three women will experience physical or sexual abuse in her life time Gender-based violence undermines the health, dignity, security, and autonomy of its victims, yet it remains shrouded in a culture of silence. Victims of violence can suffer sexual unwanted pregnancies, unsafe abortions, traumatic fistula, sexually transmitted infections including HIV and death.<sup>36</sup>

According to WHO data, one in every three women has been beaten, coerced into sex or abused in some other ways most often by someone she knows. One in five women is sexually abused as a child according to 2014 Report. Women in positions of abject dependence on male authorities are particularly subject to unwanted sexual coercion. Rape in time of war is also common. It has been extensively documented in recent civil conflicts and has been systematically known as an instrument of torture or ethnic domination.

Most recent and on-going conflicts are civil wars that make the entire country a war zone and cause a major increase in the number of civilian casualties. These wars are characterized by crimes and human rights abuses such as sexual violence against women including rape and enslavement. The right to education is often lost in countries at war. Women experience violence in multiple forms in various societies, violence is experienced both in the public and private sphere. In Nigeria, from birth, the girl child is made to chart a different course from that of her brother(s). She's brought up to recognize her roles as helper to the male which in

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<sup>36</sup> Ibid 13



some feminist reports have been described as secondary and subservient. She's trained from childhood to keep the home, to be a good wife and a good mother to her children.<sup>37</sup>

Also, in Nigeria, where early marriage is practiced, it deprives girls of education and also limits their opportunities to develop skills that would give them social and economic independence, early sexual activity and child bearing can cause severe health problems. Customary marriages are not registered leaving women unable to claim property rights, inheritance or support. Violence which is always initiated by men against women and children, is high and occurs in all societies both developed and underdeveloped. In Recommendation (REC) 2002(5) of The Committee On The Protection Of Women Against Violence, The Council Of Europe stipulated that violence against women includes but is not limited to the following.<sup>38</sup> UNICEF confirmed that violence against women is high and that while 16 million women have died of violence in Nigeria, the figure for the world is 60 million. In Africa and in particular Nigeria, the story is the same. The UN (1995) showed that as high as 60% in developing countries experience violence. In Nigeria, the 1999 report of Federal Ministry of Health states that as a result of violent act of female genital mutilation, there are 400.000 cases of vesico vaginal fistula (vvi), up to 10,000 cases annually.<sup>39</sup>

Despite the high cost of violence against women, social institutions in almost every society in the world. legitimize, conceal and deny abuse. The same acts that would be punished if directed at an employee, a neighbor or an acquaintance and go unchallenged when men directed them at women especially within the family. Gender-based violence among sex

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<sup>37</sup> Josephine Ngozi Mokwunyci, African Womanism In African Culture: A Strategy For Survival In Nigeria. *UNIBEN Journal of Humanities*, 2(1)(2014)

<sup>38</sup> John Ademola Yakubu, *The Abused and the Society*, 4.

<sup>39</sup> Ibid

workers undermines the health, dignity, security and autonomy of its victims, yet it remains shrouded in culture of silence. Victims of violence can suffer sexual and reproductive health consequences, including forced and unwanted pregnancies; unsafe abortions, STI including HIV and even death.<sup>40</sup>

Gender-based violence includes a host of harmful behaviors that are directed at women and girls because of their sex, including wife abuse, sexual assault, dowry related murder, marital rape, selective malnourishment of female children, forced prostitution, female genital mutilation and sexual abuse of female children.

Gender-based violence causes numerous effect on the victim. Gender-based violence victim can suffers psychological, emotional, physical, health consequences, this affects the development of a nation in all aspects of life. Poverty, lack of education and lack of health care increases both vulnerability and the likelihood of exposure to Gender-based violence. Low-economic status (income, low level of education have been associated as risks factors for both experiencing and perpetuating intimate partner violence and men having multiple partners.<sup>41</sup>

Women continue to face discrimination in employment practices and in access to educational facilities amongst other areas. Even where there are laws prohibiting discrimination, there may be no legal process or remedy or there may be inadequate to protect women against discrimination. Women may have little or no knowledge of their legal rights and may also be able to seek legal redress even where remedies exist. A woman may be reluctant to report

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<sup>40</sup> GBV In Nigeria, A qualitative study on violence against female workers conducted in the FCT. Cross River and Lagos state, <http://www.Gender-based-violence-study-Report,SHIPS for-MARPS,pdf.com>, accessed March 14<sup>th</sup> 2024.

<sup>41</sup> Gender-based violence, Causes and Effects, <http://www.UK.essays.com>, accessed March 14<sup>th</sup> , 2024.

domestic Violence, if there's no protection from further instances. She may also fear the costs of legal assistance. Access to legal institutions and may be practically impossible in rural areas.

In many countries, there are still no constitutional guarantees against discrimination on the basis of sex and some institutions make the guarantees of non-discrimination subject to customary and traditional law. In the Commonwealth countries where the legal system derives from the "Westminster International Treaties are not self- executing and may not be incorporated into national law. Furthermore, in many countries there are no anti-discrimination legislation that would give women legal address against sex based discrimination perpetuated by state or non-state actors.<sup>42</sup>

According to former President Of South Africa, Nelson Mandela of blessed memory "For every woman and girl violently attacked, we reduce our humanity. For every forced into unprotected sex because men demand this, we destroy dignity and pride. For every woman who has to sell her life for sex, we condemn to lifetime in prison. For every woman we remain silent, we conspire against our women. For every woman infected with HIV, we destroy a generation."<sup>43</sup>

## **1.5 Conclusion**

Women and girls in Nigeria, Africa and all over the world continue to suffer violence and discrimination in both public and private spheres. There has been a culture of silence on the part of the government this leads to various psychological, emotional and health effects on the

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<sup>42</sup> Christian Chinkin, Gender Mainstreaming in Legal and Constitutional Affairs, 4.

<sup>43</sup> Lagos, NFPA fight Gender-based violence, <https://www.pmnnewsNigeria.com/2012/09/28/agos-unfpa-fight-gender-based-violence.>, accessed March 16<sup>th</sup>, 2024.

victim. In the words of "Nelson Mandela" of blessed memory "For every woman we remain silent, we conspire against our women".

## **CHAPTER TWO**

### **FORMS CAUSES AND TYPES OF GENDER-BASED VIOLENCE**

#### **2.1 Introduction**

Violence against women can come in various forms whether sexual violence, physical, emotional, psychological or even financial abuse and these forms are orchestrated by so many factors. Violence against women is influenced by some factors effects and consequences on the victims and perpetrators of the act. This chapter will critically examine the forms of gender-based violence, the causes and effects of gender-based violence.

#### **2.2 Forms or Types of Gender-Based Violence**

There are different major types of gender-based violence which are sub-divided into other forms of gender-based violence.

##### **2.2.1 Physical Violence**

Physical violence is almost always accompanied by sexual abuse, which women consider to be damaging, humiliating and painful, since it's targeted at their self-worth and parental ability. Physical violence includes assault and battery.<sup>44</sup> Any necessary or unwanted physical contact, which is usually violent hurtful and usually results in bodily harm, discomfort or injury. These include slapping, kicking, pushing, punching, choking and strangling.<sup>45</sup> The physical assault may injuries.<sup>46</sup> Physical violence can be sub-divided into various forms;

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<sup>44</sup> Akpoghne, T.U, Brenda S.M, Gender Bused Violence: The Dangers and Effects of Harmful and Unhealthy Practices Against Women's Rights, Journal of Private and Comparative law, Ahmadu Bello University. Vol. 4& S5,(2010-20),140.

<sup>45</sup> Gender-based Violence, <https://www.m.guardian.ng.2017>. accessed February 17<sup>th</sup>, 2024

<sup>46</sup> Gender-based violence, <https://www.health.gender.violence>. accessed February 17<sup>th</sup>, 2024

- a. Domestic Violence
- b. Female Genital Mutilation
- c. Wife Battering or Abuse
- d. Breast Ironing
- e. Honor Killings
- f. Human Trafficking
- g. Dowry Violence
- h. Ritual Killing
- i. Acid Bathe
- j. False Imprisonment
- k. Forced feeding
- l. Forced Marriage
- m. Early marriage

#### **a. Domestic Violence**

It is the intentional and persistent abuse of anyone in the home in a way that causes pain, distress and injury.<sup>47</sup> Domestic violence is also known as domestic abuse. spousal abuse or intimate partner violence, it can be defined as a pattern of abusive behaviours by a partner in marriage or an intimate relationship.<sup>48</sup>

Domestic violence includes any of the following acts committed by a person against his spouse:

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<sup>47</sup> Freeman, M. P. *Veerman, Limits of Children's Rights* (London: Martinus Nishofr Publishers, 1992) 30.

<sup>48</sup> Oldele. Grace A, Domestic Violence Against Women: Prevalence And Control In Nigeria, *International Journal Of Law And Contemporary Studies*, 5,no. 1&2,(2010).2-3.

- i. willfully or knowingly placing or attempting to place the spouse in fear or physical injury to himself or to one of his children.
- ii. Willfully causing or attempting to cause physical injury.
- iii. Intimidation, harassment, maltreatment, brutality or cruelty.
- iv. Compelling the spouse by force or threat to engage in any conduct or act, sexual or otherwise, from which the spouse has a right to abstain.
- v. Confining or detaining the spouse against his will.
- vi. Any harm or threat to cause harm to a child of the spouse.
- vii. Causing or attempting to cause damage to the spouse's property.
- viii. Threat to commit any act mentioned in paragraph i-viii.<sup>49</sup>

Domestic violence is not an isolated individual event but rather a pattern of perpetrator behavior used against a survivor. The pattern consists of a variety of abusive acts, occurring in multiple episodes over the course of the relationship. Some episodes consists of a sustained attack with one tactic repeated many times. e.g. punching combined with other various tactics (such as name calling, threats or attacks against property.<sup>50</sup> This has been described by Carol Arinze Umobi as violence perpetuated and occasioned at home by known and identified perpetrators, partners, both intimate or peripheral, boyfriends, current and retired, husbands, former partners or former husbands, fathers, step-fathers, fathers-in-law, brother of both full and half blood or sons and other relatives.<sup>51</sup>

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<sup>49</sup> Ibid

<sup>50</sup> Gender-based violence, [www.health.gender.violence.com](http://www.health.gender.violence.com), accessed February 16<sup>th</sup>, 2024.

<sup>51</sup> S.O. Idehen: Domestic Violence Against Women In Nigeria: A Critique, *Nassarawa State University Law Journal*, 4.(I)(2011), 34.

Nigeria, domestic violence is seen as a norm over the years, it has been used as a manifestation of the unequal power relations between the male and female which has led to the domination of the woman. This has hindered the full advancement of the woman in all spheres of life. Domestic violence is the most common form of violence against women. Worldwide, an intimate partner kills 40-70% of all female murder victims. The men claim beating is a form of correction and discipline. It's a tool of power and control.<sup>52</sup>

Domestic violence is one of the worst gender-based violence as it has severe consequences in the women takes different form and is usually carried out by familiar members of the home. The Nigerian woman in the home can best be described as the silent voice who bears the heavy burden of being violated in the home without any hope of being freed until it becomes too late. Reports made by brutalized women to the police often end up being trivialized and more than often the women are told to return home to beg their partners for the purposes of an amicable settlement as such issues are always termed a family matter.<sup>53</sup>

Generally, violence against women by their male partners is widely condoned by many African societies. In some African societies, traditional culture permits a man to discipline his wife by physical means. In fact, in some communities, wife beating is considered a sign of love, which women have socialized to accept and even at times encourage. In this context, the likelihood of women negotiating condom use would be very low. In many cases, the threat of

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<sup>52</sup> Ibid, 21

<sup>53</sup> Idehen, Domestic Violence Against Women in Nigeria, 34.



abandonment or relationships and thereby exacerbate their vulnerability to HIV/AIDS infection.<sup>54</sup>

In Nigeria, cases of domestic violence is predominant. It is almost like an everyday routine. Most cases of domestic violence are underreported because the victims (women) are ashamed of what the society would think and say about them and they continue to suffer in silence. Most times news of domestic violence is heard only when death occurs as a result of violence and constant beating by the man.

According to an online news media, it reported the horrific story of one Pregnant Nigerian woman, Chínyere who was beaten to death by her husband in their home. She endured the endless beating till it finally led to her untimely death.<sup>55</sup> Just recently, it was reported that a man killed his girlfriend and stuffed her body in a bucket in Lagos State.<sup>56</sup> Also, just in July, 2018, ex-deputy governor's daughter was allegedly used for money rituals by boyfriend. The late Khaiidat was found dead under the bed of her Abuja-based boy friend, Adeyemi in Ondo State after she was allegedly used for money rituals.<sup>57</sup>

Despite violence has taken an unprecedented dimension that has led to severe harm and damage to the women folk. This heinous crime has unfortunately be left unattended to in Nigeria and has led many women to their death. It's thus pertinent at this stage to address this

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<sup>54</sup> F. Shu-Acquaye, Convention On The Elimination of all Forms Discrimination Against Women And the African Woman: Progress In the Fight Against HIV/AIDS in Southern Africa, *Botswana Law Journal*, 8(8)(2008).

<sup>55</sup> Sundiatapost, 2017, <https://sundiatapost.com/2017/08/14/shocking-story-of-domestic-violence-pregnant-woman-who-died-after-brutal-beatin-by-her-husband-buried-with-her-baby/?amp>, accessed February 18<sup>th</sup>, 2025.

<sup>56</sup> information Nigeria/local news, May 22, 2018, <https://www.informationng.com/201805/loved-up-photo-of-man-and-his-girlfriend-before-he-allegedly-killed-her-for-money-ritual-in-Lagos.html>, accessed February 15<sup>th</sup>, 2024.

<sup>57</sup> Oluwaseun Akingboye. Ex-deputy Governor's daughter allegedly used for money rituals by boyfriend, <https://m.guardian.ng/newslex-deputy-governors-daughter-found-dead-allegedly-used-for-money-rituals-by-boyfriend>, accessed February 18<sup>th</sup>, 2024

vice squarely and find ways and means of abolishing it completely from Nigeria so that the constitutional provisions of the right to life and human dignity can be the lot of women. International conventions have provided for women while national laws can be said to be inadequate in this area.

Customary laws do not help matters as it's stemmed in patriarchy values which lay emphasis on male authority and supremacy as women are seen as chattels to be used and broken. It therefore become necessary to address these issues so as to provide suggestions towards reforming our laws as well as the mindset of the populace and also get government to aid the total eradication of this menace.<sup>58</sup>

#### **b. Female Genital Mutilation**

It is a broad term applied to a range of practices involving the removal of all or parts of the clitoris and other external genitalia. In its most severe form it's known as "infibulation" on which both clitoris and both labia are removed and the two sides of the vulva are sewn together leaving only a small opening to allow urine and menstruation. Usually, these mutilations are executed with blunt and unsterilized instruments in very unhygienic circumstances.<sup>59</sup>

The practice of female circumcision which is now widely known as Female genital Mutilation is one of the most serious form of violence against women primarily in Africa. It has been defined by the World Health Organisation (WHO) AS "all procedures which involves partial or total removal of external female genital and procedures which involve partial or total

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<sup>58</sup> Idehen, Domestic Violence Against Women in Nigeria, 34,

<sup>59</sup> Hadiza Isa Bazza, Domestic Violence and Women's Rights in Nigeria, The Need For Profession Counselling, *International Journal of law*, 3(1& 2), 51.

removal of the external female genital or injury to the genital organs, whether for cultural or any other non-therapeutic reasons.” Female Genital Mutilation symbolizes the subjugation of women and control of women sexuality.<sup>60</sup> The mystical reasons behind the harmful practice are that it prevents promiscuity in women, it controls female sexuality and to preserve the virginity of young girls until marriage.

However, studies have shown that there's no truth in these myths, rather a gross violation of Women's Human Right to Dignity of Persons as contained in Section 34 of the 1999 constitution.<sup>61</sup> According to Nahid Toubia's Female Genital Mutilation (NTFGM), a call for global action (1993), there are no definite studies that have been conducted on the prevalence of FGM in Africa and Middle East. They maintained that based on Hosken's Report 1992, there are estimated figures of 79.97%, 180 million of mutilated females in the world today. Hosken maintained that there are more than 140 million of mutilated women who have undergone some form of female genital mutilation in the world.<sup>62</sup> This harmful practice remains high in some countries of the world including Nigeria. This practice is deeply rooted in traditional understandings of purity and chastity, yet it can cause irreparable pain and health problems.<sup>63</sup>

In a vast majority of cases, it's also carried out at a very young age when there's no possibility of the individual consent of the girl child and this is why it's considered to be a fundamental violation of human right. Female Genital Mutilation in any form is the greatest injustice and cruelty meted out to women by the society and the damage irreparable. Section 33 and 34(1)

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<sup>60</sup> Akpoghomc, Dangers and Effects of Harmful Practices Against Women's Rights, 30.

<sup>61</sup> Hadiza, *Domestic Violence and Women's Right In Nigeria*, 38.

<sup>62</sup> Ibid

<sup>63</sup> Various Forms of Violence Against Women, <http://www.m.guardian.com/various-forms-of-violence-against-women>, accessed February 15, 2024.

Federal Republic C Constitution of Nigeria, Cap C3, LFN 2004, falls directly under chapter four clearly headed "Fundamental Rights" in which certain rights are guaranteed to all citizens of Nigeria. .Section 33(2) states the situation on which a person shall not be regarded as having being deprived of his life, these situations are for the defense of any person from unlawful violence, for the defense of property, in order to effect a lawful arrest or to prevent the escape of the person lawfully detained. These exceptions did not include the offence of being a woman and consequently subject to Female Genital Mutilation.

According to the WHO (1986). the practice of FGM is still predominant in societies with high level of illiteracy, poverty, hunger and low status of women especially in Africa, Asia and Middle East and it constitutes a serious a serious threat to public health considering the millions of women and children affected around the world. It has been recognized as a form of torture and violence against women and children and an infringement on the physical health and psychosexual integrity of women.

Those practicing it contend that female circumcision serves to reduce sexual desire in female and maintain chastity and virginity before marriage. Other reasons for FGM include to prepare the female for marriage and childbirth to insure cleanliness; to prevent labia hypertrophy and improve fertility and to fulfill religious rites for example according to Oke the act of circumcising was widely spread among the human species and in some societies especially the Jews and the Muslims, it was a religious rite of purification and initiation However, the practice of female circumcision is still very common or prevalent in many parts of the world today.<sup>64</sup>

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<sup>64</sup> Ibid 25

In Nigeria, our different cultures consider a woman's natural destiny directly to be marriage and subsequent procreation. Many societies in all regions of the world continue to accept the exercise female sexuality only for the purpose of reproduction and within the context of marriage.<sup>65</sup> More assessment on FGM will be discussed in chapter four of this research paper.

#### **e. Wife Battering/Abuse**

It is a worldwide form of violence against women. It transcends social, economic, religious and cultural groups. It often goes unnoticed and undocumented partly due to its nature because women used to feel ashamed to tell people how they are maltreated in their matrimonial homes. Hence they are silent about the abuse and it's an important cause of morbidity and mortality among women. Studies identify a consistent list of events that are said to "trigger" wife abuse. These include not obeying her husband, talking back, not having food ready on time, failing to care adequately for the children or home, questioning him about money or girlfriend, going somewhere without his permission, refusing him sex, drunkenness and expressing suspicions of infidelity. All these constitute transgression of gender norms. Gelles reported that abuse frequently occurs when the woman provokes the man through verbal attacks, name calling and physical attack and these make the average woman to remain in the violent situations for years in a chronic state of fear. She disentitles herself to the pain and accepts the abuse as part of life. Her helplessness and hopelessness leads to severe psychological depression and paralysis.<sup>66</sup>

There has been no systematic research on wife battering in Nigeria, but circumstantial evidence shows that it's real. Records indeed have it that violence within the family in Nigeria

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<sup>65</sup> Akpoghome, *Domestic Violence Against Women in Nigeria*, 30.

<sup>66</sup> T.O. Tejumola, *Nature and Health Consequences; The Abused and the Society*, (Royal People Nigeria Ltd., 2007), 59-60

has reached alarming dimensions. Reports of beating, torture, acid attacks and killing of women in the family or relationships are regular features in the media and documents report. The pages of most Nigeria newspapers are replete with instances of women who were beaten by their husband.<sup>67</sup> The NTA (Nigeria Television Authority) has granted many women interview, the National Orthopaedia Hospital Igbobi, Lagos as well as University Teaching Hospital, LUTH, have reported such cases too. Several other instances from public testimonies before civil resources development and documentation centre tribunal in Enugu and Abuja since 1996 to date revealed more harrowing cases of wife battering in Nigeria.<sup>68</sup>

Wife battering is an everyday occurrence in Nigeria and in other part of the world. Nigerian government has a lot to do in curtailing wife battering and bringing the perpetrators to book and attaining justice for battered women through effective laws. Case of wife battering will be examined in chapter four of this book.

#### **d. Breast Ironing**

This rare practice is found in some rare isolated African societies, it entails suppressing the growth of breasts in young girls with different hot (Grinding Stone, Pestle, Kerosene, Breast Band etc) objects.<sup>69</sup> This form of violence is practiced mainly in West and Central Africa- Benin, Chad, Ivory Coast, Guinea- Bissau, Guinea-Conakry, Kenya, Togo and Zimbabwe. Mothers or female relatives usually use hard or heated objects including Stones, Spatulas and Pestles to flatten the breasts. The heat melts the fats in the breasts and flattens them with time.

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<sup>67</sup> Hadiza *Domestic Violence and Women's Right in Nigeria*, 38.

<sup>68</sup> Ibid

<sup>69</sup> Griffiths, *International Human Rights, Gender And Culture*, 19.

The 'good' motive behind this cruel practice was to protect girls from unwanted sexual advances, early pregnancies and early marriages.<sup>70</sup>

In Doukala, one of the most largest and populous city in Cameroon, men in this area of the country strongly believe that teenage girls as low as 9years whose breasts are developing are ripe for sex. In reaction, a mother who cares about her daughter and monitors her daughter's breast growth pounds the breast with hot object such as Stone, Hammer, an Umbilical belt or a Pestle so it stops developing. This way, men will find her attractive and she can pursue her education. True to their plans, pregnancy rate has reduced since 1996. Made popular in the last 50 years, this practice was initially introduced because it was assumed to help with a woman's breast milk. At present. 5.661 girls have undergone this process. This problem has been brought to light in other countries but remains an open secret in places where it's practiced. Due to the global factor, breast ironing has extended to the U.K.<sup>71</sup>

About a thousand women in the UK are reported in 2026 to have been subjected to breast ironing. The victims also lived in West African Communities in London, Birmingham, Manchester, Luton, mostly had their breasts ironed by their mothers, reports, UK Mirror.<sup>72</sup> The painful process often subjects girls to emotional trauma and tissue damage which can have long-term effects on them. Some women end up having one breast bigger than the other. There's no known law against breast ironing despite efforts of survivors and right agencies to get the government to ban the practice. No one has been arrested and convicted in Cameroon

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<sup>70</sup> Ismail Akwei, Breast Ironing Custom, <https://face2faceafrica.com/article/after-many-years-of-harm-african-girls-still-face-cruel-breast-ironing-custom>, 2017.accessed February 15<sup>th</sup>, 2024.

<sup>71</sup> Practice where teen girls undergo breast Ironing, <https://m.guardian.ng/life/cameroon-practice-where-teen-girls-undergo-breast-ironing>, accessed February, 15<sup>th</sup>, 2024.

<sup>72</sup> Ibid

for breast ironing despite the over four million victims. Two arrests were made in London and Birmingham but no one was charged.

The British Parliament defined breast ironing as child abuse and called for the practice to be made a criminal offence. No effort has been made by Cameroon to curb the practice whose motive is ineffective as flattened breast has not reduced the rate of teenage pregnancies and rape incidents. 38% of children in Cameroon are married by their 18 birthday, more than quarter of adolescent girls are mothers and 20% of them drop out of school after getting pregnant, UNICEF reports.<sup>73</sup> Breast Ironing is a form of violence against women, although it's carried out by women, it's done in order to prepare them for marriage which places women in a subordinate position to men and makes them inferior owing to the fact that women are supposed to go through such torture just to please their men. Although, this practice is not common in Nigeria, it should be abolished in Countries like Cameroon because it's a threat to human dignity.

#### **e. Honor Killings**

Honor killings is a common form of violence against women in certain parts of the world. In honor killings, women and girls are killed by family members usually husbands, fathers, uncles, brothers because the women are believed to have brought shame or dishonor upon the family. These killings are traditional practices believed to have originated/ from tribal customs where an allegation against a woman can be enough to defile its family reputation. Women are killed for reasons such as refusing to enter an arranged marriage, being in a relationship that is disapproved by their relatives. attempting to leave a marriage, having sex outside marriage, becoming the victim of rape. dressing in ways that are deemed inappropriate. Honor killings

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<sup>73</sup> Practice Where Teen Girls Undergo Breast Ironing, 44.



are common in countries such as Afghanistan. Egypt, Iraq. Jordan. Lebanon. Libya. Morocco, Pakistan, Saudi Arabia. Syria. Turkey. Yemen. Honor killings also occur in immigrant communities in Europe, the United States and Canada. Although honor killings are most often associated with the Middle East and South Asia. it also occurs in India in the northern regions.

#### **f. Human Trafficking/Trafficking**

Human trafficking is another form of violence which has affected mostly women. Globally, human trafficking is among the fastest growing criminal activity. Most women involved are taken into forced prostitution (Sambre,2004). This commercial sex trafficking is induced by force, fraud and coercion. Most women involved here are those who have not even attained the age of 18years. In most cases such girls are subjected to involuntary servitude debt bondage or slavery (USAID),2001<sup>74</sup> Trafficking is widely recognized as a global scourge. It affects both children and adults alike, with women and children being the most vulnerable, as one of the most primary purpose of trafficking is commercial sexual exploitation. However, people are also trafficked for various other purposes such as exploitative labor, removal of organs and slavery.<sup>75</sup> In relation to Southern African region, the International Organization for Migration (IOM) has produced a report detailing some of the trafficking trends that prevail (Martens et.al.2003,13). The IOM report highlights nine distinct trafficking operations that have been identified in the Southern African region, namely, trafficking of women from refugee-producing countries to South Africa, trafficking of children from Lesotho to towns on the Eastern free state of South Africa, trafficking of women and girls from Mozambique to

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<sup>74</sup> Hadiza. Domestic Violence and Women's Rights in Nigeria, 38.

<sup>75</sup> Julia Sloth Nielsen, "Children's Right in Africa: A Legal Perspective, Trafficking of Children In Africa: An Overview of Research, International Obligations And Legislative Provisions, Ashgate Publishing Ltd, (2008),238-242.

Gauteng and Kwa Zulu-Natal; Trafficking of Women from China to South Africa and trafficking of Eastern European women to South Africa.<sup>76</sup>

A recent study reveals that trafficking in persons (TIP) occurs both within Senegalese borders and internationally to, through and from Senegal. The main victims of human trafficking in Senegal are women and children who are trafficked for prostitution, sex tourism, domestic labor or organized begging.<sup>77</sup> The report states that a minimum of about 142,000 children in Senegal have been trafficked for exploitative domestic labor and force begging. It is on the record that between March 1999 and April 2002, about 1,126 trafficked out of the country were deported from different countries. This act violates the constitutional guarantee rights of personal liberty, right to peaceful assembly and association, freedom of movement as it is contained in Section 35, 40 and 41 of the 1999 constitution of the federal republic of Nigeria.<sup>78</sup> The UN protocol on trafficking defines trafficking in humans as “all acts related to recruitment, transport, sale or purchase of individuals through force, fraud, other coercive means for the purpose of exploitation.”<sup>79</sup> Nigeria is a well known source country for international human trafficking. Many hundreds of young Nigerian girls are trafficked to Europe and Asia every year, where they are put to work in brothels and strip clubs or sent out to prostitute themselves in the street. Internal trafficking also occurs within Nigeria's borders. Young girls are recruited from poor families in rural areas with a promise of work or

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<sup>76</sup> Julia Sloth, *Child's Right in Africa*, 47.

<sup>77</sup> Ibid

<sup>78</sup> Section 35 LFN, 2004: Right to Personal Liberty, it provided thus; Every Person shall be entitled to his personal liberty and no person shall be deprived of such liberty, Section 40 LFN 1990 provided that; Every person shall be entitled to assemble freely and associate with other persons or belong to any political party, trade union or any other association for the protection of his interests, Section 40, LFN 1990, Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom.

<sup>79</sup> Human Trafficking in Nigeria, <https://www.W.caritasnigeria.org/en/human-trafficking-in-Nigeria>, accessed February 16<sup>th</sup>, 2024.

education in the city and are then sold into domestic servitude or forced work in farms or factories and mines with little or no pay. These victims of trafficking often have to endure physical and psychological abuse and are under continuous threats of physical harm or deportation.<sup>80</sup>

In *Omokuwajo v FRN*<sup>81</sup> the accused was arrested at Yauri, Kebbi state by officers of the Nigerian Immigration Service Anti-Human trafficking Unit and handed over to National Agency For Prohibition Of Traffic In Persons And Other Related Matters(NAPTIP). She was therefore arraigned on a six count charge for offences touching on human trafficking contrary to Section 15(a) and 16 of the Trafficking in Persons Prohibition Law Enforcement and Administration Act 2003 as amended. The government passed the Trafficking In Persons Prohibition and Administration Act and established the National Agency for The Prohibition of Trafficking In Persons and other Related matters (NAPTIP) IN 2003. Even then, trafficking in Nigeria is still prevalent. Proper laws should be enforced to eradicate it totally. Regretfully, Nigeria is a source, sit and destination country for trafficked women and children. Prostitution, domestic and exploitative labor continues to fuel this modern day slavery.<sup>82</sup> Just recently, operatives of National Agency for the Prohibition of Trafficking in Persons arrested two police officers and three others believed to have been involved in attempts to traffic 10 children to Moscow/Russia. They are believed to have been using the Russia Football competition as cover for travel.<sup>83</sup> Nigeria currently ranks 23 on the global slavery index of 167

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<sup>80</sup> *Human Trafficking in Nigeria*, <https://www.carilas.com>, accessed February 16<sup>th</sup>, 2024.

<sup>81</sup> (2013) 9 NWLR 1359, 300, 332.

<sup>82</sup> *Human Trafficking in Nigeria*, <https://www.unicef.org>, accessed February 16<sup>th</sup>, 2024.

<sup>83</sup> *Human Trafficking In Nigeria*, <https://www.Allafrica.com/stories/201806120238org>, accessed February, 2024

countries with the highest number of slaves. Human trafficking is third in the ignoble hierarchy of the commonly occurring crimes in Nigeria according to UNESCO.<sup>84</sup>

#### **g. Dowry Violence**

The custom of dowry which is common in South Asia especially in India, is the trigger of many forms of violence against women. Bride burning is a form of violence against women in which a bride is killed at home by her husband or husband's family due to the dissatisfaction over the dowry provided by her family. Dowry death refers to the phenomenon of women and girls being killed or committing suicide due to disputes regarding dowry. Dowry violence is common in India, Pakistan, Bangladesh and Nepal. In India, in 2011 alone, the National Crime Records Bureau reported 8.618 dowry deaths while unofficial figures suggest the number to be at least three times higher.

#### **h. Ritual Killing**

Killing women for rituals has become a common sight in Nigeria and Africa as a whole. It's a violent assault on womanhood that ultimately leads to death. Their corpses are littered and some of them are nursing mothers, depicting the extent some people can go in savagery. The demands for special parts of a woman's body for money making has made the women folk vulnerable to the sharp cutlasses of brutal murderers who value materialism more than life. Perpetrators of this crime are hardly caught due to Security lapses in the country. A vigorous and sustained awareness campaign should therefore be mounted both in the cities and the rural

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<sup>84</sup> Human Trafficking In Nigeria, [www.premiumtimesng.com/newshmore-news/259942/Saraki](http://www.premiumtimesng.com/newshmore-news/259942/Saraki) laments high rate of human trafficking in Nigeria. accessed February 16<sup>th</sup>, 2024.

areas against this heinous crime against humanity. Young girls should be careful who they go out with and where they are being taken to.<sup>85</sup>

#### **i. Acid Bath**

Another type of physical violence is the use of acids which are often used on women. This is carried out with an evil motive of causing permanent disfigurement. The acids are purchased on the permanent disfigurement. The acids are purchased on the streets and are in the form of sulphureted acid, hydrochloric acid and phosphoric acid. These acids are corrosive chemicals which are routinely used in laboratories and factories. Acid baths in Nigeria gained popularity in 1999 when a former beauty queen was disfigured by her boyfriend for refusing to renew their relationship.

It has been noted that there are no age limits to the victims as both old and young Women and girls are victims. Many cases of acid bath are as a result of the refusal of the woman to renew or at times submit to a relationship with the perpetrator. The offence is a bailable one and has probably not deterred perpetrators from carrying out acid baths on their female partners when they refuse their advances. Many battered women are usually passive and do not leave the abusive and battering relationships, only few of the women fight back.<sup>86</sup>

#### **j. False Imprisonment**

This is another act of violence against women although rooted in the law of tort for which damages can be claimed against the defendant. What makes this tort an act of violence against women is the practice of unlawful arrest and detention of a married woman for the purpose of

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<sup>85</sup> Adanna Chinedu Madu, *Women Empowerment In Relation To National Development and Human Rights*, (Nigeria, SNAAP Press Nigeria ltd, 2010),74.

<sup>86</sup> Idehen, *Violence Against Women In Nigeria*, 34.

getting at her fleeing husband who is suspected of committing an offence. In most cases, the woman on arrival at the police station is forcefully pushed cases into the police cell. Her only connection with the alleged offence committed by her husband is that she's the suspect's wife. She was not arrested because she was an accomplice or an accessory after or before the fact or that she conspired with her husband to commit the alleged offence. In some cases the innocent woman is harassed and beaten to disclose the whereabouts of her husband which she might be ignorant of.<sup>87</sup>

#### **k. Forced Feeding**

In some countries notably Mauritania, young girls are forcibly fattened to prepare them for marriage because obesity is seen as desirable. This practice of forced feeding is also known as “eblough orgavage”. The practice goes back to the 11<sup>th</sup> century and has been reported to have made a significant comeback after a military junta took over the country in 2008.

#### **I. Forced Marriage**

A forced marriage is a marriage in which one or both of the parties is married against their will. Forced marriages are common in South Asia, the Middle East and Africa. The customs of bride price and dowry that exist in many parts of the world, contribute to this practice. A forced marriage is also often as a result of dispute between families, where the dispute is resolved by giving a female from one family to the other. The custom of bride kidnapping continue to exist in some Central Asian Countries such as Kyrgyzstan, Uzbekistan and the Caucasus or parts of Africa especially Ethiopia. A girl/woman is abducted by the would be

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<sup>87</sup> Adanna Chincdu, Women Empowerment in Relation to National Development and Human Rights 52.

groom, who is often helped by his friends. The victim is often raped by the would be groom after which he may try to negotiate a bride price.

Forced marriage is marrying out a girl against her wish, it could also be referred to as induced marriage. In some cases the girl is withdrawn from school and even denied access to education. Cases abound where parents have forced their grown up daughters into marriages that were against their wishes either due to cultural, social, economic or political reasons with the village elders to legitimize the marriage.<sup>88</sup> Forced marriage also occurred in the book haram abduction of Chibok girls. These Chibok girls were kidnapped after which they were raped and married off to strangers by the Boko haram members. The marriage was obviously against the wish and consent of these innocent chibok girls. The government has a role to play in combating issues of forced marriage as this violates the fundamental right of personal Liberty.

#### **m. Early Marriage**

Early marriage is the act of giving out a female child for marriage at a very tender age, mostly when the girl knows nothing about her right.<sup>89</sup> Early marriage refers to a forced marriage of a girl under the age of 18years. Girls as young as six or seven years have been victims.<sup>90</sup> The Oxford dictionary describes a child as a young human being below the age of majority. In addition, section 23 of the Constitution of the Federal Republic of Nigeria<sup>91</sup> says: a person under the age of 18years is incapable of contracting a valid marriage. If such marriage takes

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<sup>88</sup> Oladele (Grace, Domestic Violence Against Women in Nigeria, 33.

<sup>89</sup> Hadiza Isa Bazza, "Domestic Violence and Women's Rights In Nigeria, The Need For Professional Counselling," *International Journal of Law*, (2008), 3,no 1 & 2, 38.

<sup>90</sup> Guardian Woman, Barly Marriage In Nigeria, <https://www.m.guardian.or.2017>, accessed February 16<sup>th</sup>, 2024.

<sup>91</sup> Section 23 of the 1999 Constitution, LFN 2004.

place it should be declared null and void and of no effect. Contradictorily, Section 29(4b) of the constitution<sup>92</sup> technically approves child marriage. It says; “This is by its provision that any woman who is married shall be deemed to be of full age.” In the words of the United Nations Children's Fund, marriage before the age of 18 is a fundamental violation of human rights. Child marriage decreases a girl's development by resulting in early pregnancy and social isolation.

It interrupts her education, limiting her opportunities for career and vocational advancement, placing her at increased risk of domestic violence and exposing her to life threatening illnesses. Some of the key ailments child brides are exposed to include Vesico-vaginal fistula(VVP), Anaemia, high blood pressure, Premature birth, Malnutrition, STDS and Postpartum depression and even Suicide.<sup>93</sup>

Medically, child marriage is dangerous to the health of the female. Their reproductive organs are not fully developed for pregnancy and childbirth, Contrary to arguments in some circles that once a girl starts menstruating, she's mature enough for marriage. According to statistics, girls under 15years are five times more likely to die during child birth than women in their 20s. They are also more prone to pregnancy and birth related injuries like VVE. As is mostly the case from Nigeria to Mali, Cameroon, Bangladesh, Sri Lanka and India, their husbands abandon them due to the stench that results from uncontrolled discharge of urine and

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<sup>92</sup> Section 29(46) of the 1999 Constitution, LFN 2004.

<sup>93</sup> Child Marriage In Nigeria, <https://arfh-ng.org/child-marriages-n-unending-abomination-in-Nigeria> accessed February 16<sup>th</sup>, 2024.



sometimes faeces. It does not matter that they partly caused the problem. Some of these much older husbands also infect their wives with HIV virus and other STDs.<sup>94</sup>

In Nigeria and indeed some parts of Africa, early marriage comes in form of child betrothal, this involves marrying out a girl child immediately she's delivered. Official data in very early marriage under age 13 are limited but studies indicate that in part of East and West Africa, for example, marriage at 7 or 8 is not uncommon. In some parts of Northern Nigeria the average age for marriage is 11years (UNICEF, 2001). The National Demographic Health Survey reported that in 26.5% of couple, there's an age difference of 15years between husband and wife (NDHS, 1998). And this contributes to a woman's powerlessness with respect to sexuality and reproductive health decisions and disagreements that may lead to violence. An adolescent girl with a much older spouse is much less likely able to participate in decisions about when to have children, to be able to negotiate the use of birth control and less able to protect herself from AIDS and maltreatment.<sup>95</sup> In 2014, a 14years old Wasila Umaru made headlines across the world after poisoning her 35years old husband and his three friends to death. This is one of the many cases of child marriages. Child marriage could lead to depression and as a result lead to violence. The constitution in Section 29 and 23 of the constitution technically approved child marriage.

The constitution should be amended to protect the right of a girl child. Even though some states have laws prohibiting child marriage it's still a common trend. The law should be properly enforced and stiff penalty meted out as a law not enforced is a toothless bulldog.

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<sup>94</sup> Child Marriage in Nigeria, <https://www.vanguardngr.com/2016/12/child-marriage> .accessed February 16<sup>th</sup>, 2024.

<sup>95</sup> Hadiza, Domestic Violence and Women 's Rights in Nigeria, 38.

### 2.2.2 Sexual Violence

Sexual violence against women is a human right violation that cannot be justified by any political, social, religious or cultural claim. A global culture of discrimination against women allows sexual violence to occur daily and with impunity. Sexual violence is rooted in a global culture of discrimination which denies women equal rights with men, legitimizes and sexualizes the appropriate appropriation of women's bodies for individual gratification for political ends.<sup>96</sup>

Sexual violence can take many forms and take place under very different circumstances. A person can be sexually violated by a person or several people, e.g. gang-rape, the incident maybe planned or surprised attack. Although sexual violence occurs mostly in the survivors home or in the perpetrator's home. It also takes place in many other settings such as the workplace, the school, in prisons, cars or open spaces (parks and farmland). The perpetrator of a sexual assault may be a date, an acquaintance, a friend, a family member, an intimate partner or former intimate partner, a complete stranger but more often than not, is someone known to the survivor.<sup>97</sup> There is no stereotypical perpetrator. Sexual violence is common in situations of war and armed conflict specifically rape and sexual torture are frequently used as weapons to demoralize the enemy. Women are sometimes forced into temporary marriages with enemy soldiers.<sup>98</sup> Women who are incarcerated may be subject to sexual violence by prison guards and police officers. Other forms of sexual violence include, but are not limited to sexual slavery, sexual harassment (including demands for sex in exchange for Job promotion or advancement or higher school, marks or grades), trafficking for the purposes of sexual

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<sup>96</sup> Hadiza, Domestic Violence and Women 's Rights in Nigeria, 4.

<sup>97</sup> Gender-based Violence, <https://www.health.genderviolence.org>, accessed February 16<sup>th</sup>, 2024.

<sup>98</sup> Ibid, 45

exploitation, forced exposure to pornography, fraud sterilization, forced abortion, forced marriage, female genital mutilation, virginity test, incest.<sup>99</sup> Sexual violence are sub-divided into various forms:

- a. Rape
- b. Spousal Rape
- c. Sexual Harassment
- d. Incest
- e. Forced Abortion and Sterilization
- f. Wife Sharing
- g. Female Genital Mutilation
- h. Virginity Test
- i. Femicide
- j. Early Marriage

**a. Rape**

Rape is forced, unwanted intercourse. Rape knows no borders as it affects females in every country of the world. Rape has been perpetrated on girls as young as a few months old and women as old as 90 years. It's prevalent in context of war and armed conflict.<sup>100</sup> Rape is a

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<sup>99</sup> Hadiza Isa Bazza, "Domestic Violence and Women's Rights in Nigeria, The Need For Professional Counselling," *International Journal of Law*, 3,no I & 2,(2008) 38.

<sup>100</sup> Rape, <https://www.m.guardian.org>, 2017.com, accessed February 16<sup>th</sup>, 2024.

type of sexual assault, usually involving sexual intercourse. Rape is usually perpetrated by men against women and girls and usually by someone they know.<sup>101</sup>

Rape incidence is steeply on the increase. It constitutes abuses of the fundamental right of our women and girls especially the right to private and family life guaranteed in section 27 of the 1999 constitution.<sup>102</sup> Sex should be the intimate part of love between two people, but for many, the joy of the healing power of sex are non-existent especially when there's crisis. Majority of the cases of rape go unreported because of the sexual stigma it creates and the burden of proof, for instance to ground a conviction on rape, the testimony of the victim must be corroborated. Indeed a person cannot be convicted of any of the sexual offences upon the uncorroborated evidence of one witness. Thus section 21 of the Criminal Code<sup>103</sup> states that:

it's not the rule of law that an accused person in charge  
of rape cannot convicted on uncorroborated evidence  
of the prosecutrix."

The proper direction is that it's not safe to convict on uncorroborated evidence of the prosecutrix. The court may after paying attention to the warning, nevertheless convict the accused person if it's satisfied with the truth of her evidence. The analysis could be very frustrating and many a times rapists get away with the offence they apparently committed on technical grounds due to corroboration and for the victims they become double jeopardized and traumatized.<sup>104</sup>

Regrettably, statistics suggests that sexual coercion is also a reality in the lives of women and girls. Surveys from the U.S reveals that between one in five and one in seven American

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<sup>101</sup> Gender-based Violence, <https://www.m.guardian.Org>, accessed February 17<sup>th</sup>, 2024.

<sup>102</sup> Hadiza, "Domestic Violence and Women's Rights in Nigeria," 38.

<sup>103</sup> Section 21 Criminal Code LFN 2004.

<sup>104</sup> Hadiza, "Domestic Violence and Women's Rights in Nigeria," 38.

women over the age of 18 has been the victim of a completed rape in her lifetime. Data in countries as diverse as Chile, Peru, Malaysia, Mexico, Panama, Danua, New Guinea and the U.S all confirm people known to the victim and that a substantial subset of victims are very young girls.<sup>105</sup>

Section 30 of the Criminal Code<sup>106</sup> provides that a male person under the age of 12 years is presumed to be incapable of having carnal knowledge and so cannot be guilty of rape and attempted rape. This presumption is irrefutable, so evidence that the accused has attained puberty despite being below age 12 will not be acceptable. A man cannot be guilty of rape upon his wife in Nigeria. He will only be found guilty where the marriage has been made by a court of competent jurisdiction. A man may only be found guilty of assault or wounding where he uses force, violence to exercise his right to intercourse.<sup>107</sup>

In Nigeria, the economic crises in the country which have caused children to be left alone in the care of family friends, or sent out to hawk various items at night makes them to be vulnerable to these forms of abuses. A story was published in the *Sunday Punch*, a nine years old girl who was sent out to buy some items and was raped by three members of a gang consisting of people she knew and probably called brother. She was reported to have been raped through the anus.<sup>108</sup>

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<sup>105</sup> Gender-based violence, [www.socielo.br/gender-basedviolence.com](http://www.socielo.br/gender-basedviolence.com), accessed February 16th, 2024

<sup>106</sup> Section 30 Criminal Code LFN, 2004.

<sup>107</sup> Mary-Ann Ajayi, "An Overview of Rape And Sexual Assault of Women And Children: The Criminal Justice System In Nigeria In Comparism With Other Jurisdictions, The Silk" - *A Journal of legal Issues and Contemporary Justice in Nigeria*, University of Abuja, I, (2012), 98-109.

<sup>108</sup> Hadiza Isa Bazza, "Domestic Violence and Women's Rights In Nigeria, The Need For Professional Counselling," *International Journal of Law*, 3, no 1 & 2, (2008) 38.

## **b. Spousal Rape**

Marital rape is also known as spousal rape, it's non-consensual sex perpetuated by the victim's spouse. Once widely condoned by law, spousal rape is now repudiated by international conventions and increasingly criminalized. In *Reg v R*,<sup>109</sup> Lord Simon J was among the first to hurl the missile at the spousal immunity concept. He stated "There's no material exception to the law of rape and accordingly, a husband may be convicted of rape of his wife if she does not consent to his intercourse, regardless of whether he's living with or apart from his wife."<sup>110</sup> Still in many countries, spousal rape remains either legal or is illegal but widely tolerated and accepted as a husband's prerogative. The criminalization of marital rape is recent, having occurred during the past decades. In Canada, marital rape was made illegal in 1983, when several legal changes were made including the rape statute to sexual harassment and making the laws natural. The views of Sir Mathew Hale, a 17<sup>th</sup> century jurist, published in the History of pleas of the crown(1736) stated that a husband cannot be guilty of rape of his wife because the wife hath given up herself in this kind to her husband which she cannot retract." In England and Wales this remained law for more than 250 years until it was abolished by the Appellate Committee of Lords in the case of *R v R* in 1991. One of the last western countries to criminalize marital rape was Germany in 1997.

The relation between some religions (Christianity and Islam) and marital rape is controversial. The Bible in 1 Corinthians 7:3-5<sup>111</sup> explains that one has a conjugal duty to have sexual

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<sup>109</sup> (1991), 1 ER,448

<sup>110</sup> Dame Carol Arinze-Umobi, *Domestic Violence Against Women in Nigeria; A legal Anatomy*. (Onitsha: Folmech Printing & Pub. Co. Ltd, 2008), 126.

<sup>111</sup> 1 Corinthians 7:3-5, King James Version, Let the husband render unto the wife due benevolence; and likewise also the wife unto the husband, The wife hath no power over her own body, but the husband; and likewise also the husband hath not power over his own body but the wife, do not defraud one another.

relation with ones spouse ( in sharp opposition to sex outside marriage which is considered a sin) and states "the wife does not have authority over her own body but the husband does. Do not deprive one another." Some conservative religion figures interpret this as rejecting the possibility of marital rape. Islam makes reference to sexual relations in marriage too notably, Allah's Apostle said if a husband calls his wife to his bed (i.e. to have sexual relations) and she refuses and causes him to sleep in anger, the angels will curse her till morning," Wife rape has been recognized in other jurisdictions, it's yet to be recognized in Nigeria. This is as a result of the patriarchal system where the wife is seen as a chattel to be used at will. The criminal code provides for rape and not for spousal rape. Section 357 of the criminal code<sup>112</sup> defines rape thus:

Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of false threats or intimidation of any kind or by fear of harm, or by means of false or fraudulent representation as to the nature of the act, or in case of a married woman, by personating her husband is guilty of an offence called rape.

Section 58 of the Penal Code<sup>113</sup> defines rape as; when a man has sexual intercourse with a woman against her will, without her consent or with incorrectly obtained consent. Canal relations which take place between husband and wife are not prima facie unlawful. The position of section 6 of the criminal code provides a spousal immunity to a husband whose act against his wife could otherwise be termed rape.<sup>114</sup> In *Regina v R* Lord Lane held that;

This position has been accepted in some countries and in some states in the U.S like New South Wales. New Zealand, Florida, Oregon, New York and Vermont. In *R*

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<sup>112</sup> Section 357 Criminal Code. LFN 2004.

<sup>113</sup> Section 58 Penal Code, CAP 89, 1969.

<sup>114</sup> Section 6 Criminal Code LFN, 2004,

*v Clarence*<sup>115</sup> when a man was found innocent for brutally raping his wife, on the ground of Implied consent by way of marriage. This common law rule was overturned and the decision in *R v R* is now a precedent for similar cases.

However, in most African countries including Nigeria, the wife who plays an unwilling or battered participant is said to have no remedy. This is as a result of the dictates of the culture or common understanding that it will be ridiculous for such rape as such rape especially as the criminal code does not offer any protection. To ensure that this crime is reduced to the minimum. Section 6 and 357 be amended to include spousal rape to enable a woman press charges.

The decision in *Alawusa v Odusote* was remarkable. The court held that if a husband uses force or violence to obtain intercourse, he may be guilty of assault or wounding through the full force will not be meted to him.<sup>116</sup>

This is a step towards combating spousal rape. Nigeria is called upon to wake up and revisit their criminal statutes with a view to joining other several states that have reviewed their laws on rape to protect wives from being sexually assaulted by their husbands.<sup>117</sup>

### **c. Sexual Harassment**

Sexual assault is unwanted sexual contact which is very close to rape or attempted rape, the difference is it may not end in actual intercourse e.g. when a man punches a woman without her consent. Sexual assault takes many forms and is very common in the workplace

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<sup>115</sup> (1889) 22 QB 23

<sup>116</sup> (1941) 7 W.A.C.A 140.

<sup>117</sup> Dame Carol Arinze-Umobi, *Domestic Violence Against Women In Nigeria; A legal Anatomy*, (Onitsha: Folmech Printing & Pub.co.ltd, 2008), 126.



environment and should never be treated as anything less than a serious offence.<sup>118</sup> The term "sexual harassment" was coined in the 1970s in the U.S.A where steps were first taken to prohibit his conduct. In the Netherlands, Italy and France, analogous terms such as unwanted intimacy, "sexual molestation" "sexual blackmail" are used respectively.

In a book titled *Women and law in West Africa*, six writers while admitting that there were no laws in Nigeria, Gambia and Ghana, specifically prohibiting "sexual harassment" offered three varying definitions of Henry Carroll and Nana Ama Ofori-Atta, having adopted the dictionary's definition of harassment' as trouble, worry, making repeated attacks on "defined sexual harassment" as troubling women and attacking them with words, gestures and taunting remarks.<sup>119</sup> With respect to sexual harassment on the job, the American Equal Employment Opportunity Commission is of the view that a single sexual advance may constitute harassment if it's linked to the granting or denial of employment benefits and that the more severe the less, the need to show a repetitive series of incidents. To Grace Osakhue and Mary Okoh, sexual harassment has to do with someone taking privileged position to obtain sexual favours as a condition for doing his work. Ellen Aryectey and Akua Ruenychia, on other part defined sexual harassment is unwelcome sexual advances, requests for sexual favours and other verbal or physical conduct of a sexual nature.<sup>120</sup>

Sexual harassment in tertiary institutions is one of the vices that are surreptitiously eroding every form of dignity and worth of all members of the institutional community, as it has become a major concern in recent years. In Pateman's opinion, an unwilling individual would with time be cajoled or coerced into inevitable submission, her position might have been

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<sup>118</sup> Sexual Harassment, <https://www.m.guardian.ng.2017> , accessed February 17<sup>th</sup>, 2024

<sup>119</sup> *Sexual Harassment*, *Igbinedion Law Journal*, College of Law Igbinedion University, I, (2003),50.

<sup>120</sup> Carol Arinzc-Umobi, "Domestic Violence Against Women in Nigeria; A legal Anatomy," 126.

informed from the fact that very often, sexual harassment is initiated by a person in a position of authority and is sustained at the expense of another that cannot counter the demand without risk of reprisals.<sup>121</sup> Sexual harassment refers to two distinct types of behaviour;

1. The abuse of power for sexual ends
2. The creation of a hostile environment

Sexual harassment is rampant in Universities all over the world. In the U.S.A, various studies suggest that 20-50% of female college students have experienced some form of sexual harassment from other students, faculty members or administrators. In Nigeria, female students in the Universities face sexual harassment daily. The lecturers offer a good grade in return for the girl's body, this has an effect on the girl's dignity. They are threatened with a bad grade if they don't oblige and they are affected psychologically and emotionally.<sup>122</sup>

In the view of the United Nations Committee on the Elimination of Discrimination Against women, sexual harassment includes “such unwelcome sexually determined behaviour as physical contacts and advances, sexual colored remarks, showing pornography and sexual demands whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem.”<sup>123</sup>

It is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion or when it creates a hostile working environment. In 1991, the European Communities

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<sup>121</sup> S.A, Dosunmu, The abused and the Society, Sexual Harassment In Tertiary Institutions: Hidden Crime Against Female Undergraduates In Lagos State, Nigeria, Royal People Nigeria Lid, (2007),21 1-212.

<sup>122</sup> Ibid, 47

<sup>123</sup> Sexual Harassment, *Igbinedion Law Journal*, 68.

Commission issued a code of practice on measures to combat sexual harassment. The code defined "sexual harassment as "unwanted conduct of a sexual nature" or other conduct based on "sex affecting the dignity of women and men at work". This can include unwelcome physical, verbal or non- verbal conduct.<sup>124</sup>

In 1977, in the U.S, a Federal Court of Appeal held for the first time in American Legal history, that "quid pro quo sexual harassment" was a form of sex discrimination. In the U.K, neither the Sex Discrimination Act of 1975 nor that of 1986, which prohibits gender-based discrimination in employment, mentioned sexual harassment. The term 'sexual harassment' has been defined in cases interpreting these acts. In *Strathelyde Regional Council v Parcelli*<sup>125</sup>, sexual harassment was described as a "particularly degrading and unacceptable form of treatment". In another case, the court held that the unacceptable conduct may the form of either verbal or touching conduct", *William v Minilec Engineering Lid.*<sup>126</sup> In the U.S the tort of interfering with an employment contract, in the context of sexual harassment involves unwelcome conduct of sexual nature which makes it impossible for an employee to retain his job or to get other job related benefits. Under labor law, there are two types of protection which laws on subjects other than sexual harassment may provide against sexual harassment. One is in the context of unfair dismissal and the other is in the context of sex discrimination. Women and girls continue to face sexual harassment especially in employment. Universities and public spheres. Laws against sexual harassment in Nigeria are not adequately enforced and this has led to continuous and worsened state of sexual harassment in the above fields. Government should do well to make good laws and d enforce them adequately.

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<sup>124</sup> Ibid

<sup>125</sup> (1986), IRLR 144

<sup>126</sup> (1989), IRILR 144

#### **d. Incest**

Incest can be defined as a sexual affair or relations between a father and a daughter, mother and son, sister and brother, uncle and niece and vice versa. This practice is illegal in so many countries and sometimes it's usually a forced or coerced affair. In this context, we are talking about the male.<sup>127</sup> Quite unlike rape cases, where only the rapist is prosecuted, both the man and the woman are prosecuted in incest. The taboo surrounding it is even more sacred than in the case of rape and consequently like rape, it's hardly reported because family members want to avoid the humiliation that is bound to be ostracized by their family if they should reveal any such accusation against any male relative. All cultures including ours, regard incest with horror and dread.<sup>128</sup>

Most mothers are right there in their matrimonial homes and may be quite unaware of the criminal intentions of their husbands. The traditional position of the father in the family as the head of the family, breadwinner and disciplinarian makes him so powerful that only the courageous and brave women can stand up and challenge him. Sadly, for a number of women, silence is the norm and as the perversion becomes accepted, the abuse of the daughters goes on. Incest, intra-family sexual abuse of children is one particular form of domestic violence against children, with victims suffering both severe psychological trauma and physical ailments such as anal and vaginal lacerations, lack of bladder control, STDS and early childhood pregnancies. The convention on the Rights of the child in its Article 19 requires governments that have ratified the convention to "take all appropriate legislative,

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<sup>127</sup> Mary-Ann Ajayi, An Overview of Rape And Sexual Assault of Women And Children, 63.

<sup>128</sup> Ibid

administrative, social and educational measures to protect the children from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment."

The criminalization of incestual relations has been codified and criminalized in both our statutory and customary laws e.g. the Nigerian criminal code Cap 77 LFN 2004, in which incest is defined as an offence against morality.<sup>129</sup> Even with these laws against incest, it's still a common happening in Nigeria. Just recently, July 3<sup>o</sup> in Lagos state the police arrested two men who defiled their under-aged daughters. It was disclosed that one of the men were having constant sexual intercourse with his 14yr old daughter before marrying her off to a bus driver who got her pregnant.<sup>130</sup>

#### **e. Forced Abortion/Sterilization**

Forced abortion can be defined as forcefully removing the fetus of a woman forcefully and without her consent. A forced abortion occurs when a woman wants to carry her pregnancy to term but is required to terminate it against her will.<sup>131</sup> This is a violent act against women and violates their right to human dignity and freedom.

#### **f. Virginity Test**

To varying degrees, the virginity of a bride is still considered a virtue in communities throughout the world. Virginity testing, the examination of the genitals as a way to determine sexual chastity remains popular in communities that place a high premium on virginity for social, economic and religious reasons. Brides who fail this tests are beaten and forced to

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<sup>129</sup> Incest in Nigeria, [http://busineslaw-ng.blogspot.com/2016/07/topic-is-incest-criminalized-in-Digeria.html?m=](http://busineslaw-ng.blogspot.com/2016/07/topic-is-incest-criminalized-in-Digeria.html?m=,), accessed February 18th, 2024.

<sup>130</sup> Incest in Nigeria, <https://www.today.ng/topic/incest> ,accessed February 18<sup>th</sup>, 2024.

<sup>131</sup> Forced Abortion, <http://www.women'srightwithoutfrontiers.org/index.php?nav=forced-abortion>, accessed February 18<sup>th</sup> 2024.

disclose the names of the sexual partners, who are then required to pay the bride's parents large sums of money."<sup>132</sup> This act of virginity testing constitutes violence against women and it is against women's right of dignity and liberty.

#### **g. Early Marriage**

The problem of early marriage is conveniently located within the ambit of the violation of personal liberties. It's indeed the liberty of an individual to choose a marriage partner. The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages says: "No marriage shall be legally entered into without the full and free consent of both parties. Such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses as prescribed by law. It's not contested that child marriage is a serious problem in Nigeria. In most part of the country, there's no legally defined minimum age of marriage."<sup>133</sup>

The Marriage Act<sup>134</sup> defines a person under the age of 21 years as a minor but allows minor to marry with parental consent. Child marriages are justified by parents on the ground that it prevents promiscuity, which a girl child is prone to at puberty. At times, the reasons are religious, economic and often times the low appreciation of the need for the girl child to go to school.<sup>135</sup>

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<sup>132</sup> The Advocates of Human Rights, 2010, [www.stopvaw.org/harmful \\_practices virginity tests](http://www.stopvaw.org/harmful_practices_virginity_tests), accessed February 18<sup>th</sup>, 2024.

<sup>133</sup> Child marriage in Nigeria, <http://www.arfh-ng.org/child-marriage-an-unending-abomination-in-nigeria/> accessed February 18<sup>th</sup>, 2024.

<sup>134</sup> Marriage Act, CAP 218, LFN, 1990.

<sup>135</sup> Child Marriage in Nigeria, [hups://www.girlsnotbrides.org/childmarriage/nigeria/](https://www.girlsnotbrides.org/childmarriage/nigeria/) accessed February 18<sup>th</sup>, 2024

Constitutionally, any person is a child in so far as that child is married. This limb of the provision further strengthens the violence against girl children contrary to Article 16 of the Convention on the Elimination of All Discrimination Against Women (CEDAW), which prohibits the betrothal and marriage of a girl child. The effect of child marriage is gruesome and includes higher maternal mortality and greater prevalence of conditions such as Vesico Vaginal fistula. There are recent positive developments in Nigeria on the issue. For instance, Bauchi an area where child marriage is prevalent has enacted a law banning child marriages. It is hoped that other states would follow suit.<sup>136</sup>

### **2.2.3 Psychological Violence**

Refers to any act that provokes fear, diminishes the individual's self-worth, dignity or self-esteem inflicts psychological trauma on another person. In the family, acts of intimidation, silent yelling, talking down, playing on emotions, degradation, trafficking her as though she was a child, blackmailing, threatening or coming home drunk amounts to psychological abuse.<sup>137</sup>

In the case of refugees, it can include threats to take their children away. If the woman is an immigrant or refugee, her abuser may threaten to have her deported. Indeed some women think that this kind of abuse is more killing than physical or sexual abuse. It also includes psychological battering, characterizes by women's continuous feeling of susceptibility to danger, loss power control. Psychological trauma due to domestic abuse is the underlying explanatory factor of the increased levels of emotional distress among married women. The

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<sup>136</sup> Ibid

<sup>137</sup> Psychological Violence, <http://www.irinnews.org> accessed February 17<sup>th</sup>, 2024.

association between former abuse and current emotional distress indicates that psychological effects of abuse may last long after the physical abuse has ended.<sup>138</sup>

Psychological violence occurs as a result of violence women experience in both public and private sphere. For instance women who are physically abused are affected psychologically as a result of the injuries and emotional trauma.<sup>139</sup>

#### **2.2.4 Emotional Violence**

Emotional abuse is a tactic of control that consists of a wide variety of verbal attacks and humiliations including repeated verbal attacks against the survivors worth as an individual or role as a parent, family member, friend, co-worker or community members.<sup>140</sup> In domestic violence, verbal attacks and other tactics of control are intertwined with the threat of harm in order to maintain the perpetrator's dominance through fear. While repeated verbal abuse is damaging to partners and relationships overtime, it does not establish the same climate of fear as verbal abuse combined with the use or threat of physical harm. The presence of emotionally abusive acts may indicate undisclosed use of physical force or it may indicate possible future domestic violence. Emotional abuse may also include humiliating the victim in front of family, friends or strangers. Perpetrators may reportedly claim that survivors are crazy, incompetent and unable "to do anything right". In order for verbal abuse to be considered domestic violence, it must be part of a pattern of a coercive behaviour in which the perpetrator uses or threatens to use physical force.<sup>141</sup>

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<sup>138</sup> T.O Tejumola, *The Abused and the Society: Wife Abuse, Nature, Health and Consequences*, 103.

<sup>139</sup> Ibid

<sup>140</sup> Gender-based violence, <http://www.health-genderviolence.org> accessed February 17<sup>th</sup>, 2024

<sup>141</sup> Gender-based Violence, <http://www.health-genderviolence.org>, accessed February 18<sup>th</sup>, 2024.



All over the world in Africa, including Nigeria, women are subjected to emotional tortures. For instance many women in the south suffer from violence after the death of their husbands even though they know nothing about the cause of his death. It has also been observed in many societies in Nigeria, women's rights and interests, benefits and entitlements are often withdrawn by their partners as punishments. These are causes of emotional pains.<sup>142</sup>

### **2.2.5 Verbal Violence**

This is the use of negative comments that are unwelcome, embarrassing, offensive, threatening or degrading 'or a woman. e.g, name calling, slut shaming, body shaming, labeling, false accusations, lying, insults, curses etc.<sup>143</sup>

Verbal violence focuses on the woman's intelligence, sexuality, body image and capacity. Women are commonly seen and referred to by the male folk as stupid, sluggish, slut, whims, fat, ugly, lousy mothers and lazy. They are most times compared unfavorably with other women with the sole aim of putting them under perpetual shame, subjugation and fear. Daughters and women are often times thought as good for nothing and not worth educating. The psychological effect that most verbal sentences of many husbands have left on their wives has caused a lot of damages to many family units in Nigeria. Many women have therefore decided to divorce their husband thus abandoning their children to suffer, while many have committed suicide as a result of counsel and courage. The commodification of women is used

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<sup>142</sup> Akpoghome T.U, Brenda S.M, "Gender -Based Violence: The Dangers And Effects Of Harmful And Unhealthy Practices Against Women's Rights," *Ahmadu Bello University, Zaria Journal of Private and Property Law*, (2010), 149.

<sup>143</sup> Gender-based Violence, <http://m.guardian.gender-based-violence.ng.2017>, accessed February 17<sup>th</sup>, 2024.

as a result of verbal abuse that send insulting messages to the integrity and dignity of womanhood and have led to the demoralization of many women.<sup>144</sup>

### **2.2.6 Socio-Cultural Violence**

Isolation of women (wives) from societal functions is no doubt a violation of the Fundamental Human Rights of women. It is therefore a wicked social violence against women. It's a notorious fact that early marriage is a rule rather than an exception, in the Northern part of Nigeria.<sup>145</sup> Many northern girls are married off or forced into marriage at the tender age of twelve or thirteen.

According to the News Agency of Nigeria (NAN), a Kano state radio station reported that one Binta Gambo set herself on fire in protest against the marriage forced on her, two months before then. The girl who was from Marraba Musawa in Katsina state told her father that she wanted a divorce from her husband she had never accepted. It was further reported that the husband agreed have the marriage terminated but the father refused.

This led Binta to set herself ablaze and she later died from the injuries sustained as a result thereof. There are also a few cases of early marriages in the South especially, where the girl's family is financially handicapped. They see early marriages of their daughters as a security to the future where the girl is married off to an old rich suitor who can as well be as old as her biological father.<sup>146</sup>

There are different forms of socio-cultural violence thus:

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<sup>144</sup> Dame Carol Arinze-Umobi, *Domestic Violence Against Women In Nigeria: A Legal Anatomy*, (Onitsha: Folmech Printing and Publishing. Co. Ltd, 2008), 139.

<sup>145</sup> Ibid, 55

<sup>146</sup> Akpoghome T.U, Brenda S.M, *Gender -Based Violence: The Dangers And Effects Of Harmful And Unhealthy Practices Against Women's Rights*, 149.

## **i. Widowhood and Inheritance**

This form of violence is noted in societies which have little regard for the role and place of women when the husband dies. Here she's deprived of all family property immediately her husband dies. In some societies, she's expected to mourn her husband through acts that inflict physical and psychological violence and torture. For example, violent shaving of her head, making her drink the water used to bathe the corpse of her deceased husband or sleep with the corpse along in a locked room overnight, all in an attempt to prove her innocence.<sup>147</sup> In support of this Kamdrim reports that; Among the Igbo of Eastern Nigeria, women are subjected to the performance of some dehumanizing rites on the death of their husbands. In some places, the woman affected is not allowed to bath, comb her hair, change her dress or even leave her compound for a period ranging from twenty to forty days.<sup>148</sup>

At time a levirate form of marriage is practiced on the widow that is, practice whereby the widow is married out to the deceased husband's brother, often the widow's opinion or consent is not sought on this; It's given to her as a condition for remaining in the family and for receiving assistance from the family. This is a violation of women's human rights, especially her choice and consent to marriage.<sup>149</sup> Unfortunately, the Nigerian Constitution did not contain any specific provision for the protection of widows from this abysmal treatments which constitutes a various violation of women's rights in Nigeria.

Women in Northern Nigeria, like elsewhere land for sustenance, shelter and survival. In most parts of Northern Nigeria, this legitimate need by women has proved difficult to satisfy by the

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<sup>147</sup> Hadiza Isa Bazza, "Domestic Violence And Women's Right In Nigeria: The Need For Professional Counseling," *International Journal of Law And Contemporary Studies*, 3, no I & 2, (2008), 51-52.

<sup>148</sup> Ibid

<sup>149</sup> Ibid

largely patriarchal society backed by customary law and Islamic law. While the plight of women in Northern Nigeria has been well documented by social scientists, it has not been given adequate scholarly attention from the legal perspective especially as it relates to the ownership of land.<sup>150</sup>

In Northern Nigeria, as in most parts of Nigeria, women are only allowed to use land mainly for agricultural purposes. They are expected to fill the land to grow crops with which to feed the family. This right to usage of land by women is often dependent on their status as their daughters or wives. This right however terminates upon the marriage of the daughters as their husbands would be expected to shoulder the responsibility of taking care of them. Their right to usage of their husband's land equally terminates upon divorce or the death of their husbands.<sup>151</sup>

These practices are clearly against the provisions of CEDAW. This convention enjoins all signatories to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular to ensure equality of men and women. This applies to the right of both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of land and property.<sup>152</sup> The Married Women Property Act provides for married women to own and acquire properties.<sup>153</sup>

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<sup>150</sup> Idah Bar Journal: *Idah Bar Journal of Contemporary Legal Studies*, 2, (2014/2015).

<sup>151</sup> Ibid

<sup>152</sup> Ibid

<sup>153</sup> Section 2(1)) (a) Married Women Property Act, 1882, 45 and 46, Vict.c.75- Subject to the provisions of this Act, a married woman shall (a) be capable of acquiring, holding and disposing of, any property.

### **i. Early Marriage**

In Nigeria, 43% of girls are married off before their 18th birthday. 17% are married before they turn 15. The prevalence of child marriage varies widely from one region to another with figures as high as 769% in the North West region and 10% in the South west. Complex marriage have led to the continual and persistent subsistence of the practice of child marriage in Nigeria. Poverty and the fact that the female child is seen as almost as dispensable property arc one of the main reasons why child marriage is predominant in Nigeria.<sup>154</sup>

### **iii. Maltreatment and Killing of Women Believed to be Witches**

In most African nations, including Nigeria, the belief in witchcraft is very strong. Even in Christianity, there is that strong belief that witchcraft is one of those evil powers that torment the “children of God”. The disappointing aspect of this belief of witchcraft in Nigeria is the tendency to always associate it with the women folk hence the often use of the word witch' or witches “Wizard' is rarely mentioned. In other words witchcraft has become synonymous with women folk especially the aged in rural areas. In some cases, the witches are stoned to death while in other places, they are stripped naked, flogged and beaten to death.<sup>155</sup>

The fear of being harmed has led many to own up to what they are not and yet after being forced to confess their evil deeds, they would still face the torture, starvation, beatings and humiliations given to witches. Nearly 90% of reported cases of maltreatment of people

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<sup>154</sup> Child Marriage in Nigeria, <https://m.buffpost.com/us/entry/513381> , accessed February 17th, 2024.

<sup>155</sup> Adanna Chincdu Madu, *Women Empowerment in Relation to National Development And Human Rights*, (SNAAP Press Nigeria Ltd, 2010), 74.

suspected of witchcraft are women, mostly the old ones, the very poor ones, the down-trodden and the voiceless.<sup>156</sup>

### **2.2.7 Religious Violence**

Any tactics that exert power and control over a woman's spirituality and religious orientation. That is choosing where she can or cannot worship, dictating how should and should not worship. It also includes using religion to justify abuse or dominance using church position to pressure for favours and to cover up domestic violence.<sup>157</sup>

### **2.2.8 Socio-Economic Violence**

- i. Discrimination and/or denial of opportunities, services. Education, denial of access to education, health assistance or remunerated employment, denial of property right.
- ii. Social exclusion/Ostracism based on sexual orientation. Denial of access of service or social benefits or social benefits, prevention of the exercise and enjoyment of civil, social, economic, cultural and political rights, imposition of criminal penalties, discriminatory practices, public or private hostility to homosexuals, trans-sexual.
- iii. Obstructive legislative practice; prevention of the exercise and enjoyment of civil, social, economic, cultural and political rights of women.

### **2.2.9. Financial Violence/Abuse**

Any behaviour that reduces, eliminates or deprives a woman of her financial independence. E.g. Refusing her to work, run her own business or engage in any financial activity, taking her

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<sup>156</sup> Ibid

<sup>157</sup> Gender-based violence, <http://www.m.guardian.ng,2017>, accessed February 18<sup>th</sup>, 2024.

money, forging her signature/name etc. The UN typically groups abuses suffered by women and girls into three categories;

- i. Family violence: The most widespread type of violence against women. This includes any abuse that occurs within the family context where the perpetrator is known to the girl or woman. Common examples are spousal beatings, marital rape, forced marriage, sexual abuse of a girl by her father, uncle/step father and a verbal abuse and trauma related to "dowry" and 'not giving birth to a son'.
- ii. Community violence: This includes violence at the hands of a perpetrator unknown or unrelated to the woman and often comes in the form of: rape, sexual harassment, forced prostitution or trafficking and public humiliation.
- iii. State violence: This includes violence that are condoned and committed by individuals associated with the government. This is often seen in the form of violence at the hands of the police, prison guards, refugee camp guards, border officials and even peace keeping troops. In conflict regions of the world, systematic rape and sexual violence is often used as a tool of war.<sup>158</sup>

### **2.3 Causes of Gender-Based Violence**

Gender based violence is caused by various factors. Some of these factors will be listed below;

No matter a woman's social and educational status, she's expected to be subservient to the man. Also the fact that a woman in marriage loses her paternal identity (Maiden name) and takes on that of her husband, but also to all relations of her husband. The abuse of this

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<sup>158</sup> Gender-based Violence, <http://www.Unfpa.org/gender/violence.hzn>, accessed February 18<sup>th</sup>, 2024.

privilege especially by the younger relations of the man could cause conflict which usually degenerate into violence. Some authors have confirmed causes of violence in marriage. Enwereji identified negligence of family responsibilities, mismanagement of family income, barrenness, excessive intake of alcohol, keeping of late nights, infidelity and aggressive tendencies, while Adeyoku found hierarchical family structure and financial dependency as the cause of violence in Nigeria. Adedoyin and Adegoke reported sexual promiscuity as the main cause of violence and divorce in Nigeria. Also violence can occur if a wife interferes with her husband's extra marital affairs with other women.<sup>159</sup>

High bride price is another factor that encourages violence. According to Nwogu, many young men who are frustrated by this usually elope with the woman and the thought of breaking the norm of the community as well as the discrimination against them for not being properly married according to tradition could cause constant quarrels and physical attacks. On the other hand, the young men who are able to afford this high bride price may be forced to regard their wives as part of the property purchased in the house and as such could batter them at the least provocation.<sup>160</sup>

Reproduction can also cause violence. The women may give birth to so many children and the man may get frustrated of taking care of so many children and such man may out of frustration take to violence at the least provocation. Also, childlessness can cause violence. These women are discriminated against because it's believed they have nothing to contribute

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<sup>159</sup> Enwereji, E, *The Abused And The Society: Gender And Violence, The Situation In Abia State of South Eastern Nigeria*, (Royal People Nigeria Ltd), 2007, 55-57.

<sup>160</sup> Ibid



to their matrimonial families since they have no children to inherit part of their husband's assets when he dies.<sup>161</sup>

Causes of Domestic Violence include:

- i. Economy; A man who is frustrated at how hard the economy is may transfer his aggression to his wife at home by beating her or through verbal violence. Also, hard economy makes parents send off their children to be exploited sexually. Also, maintenance money for the family, unemployment of the man; when a man is unemployed, this could frustrate him and therefore lead to violence on the woman. Effort to keep and control the woman's income.
- ii. Socio-cultural
  - a. Belief in the inferior status of women
  - b. Attempts by a woman to assert herself
  - c. Cultural practices such as widowhood, rituals or other cultural ceremonies e.g FGM, requirement of a married woman to swear with fidelity before a deity
  - d. High incidents of female births
  - c. Polygamy
  - d. Extended family
- iii. Sex
  - a. Frigidity

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<sup>161</sup> Ibid

- b. Incestuous relationships
  - c. Excessive sexual demands
  - d. Adultery
- iv. Psychological
  - a. Feelings of inferiority
  - b. Insecurity of the man
  - c Tendency to feel insulted
- v. Religion
  - a. Lack of approval of wife's religion
  - b. Lack of approval of wife's interest attendance to church
  - c. Involvements in cults.

Some other cause of gender-based violence includes:

i Patriarchy

Patriarchy necessitates stereotype sole socialization between the sexes creating the development of values that discriminate against the female sex. This discrimination has no boundary in life's endeavours and so has crystalized into politics, which continues to stereotype women and justify their subordination.

ii. Discriminatory cultural practices

The social culture regards exceptional excellence as masculine, making women shy away from challenging endeavours. Parents by the dictates of cultural norms and practices prefer to send their male children to school over the females. This has accounted for the high illiteracy rate in the female sex stifling their participation in politics and public life.

### 3. Lack of Economic wherewithal

The long standing discrimination against women has left them economically disadvantaged. Job opportunities offered on sex basis have given men a productive role. Much of the economic production by women are hidden from economic sale.<sup>162</sup>

Another cause of gender-based violence include;

Media/Entertainment- Films and TV programs provide male models who use physical strength or weapons to solve problems, achieving goals. The media presents violence as exciting. Overwhelmingly, the victims of such violence are women especially in the pornographic films.<sup>163</sup> Socio-cultural: The long held concept of the ideal man has been the strong, silent type who fights his way to the top. Men are expected to be strong, aggressive and in control. So boys learn at an early age to use force if necessary to gain and maintain control.

Historical/Religious- Violence against women is also deeply rooted in our social institutions. Women have long been referred to as inferior to men. Indeed for centuries they were considered the property of their husbands. Some religions continue to assert these beliefs today.

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<sup>162</sup> Felicia Anyogu, Carol Arinze Umobi, "Achieving Gender Equality in Public Voice in Nigeria: The Role of Law," *University of Jos Law Journal*, 9, no I, (2010).

<sup>163</sup> Onuora Oguno Azubike, Personal Liberty And Domestic Violence: Legal Respite in Nigeria, *University of Ilorin Law Journal*, (2010),6, 23-24

Physical/Genetic; Men are generally predisposed to be bigger and more muscular than women. Thus it's often easy for a man to force his wishes on a woman without fear of being physically injured himself.

Legal/Judicial: Because virtually all domestic violence and many sexual assault take place within the home, officials have traditionally been reluctant to enforce laws prohibiting male violence against women. While much progress has been made, far too many prosecutors and law enforcement officers continue to believe that a man's home is his castle that if only the women were better wives their husbands wouldn't have to hit them. Likewise criminal justice officials often ask a rape victim what she did to provoke the accused and marital rape has usually been seen as justifiable rather than assaultive.<sup>164</sup>

### **Lack of Enlightenment Programs**

A lot of women do not know their rights and what to do to prevent themselves from being abused and this has escalated the level of violence in the society. Also a lot of women grow up with the stereotype mentality of trying to manage the marriage even if it endangers her life. Mothers bring up their daughters with specific instructions on what a girl is expected to do in the society and how she's expected to behave and so are wrongly educated to be submissive to their husbands.<sup>165</sup>

### **Lack of Access to Credit; Prohibitions on Land ownership**

Gender biased access to economic resources such as bank loans, mortgages or other types of credit may restrict women's ability to be financially independent. Women may also be

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<sup>164</sup> Ibid .

<sup>165</sup> S.O Idehen, "Domestic Violence Against Women In Nigeria: A Critique," *Nassarawa State Law Journal*, 4, no 1 (2011).

prevented from owning properties by discriminatory property and inheritance laws and policies. These factors contribute to the feminization of poverty.<sup>166</sup> In Nigeria, gender discrimination against the girl child contributes to the case with which the girl child is trafficked, she's viewed as a chattel to be used as an instrument of pleasure.

Another cause of gender-based violence is inordinate sexual demands. In *Akinbuva v Akinbuwa*.<sup>167</sup> The court of Appeal held that refusal to have sexual intercourse with a wife amounts to an act of cruelty. It went further to state that; it seems clear that the refusal by the husband to have sexual intercourse with the wife for so long without any reasonable justification, will not only constitute a behaviour of the husband which the wife living under the same roof with him all the time could not be reasonably expected to tolerate, certainly amount to cruelty. The cases of *Anagbodo v Anagbodo* and *Onabolu v Onabolu* all carry the same import.<sup>168</sup>

Poverty may make parents sell off their female children to be trafficked and also to be married all such a young age. Witnessing marital violence as a child, absent or rejecting father, being abused as a child causes gender-based violence. Another major cause of gender-based violence is illiteracy. Some of the women abused are illiterates and they don't know their right, they believe men are supposed to control them and see themselves as inferior to men. Even the ones who are illiterate do not still know their right and that's why cases of gender-based violence are under reported.<sup>169</sup>

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<sup>166</sup> Christine Chinkin, Gender Mainstreaming in Legal and Constitutional Affairs- A Reference Manual For Governments And Other Stakeholders, (Common Wealth Secretariat), 2001, 17,

<sup>167</sup> (1998) 7 NWLR 559, 661

<sup>168</sup> *Anagbodo v Anagbodo*, (1992) 1 NWLR, 216, 217, *Onabolu v Onubolu* (2005) 2 SMC

<sup>169</sup> Dame Carol Umobi, Domestic Violence Against Women in Nigeria: A Legal Anatomy, (Onitsha: Folmech Publishing Co. Ltd, 2008), 140.

## 2.4 Effects of Gender-Based Violence

It is believed that sexual intercourse in marriage should be by mutual agreement between husband and wife so as to guarantee peaceful existence and progress both in the home, nation and the world. Some states such as Norway, Sweden, Denmark, Finland, Queensland and Australia have revised their rape laws to protect wives from being sexually assaulted by their husbands superiority and put to test his powerlessness in certain circumstances and fear of rejection by his spouse. Effects of gender-based violence include; Physical injuries, it manifests through bodily injuries especially around the vagina as a whole. There may be apparent injuries on other parts of the body especially at the back, Scars, bites, inflicted on her body because of resistance.<sup>170</sup>

Psychological or emotional effects are fear, misery, depression and other behavioural changes and those who cannot contain the situation escape, relocate or even commit suicide. Violence has been found to affect victims physically, morally, psychologically, socially, financially and spiritually. Human Rights Abuse studies have confirmed that women who experience violence indulge in drugs, 82% of urban women who experienced violence in their marriage were on drug for depressive symptoms. Physically they suffer injuries and fractures and fractures when attacked, predispose them to torture. Men may at the least provocation withdraw all financial, social and healthcare services from their wives, a good number of women especially the expectant ones receive inadequate care and attention and therefore become malnourished.

Battering of women leads to mental and physical health consequences on the women and their children. It has been confirmed that 65% women who experience constant violence develop mental illness. Psychologically, violence affects women in their day to day relationships with

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<sup>170</sup> Dame Carol Umobi, *Domestic Violence Against Women in Nigeria: A Legal Anatomy*, 140.

others. Violence makes women traumatized, withdrawn, aggressive, helpless and unable to build relationship of trust and intimacy necessary for healthy living. Violence affects the overall development of children from infancy to adolescent. Study carried out by UNICEF (2000) in Nicaragua observed that children from abusive homes were six times more likely than others to die before the age of five years. Also they were more likely to be malnourished and less likely to be immunized or to receive oral dehydration therapy for diarrhea. Also children especially girls record high school drop rates and poor learning outcomes.

Domestic violence causes physical damage ranging from broken limbs, cuts, bruises, temporary or permanent loss of sight and hearing and loss of teeth, fractures, severed limbs, burnt fingers, maimed and disfigured body parts to lasting psychological damages. In extreme cases, domestic violence could lead to the death of the woman thereby violating the woman's right to life guaranteed under Section 33 of the constitution of the federal republic of Nigeria.<sup>171</sup> And also constitutes an offence under the Nigerian criminal code and Penal code.

Domestic violence against a pregnant woman could lead to late antenatal bookings, pains, burns, injuries, vaginal tears, bleeding and miscarriage. Psychological trauma, physical consequences, massaging the breasts with objects may result in severe pains, abscesses, itching, premature flow of breast milk, sleeplessness, pimples on the nipple, infection of the breast, complete disappearance of the breast and even breast cancer.<sup>172</sup>

Female Genital Mutilation can lead to HIV transmission. Early or forced marriage limits education and other opportunities for girls and often leads to early child bearing and increased health risks. They are also prone to obstetric fistula which can result from prolonged and

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<sup>171</sup> Section 33 LFN 2004

<sup>172</sup> Oladele Grace, "Domestic Violence Against Women: Prevalence And Control In Nigeria," *International Journal of Law and Contemporary Studies*, 5, No I & 2 (2008), 4-5.

obstructed labor. Effects of human trafficking are suffer emotional and psychological abuses, suffer the risk of infection of infection with all kinds of dreadful diseases like HIV/AIDS which is common among sex workers.<sup>173</sup>

The most crucial consequences of violence against women and girls is the denial of fundamental human rights to women and girls. There's a growing recognition that countries cannot reach their full potential as long as women potential to participate fully in their society is denied. Data on the social, economic and health costs of violence leave no doubt that violence against women undermines progress towards human and economic development. By hampering women's participation and full involvement countries are eroding the human capital of half their population rue indicators of a country's commitment to gender equality lie in its actions to eliminate violence against women in all its forms and all areas of life.<sup>174</sup>

## **2.5 Conclusion**

Women experience sexual, physical, verbal, emotional, psychological violence, financial abuse which has been discussed in details in this chapter. These forms of violence also has effects on the victims which has also been discussed. The government has a major role to play in ensuring these acts of violence against women is reduced to the barest minimum.

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<sup>173</sup> Ibid

<sup>174</sup> Adanna, Women Empowerment in Relation to National Development and Hunan Rights, 82.



## **CHAPTER THREE**

### **LEGAL FRAMEWORK FOR GENDER-BASED VIOLENCE IN NIGERIA**

#### **3.1 Introduction**

International Rules, Laws and Conventions that guide against discrimination of women and Gender-based violence will be discussed extensively in this chapter. Also regional laws and the Nigerian Constitution will also be enlisted and discussed.

#### **3.2 International and Regional Laws, Treaties, and Conventions**

The United Nations has gone a long way in projecting women through legal instruments which are usually signed and ratified and implemented by member states. It has advanced the cause of women by fostering many declarations, Conventions, Covenants and Treaties aimed at erasing all forms of discrimination against women.

These include the:

- Universal Declaration of Human Rights
- The International Convention on Civil and Political Rights
- .The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

#### **3.3 CEDAW Convention on Elimination of all Forms of Discrimination Against Women**

This was adopted and opened for signature, ratification and accession by the General Assembly resolution 34/180 of 18 December 1979; and with its entry into force on 3 September 1979, conforming to the provisions of Article 27(1) which held that: “The present

convention shall enter into force on the thirtieth day after the deposit with the Secretary General of United Nations of the twentieth instrument of ratification or accession."

Article 1 of the Convention defines the term "Discrimination Against Women" to mean,

Any distinction, exclusion, restriction made on the basis of sex, which has the effect or 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, economic, social, cultural, civil or any other field.<sup>175</sup>

The instrument calls on state parties to eliminate discrimination against women across a broad range of areas including both civil and political rights, economic, social and cultural rights. This convention codifies the existing gender-specific and general human rights instruments containing guarantees of freedom from discrimination on the ground of sex, with significant attention and calls on state parties in its Article 5 to eliminate traditional and stereotyped notions of the roles of sexes with particular emphasis on rural women as contained in Article 14.<sup>176</sup>

The thirty articles of CEDAW marshaled out the meaning of equality, and the way forward towards its achievements, and has consequently created International Bill of Rights for women, plus an agenda for action by state parties in making sure that these guaranteed rights are religiously observed. Under this convention, state parties are enjoined to do anything within their powers to prevent the treatment of women differently from men by creating basic rules in their laws to address it. Also, states are to take steps to ensure that women are free from any form of discrimination that affects their social, economic as well as political

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<sup>175</sup> Dame Carol Arinze Umobi, *Violence Against Women: A Legal Anatomy*, (Onitsha: Folmech Publishing Co. Ltd, 2008), 202-209.

<sup>176</sup> Carol Arinze Umobi, *Violence Against Women: A Legal Anatomy*, 82.

development, cultural inhibitions, sale into slavery, forced prostitution, being offered as sacrificial lambs for peace in war times, and are to be totally eroded. They must also be given the freedom to organize themselves freely into groups as desired organizations once such an organization has the peace and progress of the country at heart.<sup>177</sup>

Equal and unalloyed freedom and access must be given to all women in representation of the country at international levels, and rights to learn and be educated must be enjoyed by every woman of the member states without preferential treatment on women. Obviously, this convention has guaranteed women the right to work, and to enjoy good health like men, and must not be denied access to health care services, family planning inclusive as reflected in Article 12.<sup>178</sup>

This convention urges state parties to embody principles of equality in these national constitutions, or other instruments and to adopt appropriate legislative measures prohibiting discrimination against women, and even temporary measures, if necessary to ensure their full development and advancement in all areas as envisaged in Article 2 and 4; they are also enjoined to modify social and cultural patterns of conduct with a view to eliminating prejudices and customary practices based on stereotyped roles for men and women, and take appropriate measures suppress all forms of traffic in women including exploitation and prostitution. A collaboration of Article 4 and 7 of the CEDAW encapsulates the totality of what is required to enhance the political and public life of women particularly in Nigeria. The United Nations also has programs and agencies poised all empowering women. The conferences at Mexico, Nairobi, Copenhagen and Beijing all mounted to improve the lot of

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<sup>177</sup> Ibid

<sup>178</sup> Ibid, 73

women lend credence to this. Regions of the world in response to the call of rights of the sexes have instruments intended to fulfill these human rights obligations. In Africa, the Charter on Human and People's Rights promulgated by the African Union in 1981 in response to this call. Particularly, in its Article 9, the state parties are mandated to take positive action to enhance the participation of women in the political life of their country through affirmative action, enabling national legislations and other measures to ensure equal participation of men and women in public life and positions of decision making.<sup>179</sup>

## **ii. Declaration on the Elimination of Violence Against Women.**

In June 1993, at the Vienna world conference on Human Rights, the International community openly acknowledged that the body of International law and mechanism established to promote and protect human right has not properly taken into account the concern of over half the world's population. States formally recognized the human rights of women as an inalienable integral and indivisible part of human rights" and expanded the international human rights agenda to include specific violation.

In December 1993 the United Nations General Assembly adopted the Declaration on Elimination of Violence Against Women. This Declaration categorized gender-based violence Against women as an issue of human rights generally, and one of sex discrimination and inequality in particular.

Article 2 of this Declaration holds that violence against women shall be understood to encompass, but not limited to the following.

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<sup>179</sup> Arinze Unobi, Domestic Violence Against Women in Nigeria, 97.

- a. Physical, sexual and psychological violence occurring in the family, battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence related to exploitation.
- b. Physical, sexual, psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.
- c. Physical, sexual or psychological violence perpetrated or condoned by the state, whenever it occurs. In other words, the state can be responsible for violence due to its action and failure to act.

Nigeria is a signatory to this declaration but it is yet to domesticate and incorporate the rules therein into its national and domestic laws.

### **iii. Convention against Torture and other cruel, inhuman, or degrading treatment or punishment 1984**

The above Convention has been signed, but not yet domesticated by Nigeria and it's also a convention that seeks to extend the central theme as espoused in Universal Declaration of Human Rights, 1948 to the effect that there must be recognition to the equality of all, enjoyment of these inalienable rights of all members of the human family as forming the foundation of freedom, justice and peace in the whole world, paying particular attention to the provisions of Article 1 which seeks to promote universal respect for and observance of human rights and fundamental freedoms. Also paying obeisance to Article 5 of UDHR and 7 of ICCPR, both of them providing for elimination and total annihilation of torture, cruel, inhuman or degrading treatments and punishment, the convention against torture dares to

make more effective the struggle against torture and other cruel inhuman or degrading treatment or punishment throughout the world.

**iv. United Nations Protocol To Prevent Suppress And Children Supplementing the United Nations Convention against Transnational Organized Crime 2000.**

It was the first major international convention relating to women and child trafficking. The purpose of the protocol was to prevent and combat trafficking in persons especially women and children, protect and assist victims of such trafficking and promote cooperation among state parties in order to achieve the set out objectives.<sup>180</sup>

The protocol prohibits the recruitment, transportation, transfer, harboring or receipt of persons by means of the threat of or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent- of a person having control over another person for the purpose of exploitation.

The protocol also specifically provides for assistance to and protection of victims of trafficking in person through the provision of medical, psychological and material assistance, employment, educational and training opportunities.<sup>181</sup> This protocol was signed by the Nigerian government and Nigeria is a signatory, Nigeria has followed in its footsteps by creation of the NAPTIP body to eliminate trafficking in women and girls.

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<sup>180</sup> Violet O. Aigbokhaevbo, "Child Trafficking In Nigeria: Regulatory Constraints," *UNIBEN Law Journal*, 13 no 1, (2010-20 12), 345-369.

<sup>181</sup> Ibid

#### **v. The United Nations Charter, Article 55**

It states that; With a view to creating conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on the respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote...

(c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

#### **vi. The International Covenant On Economic, Social and Cultural Rights (ICESCR), 1966**

Article 2(2), states;

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex., language, religion, political or other opinion, national or social origin, property, birth or other status. Nigeria is a signatory and has incorporated this convention in our Constitution with regards to Section 42 of the Constitution.

#### **vii. The International Covenant On Civil and Political Rights (ICCPR), 1966**

Article 26 of 'the ICCPR establishes a free standing right of equality before the law. It prohibits discrimination in law or in act any field regulated and protected by public authorities. Article 3 provides a comprehensive gender analysis of all its provisions and highlights aspects of particular concern to women. Nigeria is also a signatory to this covenant with regards to Section 42 it has domesticated this covenant.

### **viii. The European Convention on Human Rights and the Human Rights Act 1998**

The ECHR, as a regional instrument, has proved itself to be much more effective than other instruments in ensuring state compliance with the human rights norms it represents. The EHCR, knowledge the right to like in Article 2 and the right to be free from torture and from inhuman or degrading treatment or punishment in Article 3.<sup>182</sup> Article 1 requires all State parties to secure the rights and freedoms delineated within the ECHR to everyone within their jurisdiction article 14 discusses the ban on gender-based discrimination, women and men being equally entitled to the aforementioned rights. In *Kontrovia v Slovakia*<sup>183</sup> it was held that Article 2 had been breached by the police to act, the ECTHR reiterated the general principles of Article 2 and in particular, the duty, in appropriate circumstances, to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the acts of another individual.<sup>184</sup> The same decision was held in *Bevaequa and Another v Bulgaria*<sup>185</sup>

### **ix. Protocol To The African Charter On Human And People Protocol On The Rights Women in Arica 2005**

The idea of a protocol to the African Charter to address women's right was based on the African charter's inadequacy in providing for women's rights. While gender equality and non-discrimination were included in the African Charter, provisions relating to specific rights of particular concern to women in Africa were not. Recognition of gender-based violence was

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<sup>182</sup> Julie Wallbank, Shazia Choudhry, Jonathan Herring, ed, *Rights, Gender and Family Law*, (United States, Routledge Ltd, 2010), 148-150.

<sup>183</sup> (App No 75 10/04:) 3 I May 2007.

<sup>184</sup> The principle was set out in *LCB and Osman v the United Kingdom* (1998) 29 EHRR 245.

<sup>185</sup> App No. (71 127/01), 12 June 2008.



one of oversight. Leading non-governmental organizations in collaboration with the African Commission, organized a seminar in 1995 on the protocol on women.<sup>186</sup>

The Protocol on women addresses gender-based violence comprehensively and includes provisions on the elimination of discrimination against women, the Right to Dignity, the right to life integrity and security of the person, trafficking in women, the prohibition of harmful practices, protection of women in armed conflict, sexual harassment, pornography, reproductive right, and protection from violence including sexual abuse for elderly women and women with disabilities.

Article 2 of this provision notes the need to modify the social and cultural patterns of conduct of women and men. It was ratified by all states and implemented, the Protocol on Women has potential to alleviate gender-based violence in Nigeria.<sup>187</sup> Nigeria is a signatory to this\*\*\*\*\*

Idiat Funmitola Akande, “Violence Against Women And Protection Under International Human Rights Law And Domestic Law,” *Journal of Human Rights Law And Practice*, (2007), I no.I,15.

#### **x. The Solemn Declaration on Gender Equality in Africa**

The Solemn Declaration was adopted by the AU in July, 2004. It recognizes the numerous impediments to gender equality and implications of gender inequality, including gender-based offence. Its preamble expresses deep concern about the status of women and the negative on women and girls and issues such as HIV/AIDS, conflict, harmful traditional practices and violence against women.

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<sup>186</sup> Idiat Funmitola Akande, “Violence Against Women And Protection Under International Human Rights Law And Domestic Law,” *Journal of Human Rights Law And Practice*, (2007), I no.I,15.

<sup>187</sup> Ibid, 80

**xi. The constitution of the International Labor Organization (LO), 1919, Article 41:**

Asserts the special and urgent importance of the principle of equal remuneration for work of value for men and women. Nigeria is a signatory to this convention and it has been domesticated into our Labor law Act.

**1) The Nigerian Constitution; The Fundamental Rights As It Relates To Gender-Based Violence**

**a. The Right to Life**

African Charter on Human and Peoples Rights (Article 4): Human Beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of his right.

European Convention on Human Rights and Fundamental Freedoms: Everyone's right shall be protected by law. No one shall be deprived of his life. Intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

Nigerian Constitution: Section 33(1) of the Nigerian Constitution provides that; Every person a right to life. and no one shall be deprived intentionally of his life, save in execution of the of a court in respect of a criminal offence of which he has been found guilty in Nigeria.<sup>188</sup>

Gender-based killing of women and girls is one of the most extreme forms violence against women can take It's not simply a violation of a woman's right to life, but a violation of the right committed with discriminatory intentions. This is different than random acts of violence,

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<sup>188</sup> Section 33. CAP 4. LEN 2004.

because it means women were killed because they are women. Examples of violence against women that violates this right include; Dowry deaths, Rape-Murder,, crimes committed in the name of the so called honor, domestic violence, Intimate partner violence.

#### **b. Right to Liberty and Security of Persons**

African Charter on Human and Peoples Rights (Article 6); Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

#### **Nigerian Constitution**

Section 35 of the Nigerian Constitution states that: Every person shall be entitled to his personal liberty and such person shall be deprived of such liberty.<sup>189</sup> The right to Liberty and security of person is a fundamental part of human dignity. It's a recognition of the equal worth of all human beings and a duty to respect that worth. Sex trafficking is a complete denial of women's right to liberty and security of person. While under the control of the traffickers, women are kept in isolation and unable to contact anyone for help and locked in their living space. If they resist sex work, they face rape, starvation and even murder.

#### **c. Right to Equality and Freedom from Discrimination**

Nigerian Constitution; Section 42 provides that; No citizen shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.<sup>190</sup>

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<sup>189</sup> Section 35, LIFN, 2004.

<sup>190</sup> Section 42 LIFN 2004

**d. The Right to be Free from Torture:**

African Charter on Human and Peoples Right (Article 5); Every individual shall have the right to the respect of dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman and degrading treatment shall be prohibited.

**xi. European Convention on Human Rights and Fundamental freedoms (Article 8);**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The United Nations Special Rapporteur on Torture and the Committee for the Convention against torture have both acknowledged the devastating impact of violence against women and its inclusion into the anti-torture framework. Types of violence against women that violate this right include Widow burning, Acid throwing, virginity testing.

**3.4 Violence against Persons Prohibition Act 2015**

This is an act to eliminate violence in private and public life, prohibit all forms of violence against persons and to provide maximum protection and effective remedies for victims and punishment for offenders, and for related matters. Some of the sections in these act include Section 1 which provides for rape thus; A person commits the offence of rape, if - he/she intentionally penetrates the vagina, anus or mouth of another person with any other part of his or her body or anything else.

Section 2 (1) provides; inflicting physical injury on another, A person who willingly causes or inflicts physical injury on another person by means of any weapon, substance or object, commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 years or to a fine not exceeding #100,000 or both.

Section 3 provides; A person who coerces another to engage in any act to the detriment of that other person's physical or psychological well-being, commits an offence and is liable on conviction to term of imprisonment of 3 years.

Section 4 provides; A person who willfully and knowingly places a person in #200,000.

Section 6(1) of this act provides; The circumcision or genital mutilation of the girl child or woman is hereby prohibited.

Section 9 provides for forcefully ejection from home, Section 10 provides for depriving a person of his or her liberty, section 12 provides for forced financial dependence or economic abuse, provides for forced isolation or separation from family and friends, section 14 provides for emotional, verbal or psychological abuse, section 15 provides for Harmful widowhood practices, section 19 provides for spousal battery, section 25 provides for incest.

### **3.5 Conclusion**

International Laws and Conventions against gender-based violence has been exhaustively discussed in this chapter. Next Chapter will elaborate more on Gender-based violence in Nigeria short comings in Nigerian Laws in its application and enforcement.

193 Section 9 VAPA, - a person who forcefully ejects his or her spouse from his or her home or refuses him or her access commits an offence and is liable on conviction to a term of imprisonment not exceeding 2years or to a fine not exceeding #300000 or both, Section 10 provides that; a person who deprives another of his or her liberty, except pursuant a court order commits an offence and is liable to an imprisonment not exceeding 2years or to a fine of #500000 or to both, Section 12 provides that; a person who causes forced financial dependence or economic abuse of another commits an offence and is liable on conviction of

imprisonment not exceeding 2years or to a fine not exceeding #5000000 or both, Section 13 provides for: forced isolation with a fine of #100000 or 6months imprisonment, Section 14 provides for emotional, verbal or psychological abuse with a fine not exceeding #200000 and a term of 2yrs, Section 15 provides a term of 2years and a fine not exceeding #500000 for committing an offence of harmful widowhood practices, Section 19 provides for spousal battery with a term of 2yrs imprisonment and fine of not less than #200000, Section 25 provides for the offence of incest with the liability of 10yrs imprisonment without fine, where the two parties consent to commit incest, provided it was not obtained with fraud, 5yrs imprisonment without option of fine.

## CHAPTER FOUR

### CRITIQUE OF LAWS REGULATING GENDER-BASED VIOLENCE IN NIGERIA

#### 4.1 Introduction

Gender-based violence in Nigeria will be examined critically in this chapter. The law regulating and discriminatory against gender-based in Nigeria will also be examined.

#### 4.2 Analysis of Gender-Based Violence In Nigeria

Gender-based violence is a common occurrence in Nigeria, Women are treated differently from men in the Nigerian society. The discrimination against the females starts from birth, for instance, the joy and jubilation that accompanies the birth of a male child is far higher than that of his female counterpart.<sup>191</sup>

According to Dr. Jumat. A. Badawi, the most cause of this belief (that women lack property right in Nigeria) is as old as 610 BC. In ancient civilization, women are treated and regarded as chattels and therefore were no better than merchandize displayed at market overt for sale to be brought by any prospective purchaser or to be inherited as part of the assets and legacy of a deceased person. Hence, because of this, women were restricted and incapacitated in several aspects. A good example is that women could not legally own property, enter into contracts, make will give evidence or act as surety.<sup>192</sup> But by virtue of Section 43 of the 1999 Constitution,<sup>193</sup> women are entitled to own property.

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<sup>191</sup> Sofia Sado "Women Discrimination: An impediment to Societal Development," 8, No. I, December, 2009, Okpella voice, 15

<sup>192</sup> Section 43 of the 1999 constitution, it provides that subject to the provisions of the constitution, every citizen of Nigeria shall have the right to own and acquire immovable property anywhere in Nigeria.

<sup>193</sup> C.U Okoboh, "Women and their right to Property in Nigeria: A Review," *Igbinedion University Law Journal*, 3. (2007), 60-61.

One of the most striking inalienable rights lavishly bestowed on all human beings, both men and women by a perfect creator is the right to own and control property. By property, it is meant the "res" (thing) over which the ownership may be exercised. It may also mean an interest in a thing anything which is capable of ownership. This was significantly expressed in *Donald v Suckling*<sup>194</sup>

However in some parts of Nigeria, women are still allowed to own property in Nigeria. The struggle in respect of equal rights and freedom from discrimination for the Nigerian woman precedes Independence. In 1935, Mrs Oyinkan Abayomi who led the women's party to demand from the colonial government, the employment of more women in the various categories of the civil service and equal pay for equal work. The reply the women received from the then Chief Secretary succinctly presents the traditional attitude to and treatment of women vis a vis men in the society:

Women don't make good sales women and since women don't have the same financial responsibilities as men, they should not receive equal salaries.<sup>195</sup>

So entrenched was the assumed inferiority of women that in AD 856, a World Conference was held in France to consider whether or not the woman was a human being and was created to worship man. A similar conference was held in Rome subsequently, to determine if women had souls which could go to heaven and so should be taught religion and entitled to worship.<sup>196</sup> Even in Nigeria, the traditional position in Nigeria prior to colonization was not much better. For example, amongst the Yorubas', a woman was forbidden to go outside during the Oro festival. The reason for this is that women were perceived as evil and would have

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<sup>194</sup> (1866) I.R IQB 585

<sup>195</sup> Ayo V. Oyajobi, "Gender Discrimination and Fundamental Rights of Women in Nigeria," *Journal of Human Rights and Practice*, 76-97.

<sup>196</sup> Ibid



nugatory consequences for the masquerade outing.<sup>197</sup> Some other discriminatory practices in Nigeria, although they have no legal backing, some of them have governmental approval as policy decisions and executive or administrative policies which discriminate against women thus offending Section 40 of the Constitution.<sup>198</sup>

Firstly, there is the practice of disallowing females to stand as sureties or bail applicants. Reasons for this range from the benevolent patriarchal attitude of men towards women to those which simply regard such efforts to recognize women as capable of being culturally religious, which efforts must be thwarted at all costs. To do otherwise according to them would amount to allowing women into the strictly preserved men's world. Also there are the requirements by the Immigration Department that a married woman submit together with an application for a passport, a letter of consent by her husband.<sup>199</sup>

Similarly, she cannot include her children's name on her passport without her husband's consent although the same is not required of her husband. Also apart from the executive and administrative actions which discriminate against women, customary practices guiding family life e.g. rules on dissolution of marriage and widow rites.

Under Customary Law, a woman also reserves the right to divorce her husband, the exercise of this right by her is customarily frowned upon so that the socially tolerable circumstances

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<sup>197</sup> Ayo V. Oyajobi, *Gender Discrimination and Fundamental Rights of Women in Nigeria*.

<sup>198</sup> Section 39 LEN 2004, it provides that every person shall be entitled to assemble freely and associate with other persons and in particular, he may form or belong to any political party, trade union or any other association, for the protection of his interests.

<sup>199</sup> Ibid

which may justify this right as so extensively circumscribed as to make the right non-existent. However, the man has an extensive scope for this right.<sup>200</sup>

Domestic violence is another abuse by men women experience daily, it is on a rise in Nigeria and the world at large. Lieman Joan in her study discovered that women often hold back from disclosing domestic violence from interviewers or even to, the police because of the emotions connected with the experience, including fear, and a sense that nothing or no one can help.<sup>201</sup>

Domestic violence presents a paradox concerning women's protection against violence, because of ways in which the human rights protection of private and family life is occasionally applied. Some states try to be solicitous of family life by classifying activity within the private sphere and therefore beyond public scrutiny and governmental intervention.<sup>202</sup> Various reports from Human Rights Watch have documented the acceptability of spouse battering in many parts of Africa. This report shows clearly that in most of these societies, both men and women do not see anything wrong with a man beating his wife occasionally. As a matter of fact, a man who does not beat his wife is considered a "sissy", who is controlled by the wife. In addition to battery, violence against women in Africa also takes the form of abduction, rape and early marriage.<sup>203</sup>

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<sup>200</sup> In Igueben, in the Okpebho Local Government Area of Bendel State, it is stated that if a wife annoys or provokes her husband so much that he stamps his foot on the ground, the woman has to leave her matrimonial home that day with her female children, but leaving her male children behind and the issue is not resolvable by custom.

<sup>201</sup> Akpoghome TU, Brenda S.M, "Gender -Based Violence: The Dangers And Effects Of Harmful And Unhealthy Practices Against Women's Rights," *Ahmadu Bello University, Zaria Journal of Private and Property Law*, (2010-2011), 1 50.

<sup>202</sup> Rebecca J.R Cook, Bernard M. Dickens, Malhmond F. Fathella, *Reproductive Health and Human Right: Issues in Biomedies Ethics*, (Oxford University Press, 2010), 29-30.

<sup>203</sup> Ediom-Ubong E. Nelson, Ibora E. Nelson, "Violence Against Women in Nigeria: The Factors and the Dynamics, The Constitution," 10, no 2, 85.

Another violence against women prevalent in Nigeria is the issue of rape. The most vulnerable are young girls between the age of 1 year-18 years. Some of these young girls may be exposed to and especially when they are sent to hawk food items or sent to buy something. Most times, it is done by people they know. The corroboration requirement in sexual offences makes it difficult for a victim to obtain judgment under Section 32 Criminal Code.<sup>204</sup>

In *Iko v State*<sup>205</sup> the court stated in unequivocal terms, that apart from instances where the law required corroboration in sexual offences, the court had made it part of its practice to always demand that a victim of rape adduces evidence independent of her to support her claim that she had been raped. In *Beakanna v Queen*,<sup>206</sup> the court maintained that it is an established practice in criminal law that though corroboration of the evidence of the prosecutrix in a rape case is not essential in law, it is in practice always looked for and it is also the practice to warn the jury against the danger of acting upon her uncorroborated testimony.<sup>207</sup>

In *Igbine v The State*<sup>208</sup> Muntaka JCA defined corroboration as confirmation, ratification, verification or validation of existing evidence coming from another independent witness(es). In the same instance in marital rape, women's rights are also violated, it is believed that a man cannot ape his wife as it is the duty of the woman to satisfy her husband sexually.<sup>209</sup> Section

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<sup>204</sup> Section 32 Criminal Code LEN, 2004.

<sup>205</sup> (2001) 14 NWLR 732, 195.

<sup>206</sup> (1963) SCNLR 191, 194-195.

<sup>207</sup> Olugbenga A. Olatunji, Penetration, Corroboration and Non-Consent, Examining the Nigerian Law on Rape and Addressing its Shortcomings, *University of Ilorin Law Journal*, 8, (2012). 91.

<sup>208</sup> (1997) 9 NWLR 519 90

<sup>209</sup> Mary-Ann Ajayi, An Overview of Rape and Sexual Assault off Women and Children: The Criminal Justice System in Nigeria in Comparison with other Jurisdictions, *The Silk*. 153

282 of the Penal code provides that sexual relations by a man with his own wife is not rape. Under the Sharia law, the law is not clear but the Quran urges the wife to be submissive.<sup>210</sup>

Female Genital Mutilation is another dangerous practice in Nigeria. Amnesty International in 2003, reported that FGM is still practiced in at least 28 countries.<sup>211</sup> Some other practices like Child marriage and Trafficking is also prevalent in Nigeria. Blacks Law dictionary defines a child to mean under the age of minority, statutorily defined, a child is person under the age of 14years while a young person is between the age of 14 and 17.<sup>212</sup> Under the Muslim law, the consent of the bride is immaterial as Muslim law has made provisions for the fathers to validly contract marriage on behalf of their virgin daughters without their consent and their ages are not considered.

Discrimination women face in the area of taxation, employment/Labor in Nigeria, and other areas would be discussed exhaustively in this chapter. Women continue to face discrimination in Nigeria despite the laws enacted, these laws will be examined next.

### **4.3 Nigerian Laws and Its Discriminatory Clause, Against Women**

#### **4.3.1 The Constitution**

Constitution failed to address certain outstanding issues such as Gender Equality and even when it impliedly address such Issues, it ends up being self-defeated by contradictory provisions. The failure has been ascribed to be as a result of inappropriate structures, lack of time and resources needed by the committee to ensure necessary public and expert consultation and wide range debates on the making of the Constitution.

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<sup>210</sup> Ibid

<sup>211</sup> The Constitution, 10, no.2, June , (2010), 85.

<sup>212</sup> Section 2 of the Children and Young Peoples Act, CAP 32, LFN, 2004.

Thus it is no surprise that certain sections of the Constitution are contradictory. So on one hand the Constitution prohibits discrimination but on the other hand condones it. For instance, Section 15(2) CFRN 1999 prohibits "discrimination on the ground of origin, sex, religion, status, ethnic or linguistic association or ties." Section 17(1) CFRN 1999 provides that "the state social order is founded on the ideals of Freedom, Equality and Justice. It was further provided under Section 17(2) (a) that in furtherance of the social order "every citizen shall have equality of rights, obligations and opportunities before the law."

Furthermore, Section 42(1) and (2) also prohibits discrimination on several grounds (including gender discrimination). However subsection (3) of the same Section 42 indirectly permits discrimination, by permitting discrimination with regards to certain grounds. Consequently, certain enactment with regards to those grounds mentioned in subsection 3 of section 42 are gender insensitive and discriminatory, for example The Nigerian Police Regulations.<sup>213</sup> Section 122 of the Police Regulation provides that; Women police officers recruited to the General Duties Branch of the Force may in order to relieve male police officers from these duties, be involved in any of the following office duties, namely; clerical duties, telephone duties and office orderly duties. Also, Section 124 provides that a woman Police officer who is desirous of marrying must first apply in writing to the Commissioner of Police for the State Police command in which she is serving, requesting permission to marry and giving the name, address and occupation of the person she intends to marry. 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.

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<sup>213</sup> A Subsidiary Legislation made under Section 46 of the Police Act, CAP P19, LFN, 2004, Section 118(g) prevent married women from seeking enlistment in the Nigerian Police Force.

A different area of gender discrimination under the CFRN 1999 is with regards to citizenship by registration. Hence, the CFRN 1999 provides that a male Nigerian may confer citizenship on his be who is a foreigner by registration but there is no such provision for a Nigerian woman married to a foreigner.<sup>214</sup> Although it has been suggested that such foreign husband of a Nigerian woman can acquire citizenship by naturalization, but this is an arduous and complicated process.

In the case of *Unity Dow v The AG of Botswana*,<sup>215</sup> Citizenship Act 1984 of Botswana conceded citizenship to issues of a Botswana man and a foreign wife but denied it to those of a Botswana woman married to a foreign husband. The Statute contravened non-discrimination provisions enshrined in the Botswana Constitution. This is a ground breaking case and its principle should be employed by Nigerian courts and extended to combat this discriminatory strides in Nigeria. Following the position in Nigeria, a foreign husband of a Nigerian woman would be deprived of all the benefits of citizenship such as the right to vote and access other public benefits, making him an alien in his wife's country.

Immigration Service often discriminates against women, especially against foreign wives who acquire citizenship by registration. To this effect, a Federal Circular dated August 17, 1994 provided thus: "Re-entry visa/permit issued to foreign women married to Nigerian men remains valid as long as the passport remains valid and her husband continues to accept immigration responsibilities on behalf of his wife. Where such a wife is divorced from the husband or is widowed she can only remain in the country based on a request for permission

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<sup>214</sup> Section 26(2) (a) ILFN 2004.

<sup>215</sup> Court of Appeal, Civil Appeal Na.4/91, Appeal Court of Botswana, July 1992).

to remain in the country. The Comptroller General of Immigration will accept such request on its merits after due consideration.

Another important issue is the indigene status of the female gender. Women who marry husbands who come from a state other than theirs are discriminated against as they are often denied the rights of indigene-ship of their husband's state. They are also denied the rights of indigene-ship from their state as they are regarded as having "vacated" thus in a report given by the Presidential Committee on the review of the CFRN 1999, it was noted that the Constitution should provide for women to have the right to claim the indigene-ship of the state of origin of their husbands. It was the proposition of the committee in its draft amended Constitution that:

A Nigerian woman married to a Nigerian who is not of the same state of origin shall be entitled to all rights and privileges of the indigenes of that state in all cases of appointment, employment, or election to any political and public office as if she were an indigene of that state.

The Committee was set up by Chief Olusegun Obasanjo, the President of Nigeria at that time, it was inaugurated in October 1999, with the mandate to co-ordinate and collate the views of Nigerians on the CFRN 1999 and make representations as to the appropriate government.

### **Under-Discrimination/violence Under the Statute**

#### **4.3.2 The Criminal Code<sup>216</sup>**

The Criminal Code is applicable in the Southern part of Nigeria, though it doesn't specifically provide for gender-based violence, it however provides for common assault and considers assault woman as a misdemeanor while assault on a man is termed felony and this is quite

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<sup>216</sup> Criminal Code Act CAPC38, LFN, 2004.

unfortunate. Section 353 of the Criminal Code<sup>217</sup> also prescribes 2years punishment for an indecent assault on a man while Section 360<sup>218</sup> prescribes 3years punishment for the same offence on a woman and merely tags it a misdemeanor. This disparity in the punishment sends negative vibe to show that the man is superior to the woman and this not ought to be. Section 218-357<sup>219</sup> protects girls under 13 years from sexual assault whether there is consent or not to have helped the girl child because Section 6 excludes wives from protection.<sup>220</sup>

The Criminal Code should be amended to provide for the offence of gender-based violence including Domestic violence and also increase the term of punishment in respect of girls over and above that of boys so as to serve as a deterrence to would be offenders.

#### **4.3.3 Penal Code<sup>221</sup>**

Under Section 55, Penal Code<sup>222</sup> (applicable in Northern Nigeria), husbands are permitted to reasonably chastise their wives.<sup>223</sup> The above provision is said to encourage violence against women as it allows for the beating of the wife for the purpose of correction. It is also noted that Section 282 of the Penal Code also condones marital rape and states that sexual intercourse by man with his own wife is not rape if she has attained puberty. This provision has led to the defilement of young girls under the age of 16 because the age of puberty is not

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<sup>217</sup> Section 353 of the Criminal Code CAP 29, LFN 2004 provides that; any person who unlawfully and indecently assaults any male person is guilty of a felony and is liable for imprisonment for three years.

<sup>218</sup> Section 360 of the Criminal Code CAP 30, LFN 2004 provides that any person who unlawfully and indecently assaults a woman or a girl is guilty of a misdemeanor and is liable to imprisonment for two years.

<sup>219</sup> Section 218-357 of the Criminal Code LFN 2004

<sup>220</sup> Section 6 of the Criminal Code LFN 2004

<sup>221</sup> Penal Code CAP P3, LFN, 2004.

<sup>222</sup> Section 55 of the Penal Code provides that; nothing is an offence which does not amount to infliction of grievous hurt upon any person which is done...by a husband for the purpose of correcting his wife, such husband and wife being subject to any native law and custom under which such correction is lawful.

<sup>223</sup> Imasogie M.O, "Gender Sensitivity and Discrimination against Women Under Statute and Common Law," *The Silk: A Journal of Legal Issues for Contemporary Justice in Nigeria*, 2012, 101.



fixed and any girl who for instance has commenced her menstrual period is deemed to have attained puberty.<sup>224</sup> It is suggested that the Section 55 of the Penal Code be repealed and replaced with laws that protect Northern women against gender-based violence.

#### **4.3.4 The Labor Act**

Article 1 of CEDAW states that women shall have equal rights as men with respect to employment opportunities, choice of professions, promotion and remuneration. Although CEDAW has not been domesticated into Nigerian Law, the Nigerian Constitution outlaws discrimination on the basis of sex and women's rights are further protected under the Labor Act.<sup>225</sup>

While certain Sections of the Labor Act is set out to protect women, these sections in a nutshell empowered the Minister of Labor to make discriminatory Regulations that prohibited women from undertaking certain jobs. This reinforces negative stereotypes that women are only suitable for certain jobs as they are fragile and their place after all is in the home. For example, women be "employed on night work in a public or private industrial undertaking or in any branch therefor any agricultural undertaking or any branch thereof."<sup>226</sup>

It is to be noted that this limitation does not apply if they don't belong as nurses, in any public or private industrial undertaking or in any agricultural undertaking. Similarly, it does not apply to women holding responsible positions of management who are not ordinarily engaged

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<sup>224</sup> Idehen S.O, "Domestic Violence against Women in Nigeria: A Critique," *Nasarawa State University Law Journal*, 4, no.I, (2011), 33-34.

<sup>225</sup> Anthony Hodges e.d., *Children's and Women's Right in Nigeria: A wake-up call*, (Abuja: National Planning Commission and UNICEF 2001), 179.

<sup>226</sup> Section 55(1) Labor Act LEN 2004 provides that subject to this section, no woman shall be employed on night Work in a private or public industrial undertaking or in any branch thereof, or in agricultural undertaking, or any branch thereof.

in manual labor, or where the night work in question was due to an interruption of work, which it was possible to foresee and which is not of accruing character" or where the night work in question had to do with raw material or materials in course of treatment which are subject to rapid deterioration and it was necessary to preserve such materials from certain loss.<sup>227</sup>

Those sections are discriminatory to the extent that they limit women's access to work, yet the International Equal Remuneration Convention of 1951 calls for equal job opportunities for men and women. Again while women who are recruited for service in Nigeria are denied the opportunity of being accompanied by their family to their place of employment. Men on the other hand, who are recruited for service in Nigeria, are allowed to be accompanied to their place of employment by "such members of his family (not exceeding two wives and such of his children as are under the age of 16 years as he wishes to take with him).<sup>228</sup>

It is appreciated that Regulation 39 of the Police Regulation Act<sup>229</sup> expressly excludes its application to acts relating to appointment of a person as a member of the Armed Police Forces. Without delving into the arguments for and against that limitation of the scope of rights, the Nigerian Government continues to breach the constitutional provision by going beyond the limit allowed.<sup>230</sup> Specifically, the limitation relates to appointment but in the

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<sup>227</sup> Section 56(1) Act LEN 2004 provides that subject to subsection (2) of this section, no woman shall be employed on underground work in any mine.

<sup>228</sup> Section 34(1) Labor Act LFN 2004 provides that any citizen who is recruited for service in Nigeria may be accompanied to his place of employment and attended during his employment thereby such members of his family (not exceeding two wives and such of his children as are under the age of sixteen years) as he wishes to take with him.

<sup>229</sup> Regulation 39 of the Police Regulation Act provides that when vacancies in the establishment of assistant superintendents of police cannot, by reason of unavailability of suitable candidates, be filled by promotions from within the Force, the Inspector General shall so inform the Nigeria Police Council and may request it to arrange for the posts to be filled by direct entry.

<sup>230</sup> Ayo V. Oyajobi, *Gender Discrimination And Fundamental Rights of Women in Nigeria*, 191-192.

Nigerian Police Regulations,<sup>231</sup> extensive miscellaneous conditions of service are provided for women police officers. These conditions of service can, by no stretch of imagination, be said to relate to appointment.<sup>232</sup> Regulation 122<sup>233</sup> is also discriminatory, a woman cannot be enlisted if she is already married, although no similar provision for a man. This provision does not apply to men, the only rationale given was to ensure a woman police officer does not relate with people of unquestionable character, can a male not be associating with persons of unquestionable character? This clearly puts the male folk above the female and it is discriminatory. Rule 03303 of both Kano and Kaduna states Civil Service Rules provides as follows: "Any woman servant, married or unmarried who is about to take a course of training shall be called upon to enter into an agreement to refund the whole or part of the cost of the course in the event of her course being interrupted on ground of pregnancy." This regulation is rather discriminatory as there are not equivalent provision for male civil servants where courses are truncated by sickness or ill health.<sup>234</sup>

Section 53 of the labor Act provides for maternity leave.<sup>235</sup> In private organization, the provision for maternity leave is observed more in breach than in compliance. This is

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<sup>231</sup> Regulation 118(4) provides that for the qualification of appointment, the woman police officer must be unmarried.

<sup>232</sup> Regulation 124 requires that; a woman police officer who is desirous of marrying must first apply in writing to the Commissioner of police...requesting permission to marry and giving the name, address, and occupation of the person she intends to marry. Permission will be granted for 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.

<sup>233</sup> Regulation 122 states; a married woman police officer shall not be granted any special privileges by reason of the fact that she is married and shall be subject to posting and transfer as if she were married.

<sup>234</sup> Imasogie, M.O, Gender Sensitivity and Discrimination Against Women Under Statute And Common Law. 104.

<sup>235</sup> Section 53 of the Labor Act: An employed woman has the right to go on maternity leave if she produces a medical certificate given by a registered medical practitioner, stating that her confinement will probably take place within six weeks while on such leave, she will be entitled to not less than 50 percent of her wages provided she has worked for not less than six months prior to her commencement of the maternity leave.

particularly so in unorganized private sector. Maternity leave is granted if at all without pay. This forces a newly delivered mother to go back to work earlier than when she is medically fit in order to earn her living. This constitutes of her right under the law.<sup>236</sup>

Even the President, His Excellency, Muhammadu Buhari, who is supposed to be at the helm of affairs and to ensure discrimination of any gender is not practiced in Nigeria made a cryptic statement which not only demeaned his wife but all women in Nigeria. He made the statement while replying to his wife's interview on BBC Hausa, where she questioned his leadership; "I don't know which party my wife belongs to, but she belongs to my kitchen and my living room and the other room."<sup>237</sup> With all due respect the President clearly sees women as properties to husband for doing house chores and also satisfying his sexual desires. This threatens a woman's dignity and her place to stand in the society and should not be encouraged.

The labor Act clearly discriminates against women in certain sections amidst its original intention to protect women in employment. These sections should be reviewed and replaced with laws to protect women

#### **4.3.5 The NDLEA (National Drug Law and Enforcement Agency) Act**

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 in writing to the Chairman/Chief Executive asking for permission stating

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<sup>236</sup> Ibid

<sup>237</sup> My wife belongs to my Kitchen, the other room, <http://punchng.com/wife-belongs-kitchen-buhari/> accessed February 22<sup>nd</sup>, 2024

details of the intended husband. The National Drug Law Enforcement Agency has stringent laws against unmarried pregnant women. For instance, it was reported that the Agency recommended that one of their employees, Miss Udoka Tochukwu aborted her pregnancy in an attempt to stop her from getting married to a driver who worked with the Niger Delta-Development Agency.

Another issue related to NDLEA is the issue of gravity of punishment meted out to women. Whether involved in the illegal drug market of their own volition or coerced into the role of drug courier by a boyfriend or husband, women receive the same harsh mandatory minimum prison terms. A peripheral or unsuspecting role in drug offence makes a little or no difference when the sentencing standard is based solely on the weight of illicit substance involved. Pregnant or parenting women are penalized for alleged, often illusory risks to which they expose their children or foetus while suffering from drug addiction.<sup>238</sup> These penalties include removal of their children from their care, the termination of parental care rights and imprisonment. Exacerbating all of these problems, poor minority women lack of access to adequate treatment and counseling tailored to their specific needs. Jellinik asserts that drug addiction is a disease like cancer because the addict like a cancer patient can't control it. It is surprising how these vulnerable groups should be punished as such.<sup>239</sup>

According to a recent study on female drug couriers, many women recounted being coerced into carrying drugs with threats of violence and death. In Nigeria, many of the convicted female drug couriers sentenced to prison told the court that they were threatened or coerced

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<sup>238</sup> Carol Arinze-Umobi, Ogugua V.C Ikpeze, *With Four Specialist Contributors, e.d, Gender Rights Law In Nigeria(I)*, (Onitsha: Folmech Printing And Publishing Co. Ltd, 2008), 212.

<sup>239</sup> Ibid

into the drug business.<sup>240</sup> In the case of *Federal Republic of Nigeria v Angela Onyemechi*,<sup>241</sup> the accused who was found in possession of 17.1gm of Indian hemp pleaded fully to the charge, but led evidence and threat to her life in several occasions when she refused. The court disregarded her evidence and sentenced her to four years imprisonment. The same sentencing policies that are used to punish high-level traffickers, those policies that carry extremely harsh mandatory minimum sentences are used disproportionately against these women.

Part of the Act dealt with offences relating to drug abuse or trafficking. Section 10 of the act states that;

"Any person who without lawful authority imports, manufactures, produces, processes, plants and grows the drug popularly known as cocaine, LSD, heroin or any other similar drugs shall be guilty of an offence and liable to a conviction to be sentenced to prison for life."<sup>242</sup>

Many Nigerian women have been sentenced and convicted for this particular offence. Regrettably, however is the discriminatory sentence passed against women when they commit these offences, which the men commit too. Some of the negative reasons why the discriminatory sentences are done include; the societal conception of women as a very delicate sex meant for child bearing, care and preservation of life, morality and ethics of the culture of the society. To do anything contrary to these cherished ideals of the culture of the people will not be acceptable. Secondly the legal process is dominated by the male folks from the point of arrest and prosecution by NDLEA officers, most of the judges who hear these cases and

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<sup>240</sup> Ibid

<sup>241</sup> MOT/L/90/1/4

<sup>242</sup> Carol Arinze Umobi .Gender Rights Law in Nigeria, 201-223.

deliver judgment are mostly men. These are men who are brought up in a stereotype male dominated society with obvious beliefs of what a woman should or should not do.<sup>243</sup>

The NDLEA Act which governs drug laws is highly discriminatory against women. The problem with NDLEA Act is the underlying assumption of the test of discrimination that men and women are the same. The way in which men are treated becomes the measure of equality and equality is defined as being treated alike. In other words, the Act was made from the standpoint of men. In practice however, the NDLEA officials and tribunal that adjudicated most drug offences in Nigeria treat women severely and harshly than they treat men. The National Drug Law Enforcement Act should be amended to reverse this situation.<sup>244</sup>

#### **4.3.6 Marriage Laws**

Certain marriage laws are discriminatory against women: While female children were kept within the private sphere by paternal authority, many adult women continue to be under male authority in the home through the institution of marriage. The law gave men power over women in the home, sometimes explicitly and sometimes by lack of regulation.<sup>245</sup>

Article 16(1) of the Universal Declaration of Human Rights, makes specific provisions for equal rights of men and women as to marriage, including the rights of the spouses during marriage and upon its dissolution.<sup>246</sup> Contrary to the requirements of CEDAW, there is no legally defined minimum age of marriage in most parts of Nigeria. At federal level, Section 18 of the Marriage defines a person under the age of 21 years as a minor but allows minors to marry with parental consent. In Eastern Nigeria, the 1956 Age of Marriage Act permits

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<sup>243</sup> Ibid

<sup>244</sup> Ibid

<sup>245</sup> Imasogie M.O, Gender Sensitivity and Discrimination Against Women Under the Statute, 101

<sup>246</sup> Ayo V. Oyajobi, Gender Discrimination And Fundamental Rights of Women in Nigeria, 83.

marriage at 16years. However, in most parts of Nigeria there are no state laws stipulating a minimum age of marriage. This is a fundamental omission in the legal protection of children, in particular girls.<sup>247</sup>

Once married, the wife in a monogamous marriage celebrated under the Marriage Act<sup>248</sup> enjoys more legal rights, at least on paper, than a woman married under customary or Islamic law. Aside from the right to exclude all other women from her matrimonial home, the Married Women Property Act accords some recognition of the wife's inheritance rights. In the event of the death of the husband, a certain portion of legacy is left to the woman. Furthermore, the matrimonial Causes Act<sup>249</sup> recognizes the equal right of each party to the custody of the children. None of these rights apply under the customary law.

Married women do not have equal right to family assets acquired during the subsistence of a marriage and her right to be involved in its disposal during or after the marriage or upon the death of her husband. During the marriage, the husband is generally regarded as having the legal power to dispose of family property, often without consulting the wife, because irrespective of the wife's contribution, assets are usually acquired in the husband's name. It is time for the law expressly to protect the right of women in this regard and to require the consent of both parties before disposal of any family assets over which both have a proprietary interest.<sup>250</sup>

Where a marriage is to be dissolved, the Matrimonial Causes Act provides that a judicial order shall divide the family assets between the parties, but Nigerian courts have been known to

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<sup>247</sup> Anthony Hodges, Children's Rights and Women's Rights in Nigeria; A Wake up Call, 239.

<sup>248</sup> Marriage Act CAP 218, LFN 2004.

<sup>249</sup> Matrimonial Causes Act CMP 220, LFN 2004.

<sup>250</sup> Ibid 103.



impose the impracticable condition of requesting a wife to produce receipts or evidence of co-ownership of family assets before the claim of equality is concerned.<sup>251</sup>

Section 5(1) (d) of the Matrimonial Causes Act<sup>252</sup> is gender insensitive because the wording was so clear and direct to the women just because men do not get pregnant, the lawmakers forgot that they get women pregnant. This ideal is no doubt from our cultural aspect of life where men are most respected and seen as superior being, lord and master to the women.<sup>253</sup> The child born of a woman despite the nine months spent in her womb was never hers by customary right of ownership and remained her child only as long as the marriage between her and her husband was good- Robert Mugabe, 1979. This statement puts clearly the traditional English Common Law as well as the Traditional Nigerian position. However, the position has been altered both in England and in Nigeria by statutes, the Matrimonial Causes Act, places parents equally in respects of their rights over their children, the paramount consideration being always the interest of the child.<sup>254</sup>

The Convention on the Rights of the Child (CRC), the International Convention on Economic and Socio-Cultural Rights (ICESR), CEDAW and the Child Rights Act among other relevant provisions of the law, provides that the best interests of the child should be taken into consideration on issues relating to children generally and especially in custody matters.<sup>255</sup>

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<sup>251</sup> *Nwanya v Nwanya* (1987) 3 NWLR 697, the court held that; The wife (Respondent) in a petition for divorce Claimed that she contributed 6.000 naira to build their matrimonial home which was in her husband's name. The claim was dismissed as she was unable to give evidence to her claim. The same position was held in *Amadi v Nwosu*

<sup>252</sup> Section 5(1) (d) Matrimonial Causes Act, CAP M7 LFN 2004, provides that a marriage shall be voidable where at the time of marriage, the wife is pregnant by a person other than her husband.

<sup>253</sup> L.A Atsegbua, Irene Airen Aigbe, Avoiding Marriage Based on Pre-marital Pregnancy: The Matrimonial Causes Act 1970 and Gender Discrimination, *University of Benin Law Journal*, 5, no.I, (2014), 58.

<sup>254</sup> Ayo .J. Oyajobi, Gender Discrimination and Fundamental Rights of Women in Nigeria, 86.

<sup>255</sup> Foluke O. Dada, "The Justiciability and Enforcement of Women's Rights in Nigeria," *Akungba Law Journal*, 2, no.I, (2013),220.

Section 71 of the Matrimonial Causes Act also provides that in the award of custody of children in divorce proceedings, the interest of the children is paramount and that custody must be awarded to the parent that is in a better position to provide for their welfare, education and welfare.

In *Onwochei v Otemeoku Odogwu*,<sup>256</sup> custody of the three children was given to the father by a Lagos High Court Judge, on the 17<sup>th</sup> of December. On appeal by the mother, the court found for the mother and ordered that the children be sent back to their mother.<sup>257</sup>

Under customary Law, the woman has no right to the custody of the child upon dissolution of marriage although considerations of the child's welfare may allow the mother to be given immediate physical custody. This, however, was no more than a day to day care of the child with the father's rights merely in abeyance. Even under Islamic Law where priority is given to the child in respect of custody where she is separated from the father, she only remains so entitled in so far as she does not re-marry another man.<sup>258</sup>

These laws continue to offend every constitutional guarantee of freedom from sex discrimination as well as other internationally acknowledged Charter pronouncements and declarations. To this extent they should be null and void and steps should be taken to abrogate them.<sup>259</sup>

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<sup>256</sup> (1990) 2NWLR, 225, 571.

<sup>257</sup> Ibid

<sup>258</sup> Ayo J. Gender Discrimination and Fundamental Rights of Women in Nigeria, 86.

<sup>259</sup> Ibid, 105

#### **4.3.7 Women and Revenue Law**

The tax system discriminately treats men and women in the marriage structure. It proceeds on the assumption that the children of any marriage are the man's alone and it is to him that relief is granted. Whatever may be the validity of the economic reasoning against duplications of grants of relief, this does not sufficiently explain why the presumptions automatically favor the man. In 1988, the Joint Tax Board reaffirmed its commitment to this discriminatory attitude when it adopted the policy that women who wish to claim tax relief on expenditure of children must show documentary evidence that the father is not responsible for their support, as well as other evidence that they incurred substantial maintenance expenses independent of the male parent. On the other hand, men do not have to do anything to obtain the relief.

#### **4.3.8 Customary Law**

Customary law is the organic or living law of the indigenous people of Nigeria, regulating their lives and transactions. It is organic in that it is not static.<sup>260</sup> In *Lewis v Bankole*.<sup>261</sup> it was held by the Supreme Court that:

"One of the most striking features of West African Native Custom is its flexibility, it appears to have been always subject to motives of expediency and it has shown ungrotrionable adaptability in altered circumstance with relatively losing its character."

There are certain customary laws and practices discriminatory against women in Nigeria. For example, the maltreatment of widows. A widow refers to a woman whose husband has died and has not remarried. Widows in Nigeria are subjected to a lot of cultural and traditional

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<sup>260</sup> C.U Okoboh, "Women and their Right to Property in Nigeria," *Igbinedion University Law Journal*, 3, (2005), 62.

<sup>261</sup> (1908) INLR 81, 83.

practices which are not only discriminatory but seen as domestic violence. Violence in this instance are carried out against widows through harmful health practices.<sup>262</sup>

Widowhood rites, often by-products of institutionalized socio-cultural norms, are more or less social obligations for women. Ordinarily, widowhood ought to evoke sympathy, empathy and support from others. However, the situation of widows in Africa and Nigeria in particular is disturbing due to the harrowing experiences they encounter. The death of a woman's husband heralds grave suffering, maltreatment and violation of her human rights by cultural agents of the community, including her spouse's family.<sup>263</sup>

In addition to the common experience of loss, they have had to put up with other challenges such as deprivation, helplessness and hopelessness brought about by harmful cultural practices. These practices is prevalent in the South East, South-South and South West of Nigeria. Some of these dehumanizing practices widows experience include, the widow is expected to dress in a particular way for a period of time and sometimes confined for a month or a year and sometimes allowed to bath for some period. Men are not subjected to such indignities when their wives die.<sup>264</sup>

In the culture of Birom of Plateau state, when a husband dies, he is buried within one week, the widow observes the Takaba, a four-month, ten days mourning period in seclusion talking to no one and silting in a place. She wears a sack and has a grass fond round her head, the sack or simple tarred clothe forms all the dressing of the widow. She remains in the house

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<sup>262</sup> S.O Idehen, "Domestic Violence Against Women in Nigeria; A Critique," *Nasarawa State University Law Journal*, 4(1), (2011), 27..

<sup>263</sup> Oguntokun O.O. "Culture and Religion as impediments to the Elimination of Violence Against Women," *Baze University Law Journal*. I. no.1. (2017), 250-252.

<sup>264</sup> Ibid, 107

mourning until the male members of the family take a decision as to who will marry the widow.<sup>265</sup>

The reality remains however that the majority of Nigerian women do not possess access to or control over resources like finance and education that would make them less vulnerable to Maltreatment and impoverishment should their husbands die. The socio-cultural conditions that take widowhood such an unpleasant experience for many women in Nigeria do so because the women are not able to mediate or modify these cultural influences as the structural disadvantage that women suffer for not having access to productive resources. The fact makes them dependent on men who benefit from the cultural conditions conducive to widow maltreatment.<sup>266</sup>

Polygamy is another customary practice of some ethnic groups in Nigeria. It is a function of social structure and it is highly practiced among the Yoruba. Being a patrilineal society, women have no power to refuse sexual advances from their husband. The multiple sexual nature of polygamy may however, lead to serious reproductive health problems. A husband may contract venereal disease from one of the co-wives and transmit to others because they have refused his sexual advances.<sup>267</sup>

Although, the Nigerian government has tried to stamp out child marriage with the enactment of the Child Rights Act (CRA), the practice of child marriage is still prevalent among Hausa-Fulani tribe who occupy Northern Nigeria and where Sharia law is in force. Giyan argues that some religious praises such as Islam encourage early marriage and parents imbibe this for fear

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<sup>265</sup> Ibid

<sup>266</sup> F.E Okonofua. Gender and Health Analysis of Sexual Behaviour in South-Western Nigeria, *African Journal of Reproductive Health*.7 .no.1.April (2003) 63.

<sup>267</sup> Babatunde A Ahonsi, *Widowhood in Nigeria; Issues, Problems and Prospects*, (Nigeria: Friedrich Elbert Foundation and Human Development Initiatives, 1997), 41.

of their daughters being pregnant out of wedlock and that early marriage has been defended in Nigeria as clearly permissible by the Islamic religion. The wording of Part I Section 67 of the 1999 Constitution that gives people the freedom to conduct marriages according to their religions and customs serves as constitutional support for those who partake in child marriage and justify it as an Islamic practice.<sup>268</sup>

In 2010, when Ahmed Yerima married the daughter of his Chauffeur, a 13 years old Egyptian girl contrary to Section 21 of the CRA, he justified the marriage on religious grounds stating that Prophet Muhammed married Aisha at the age of nine. Due to the pressure exerted on children to marry young in Northern Nigeria, 43% of Hausa-Fulani girls are married by age 15 and 78% are married by 18.<sup>269</sup>

Section 29(4) of the Constitution<sup>270</sup> subtly endorses child marriage. They are robbed of their youth and required to take roles for which they are not psychologically or physically prepared and are deprived of the opportunity for personal development as well as their right to full reproductive health and well-being education and participation in civic life.

Section 42 (1) of the 1999 Constitution<sup>271</sup> provides that every citizen 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 to either expressly by, or in the practical application of, any law in force in Nigeria. One area in which this section has been put to section has been

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<sup>268</sup> Ibid 107

<sup>269</sup> Ibid

<sup>270</sup> Section 29 (4) of the 1999 constitution provides that for the purposes of subsection (1) of this section, (a) 'full age means the age of eighteen years and above,(b) any woman who is married shall be deemed to be of full age.

<sup>271</sup> Section 42 of the Constitution of Nigeria, LFN, 2004.

put to severe test is in the area of cultural discrimination on the ground of sex. Two of such cultural discrimination is on issues pertaining to the right of inheritance and burial.

Nigeria is a patrilineal society. That being the case, men are generally receivers of inheritance, particularly from their fathers. Nigeria is also a pluralistic society with well over 250 ethnic groups all with some measures of cultural diversity. In most of these ethnic groups, female inheritance is an aberration. Among the Edo people of Nigeria, female children have no status or position in the family. For example, Okogie points out that Esan idioms state that a woman inherits the sword or "you do not have a daughter and name her, the family keeper, she will marry and leave not only the family, but the village, a wasted asset.

The Esan culture places a premium on the superiority of the first son.<sup>272</sup> In respect of burial rites the responsibility to perform this all important ceremony is vested in the male man and never the woman. There is an economic motivation in disallowing a woman to bury her father, his wealth automatically goes to her and her husband. Denying her of performing the burial rites of the father ensures therefore that the family wealth remains in the family.<sup>273</sup>

The same position in Esan culture is the same in Benin Customary Law. Benin customary law adopts a strict application of primogeniture which excludes women from inheriting their father's property. On the death of the father and head of the family, his eldest son succeeds him as the head of the family. But female cannot be the head, no matter her seniority in the family.

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<sup>272</sup> M.A Inegbedion, J.O. Odion, *Constitutional Law in Nigeria*, 2<sup>nd</sup> e.d, (Benin City: Ambik Press 2011), 280-282.

<sup>273</sup> Ibid

Under the Yoruba customary law of intestacy, the mode of distribution of a deceased's person's estate also depends on whether the disposition is by a man or a woman. Where a woman dies, her husband inherit all properties, but where a man dies, his children inherit his estate to the exclusion of other blood relations. A woman cannot inherit her deceased husband's property. Where the deceased leaves no children, the estate devolves on his brothers or other relatives either paternal or maternal.<sup>274</sup> In *Suberu v Sunmonm*<sup>275</sup> the Federal Supreme Court held that by Yoruba custom, a wife cannot inherit her husband's property.

In Ibo Land, the male child inherits from the father, the father's personal Ofo" and other objects of worship. Where the deceased is a title holder, the eldest son known as the "Okpala" inherits the father's title. Under the Ibo customary law, females do not possess the right to inherit land, that is, neither the daughters nor the widow of the deceased has right to his estate. This principle was brought out in the case of *Ugboma v Ibenemeo*<sup>276</sup> the same position was also held in *Nezianya v Okagbue*<sup>277</sup> where the court held that a wife of a deceased member of the family could not become an owner of her late husband's estate.<sup>278</sup> But in *Mojekwu v Mojekwu*,<sup>279</sup> the court held that a customary law that allows only males to exercise a right of inheritance but denies the female children of a deceased the same right and even confers such right on distant male relatives is repugnant and unconstitutional. Also, in *Mojekwu v Ejikeme*<sup>280</sup> and others the court considered the validity of the nrachi custom (denial of female

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<sup>274</sup> L.A.M Agbonika, The Right of a Woman to Succession and Inheritance Under Customary Law in Nigeria. *Benue State University Law Journal*, 5, no. 1, (2014), 173.

<sup>275</sup> (2002)12 NWLR 780, 30

<sup>276</sup> (1997) 7 NWLR 5 12, 283, the court held, in accordance with the general Igbo custom known as Akwuzu, women are not entitled to inherit lands

<sup>277</sup> E.I Nwogugu, *Family Law in Nigeria*, (Nigeria: Heinemann Educational Books Nigeria Plc. 1999), 407.

<sup>278</sup> (1963) AII NLR 352

<sup>279</sup> (2000) 5 NWLR 402

<sup>280</sup> (2000) 5 NWLR 657 413 112



inheritance) and declared same as being repugnant to natural justice, equity and good conscience.

#### **4.3.9 Northern Nigeria Customary Law**

##### **4.3.9.1 Indigenous Native Laws and Custom**

These are indigenous Native laws and Customs in some parts of Northern Nigeria other than Islamic law. Although the mode of succession and inheritance under the indigenous native laws and customs vary, it is generally accepted that the first in line as heirs to a deceased's person's property are his sons and the next his brothers. Females are excluded from inheriting the deceased's property. They could only inherit their mother's movable properties. But in the case of landed property, whether owned by a man or woman, it is inherited only by the males in the family.<sup>281</sup>

##### **4.3.9.2 Sharia Law**

Before the advent of Islam, the Bedruin Arabs discriminated against their women and the girl child. In fact whenever their women delivered a girl child, such child risked being buried alive, although with the advent of Islam, this act was condemned.<sup>282</sup> The justiciability of women's rights has been put in question especially under Sharia law. A primary concern is the fact that most of the judges in the court are not lawyers or persons knowledgeable in the law. The fact that women's rights are in jeopardy under this system cannot be overstated.

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<sup>281</sup> Ibid 112

<sup>282</sup> Q81:8-9 To this the Qu'ran states as follows, "When the female(infant) buried alive is questioned, for what crime was she killed."

In *Safyatu Iussain Titudu v AG of Sokoto State*,<sup>283</sup> the plight of women under the Sharia system of justice was brought to question in the determination of the guilt of the male and female participation adultery. The appellant was charged with the offence of "Zina (adultery) committed with one Yakubu Abubakar contrary to Sections 128 and 129 of the Sokoto State Penal Code Law 2000. The Sharia court was of the view that since the 2<sup>nd</sup> accused, who was once married and divorced, had confessed to the offence of Zina with the 1<sup>st</sup> accused having legitimately exercised his right under Sharia to retract his admission of the offence and change his plea, the 1<sup>st</sup> accused was discharged and acquitted, The court then went further to state that the offence of Zina was proved against the 2<sup>nd</sup> accused since she got pregnant and delivered a deceased's baby. She was then sentenced to death by stoning in the presence of other Muslims as witnesses.<sup>284</sup>

Under Maliki school of thought which dominates the interpretation of Sharia in Northern Nigeria pregnancy is considered sufficient evidence to condemn a woman for Zina, an offence i.e. to be read as adultery or as voluntary premarital sexual intercourse. The oath of a man denying having had sexual intercourse with a woman is often considered sufficient proof of innocence, unless four reputable and eye witnesses declare his involvement in the act of voluntary intercourse.<sup>285</sup>

*Akinbuwa v Akinbuwa*,<sup>286</sup> the court held that the minor assault of the wife by the husband for corrective purposes is tolerable. This system of law is problematic in Nigeria especially in the procedure of application of death penalty under the Sharia Penal system that allows Sharia

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<sup>283</sup> (2008) I WHRC 309

<sup>284</sup> Foluke O. Dada, The Justiciability and Enforcement of Women's Rights in Nigeria, 223-232.

<sup>285</sup> Ibid

<sup>286</sup> (1998) 7 NWLR 559, 661.

courts, often only consisting of one judge and having no guarantees for adequate legal presentation to impose the death penalty. The Nigerian Government by ratifying the Convention Against Torture in June 2001, the Federal Republic of Nigeria agreed not to apply punishments like stoning, flogging or amputation which are considered cruel, inhuman and degrading treatment by international human rights standards.<sup>287</sup> Certain Sharia Laws are discriminatory against women like the ones discussed above and should be repealed by the government.

#### **4.4 Enforcement of Nigerian Laws against Gender-Based Violence**

The enforcement of Nigerian laws against gender-based violence is grossly inadequate. Some of the reasons are most times women are often scared to report their ordeal to the authority because of the fear of being shamed or mocked. The Nigerian; government also don't help matters as most times the suspect is released on bail without even taking the issue to court. The police sometimes feel they cannot make an arrest because of the Constitutional right to private and family life, also some of these officials collect bribe from the woman beaters. The court also has a role to play in enforcing these laws against gender-based violence. The role of the executive and legislature will be discussed as well as the judicial approach of Nigerian courts and access to justice by women who are violated.

##### **4.4.1 The Role of the Executive and Legislature**

There is need to deconstruct the belief and entrenched attitude that acts of violence in the home are within the private sphere. Those who see domestic violence as a human rights violation, point out that government and other authorities do have a responsibility to intervene

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<sup>287</sup> Ibid 113

in private forms of violence. By fostering the conditions that allow male batterers to go unpunished, by failing to respond seriously to women's complaint of sexual assault and by sponsoring institutions that do not take women's needs into account, the state becomes responsible for violence, both in its action and in its failure to act. The court in *Ezeonu v Uzoukwu*<sup>288</sup> held that fundamental rights action can be maintained against private individuals. Some state governments, through their policies, have taken steps towards eradication of gender-based violence, particularly domestic violence against women. The Nigerian Constitution of 1999 is explicit on government's aspirations that all citizens be treated as equal under the law. These aspirations are limited in fulfillment because of the complexity of the Nigerian Legal System, arising from a tripartite system of law (statutory, customary and the Sharia) which are sometimes contradictory. This creates the need for harmonization, as well as legislative protection for vulnerable women.<sup>289</sup> The police room the executive arm of government has a role to play. Some of the reasons adduced for police inefficiency in issues of domestic violence are that the police underestimate the incidence of these abuses. Secondly, police is reluctant to intervene in what they are led to board as "domestic problems" and this can be for various reasons: out of respect for the privacy of the family, because of the mistaken vision of marital rights, because they do not foresee a successful persecution, because they believe the has provoked" the violence and because the police prefer to treat domestic

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<sup>288</sup> (1991) 6 NWLR, 200, 763.

<sup>289</sup> Carol Dane Arinze-Umobi, *Domestic Violence Against Women in Nigeria: A Legal Anatomy*. (Onitsha: Folimech Printing, and Publishing Co Ltd 2008), 267-287.

crimes differently from crimes in other contexts, responding by mediation rather than law enforcements.<sup>290</sup>

There is no doubt that the role of police in management of domestic violence is ambiguous and most of these ambiguities arise from conflict within the rest of the society and the entire legal system which all combine to underestimate and trivialize the abuses, removing from them the purview of the criminal system and relegating them to a ragbag of "social problem".<sup>291</sup>

These ambiguities are: Firstly, recruit training frequently categorize violence in domestic circumstances as a social, rather than criminal matter. Secondly, police officers experience cases of domestic violence as often frustrating based on the silence of victims and refusal to prosecute their abusers, leading to the police officers into explaining their failure to act as law enforcers. Thirdly, police generally are unaware of the dynamics of abusive relationships and thus not attuned to the woman's feeling of fear, dependency may quickly conclude that the woman enjoys the abuse and is merely seeking attention. Fourthly, the police like many others in the community, see family violence as a feature of domestic life, which they consider should not be part of police work at all. In some other situation, the police merely reflect the societal view that man has the right to beat his wife which in the North is legalized by way of reasonable chastisement.<sup>292</sup>

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<sup>290</sup> C.A Umobi, O. Ikpeze, "Domestic Violence Against Women: Governments Laissez-Faire and Police Lackadaize in Assumption of Jurisdiction: A Minus on Government," *Nasarawa State University Law Journal*. 5, (2012), 63-64.

<sup>291</sup> Ibid 113

<sup>292</sup> C.A Umobi, O. Ikpeze, Domestic Violence Against Women: Governments Laissez-Faire und Police Luckadaize in Assumption of Jurisdiction, 64.

The Police response is poor and inadequate because of the unclear and nebulous police powers such as power of entry, power of arrest and power to release on bail.

#### i. Police Power of Entry

The power of police and others in authority to enter the private premises of an individual is limited. These limitations are enshrined in both national and international human rights document that protect the lives of men and women alike from state interference.<sup>293</sup>

Police powers of entry onto private premises are curtailed to cases where they have reasonable grounds to suspect that a breach of peace is occurring, is about to occur, or they have been issued a warrant. An actual or potential breach of peace cannot reasonably be suspected in circumstances where there is no indication that an assault has or is about to occur. In absence of a warrant the police unless invited in or able to justify their suspicion that a breach has occurred, or is about to occur, probably by reason of noise will have no right to enter. If they enter by force or trick, they may face consequential legal action from the occupier or a disciplinary hearing within the police.

A member of the Australian states has introduced legislations to straighten, extend and protect the powers of entry to investigate offences and cases of domestic violence. Nigeria is called upon take such bold steps. Such could include police radio telephone through which they acquire warrant for entry into premises where such violence is suspected.<sup>294</sup>

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<sup>293</sup> Carol Dame Arinze-Umobi, *Domestic Violence against Women in Nigeria: A Legal Anatomy*, 269.

<sup>294</sup> Ibid

## **i. Power of Arrest**

The police may wish to make arrest after gaining entry into the compound. Arrest provides the immediate protection for the victim. This power of arrest, juxtaposed with the individual's liberty, particularly when the offender is arrested and detained beyond the constitutional time limit, clashes with the individual's civil liberty. In many Commonwealth jurisdictions, unless the offender has committed or is about to commit breach of peace, a police officer must have warrant of arrest.

In London for instance, police power to arrest in domestic violence has been clarified so that there are no nebulous, shady or hazy aspects of the police power of arrest in this context. In *Bruno v Codd*.<sup>295</sup> New York City women who had been beaten by their husbands sued the police commissioner and others for failing to provide them with protection against their abusive husbands.

While legislation is an important step towards combating violence against women, it must be understood as more than a purely legal issue. The law in most countries, (Nigeria inclusive) does not specifically mention domestic violence, or other forms of violence against women, apart from perhaps sexual abuse. Laws do not address the relationship between violence against women, discrimination and subordination of women generally, and as a result, legislation on violence against women has developed in a fragmented way. Where specific laws on domestic violence abuse exist, none existed in Nigeria until the recent passages of the laws by different states, infringement of a *Widow's and Widower's Fundamental Rights Law No. 3 of 2001, Enugu State*; the law against female genital mutilation in Edo State, Ekiti and Cross River State. Prohibition of Early marriage in Kebbi and Niger State, Retention in

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<sup>295</sup> (1974) NYS 2d, 396.

schools and against withdrawals of girls from schools in Kano, Borno, Gombe and Bauchi States; trafficking in Women and children in Edo State; Law against domestic violence in Cross River State and a host of others by different state legislative houses; they ordinarily involve some kind of protective orders.

This involves a procedure in which a woman can go to court and argue that the court should order the abuser to stop his behaviour, and stay away from her. Police can then arrest the abuser should he violate the protection order. Even where such legal remedies are available, however, police prosecutors and judges can fail to take women's complaint seriously, , block or intimidate women from obtaining reliefs.

Although Nigeria is a party to CEDAW, there has been little or no specific legislation at the national level protective of women against violence other than those contained in the criminal and penal codes. The need for an accelerated national comprehensive laws protective of women cannot be over-orchestrated. Most unfortunately, the provisions that directly address the rights of women and children are non-justiciable and have no legal force, because Section 6(c) of the Nigerian constitution<sup>296</sup> prevents the court from looking into whether or not, the Fundamental objectives and Directive Principles of the State Policy have been implemented.

For those laws relating to violence, the Nigerian criminal law has a number of provisions relating to sexual and domestic offences, the restrictive definitions such as that of rape leaves

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<sup>296</sup> Section 6 (c) CAP 1, LFN, 2004. It provides therefore; the judicial powers vested in accordance with the foregoing provisions of this section shall not, except as otherwise provided by the Constitution, extend to any issue or question as to whether any act or omission by any authority or person as to whether any law or judicial decision is in conformity with the Fundamental Objectives and Directive Principles of state policy set out in Chapter II of this Constitution.



much to be desired, the manner in which rape trial is conducted and the nature of the evidence required by Section 211 of the Evidence Act<sup>297</sup> expose the women to indignity.

Enforcement of laws against gender-based violence is a major set-back in Nigeria because most of the laws contradict each other for example, Section 42 of the 1999 Constitution provides for discrimination based on Sex, but some laws and statutes are clearly discriminate against women for instance, Section 26 of the 1999 Constitution.

#### **4.4.2 Nigerian Judicial Approach: Access to Justice**

The concept of justice has a long controversial history and remains the subject of continuing debate in legal, philosophical and theological circles. As varied as the theories of justice are, most of them agree that justice is of overwhelming importance to society, being one of its key features and which according to Rawls is the first virtue of social institution.<sup>298</sup>

No legal protection has any practical meaning if it is not enforced, or if those seeking redress cannot obtain justice through the courts. It has already been noted that it is extremely difficult for women to seek justice in cases of rape or conjugal violence because of the restrictive evidence requirements, the humiliation of public questioning on such matters and in the case of violence within marriage, social pressures from family relative.<sup>299</sup>

In pursuing its social objectives declared in Section 17 of the 1999 Constitution, Nigeria in practice has not been able to provide equal opportunities before the law and secure easy accessibility to the courts for all its citizens. Of the three systems of law, the Customary laws

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<sup>297</sup> Section 211 of the Evidence Act 2011 provides that when either party proposes to give evidence of any fact, the court may ask the party proposing to give the evidence in what manner the alleged fact if proved, would be relevant and the court shall admit the evidence if it thinks that the fact, if proved, would be relevant and not otherwise.

<sup>298</sup> Victoria E. Onuoha, "Access to Justice," *Nigerian Education Law Journal*, 9, no.1, 1-2.

<sup>299</sup> Children und Women 's Right in Nigeria; A Wake-up Call, 241.

is overtly discriminatory and oppressive to women in substantive rights and access to justice in civil matters. Customary law supports women being at the receiving end of domestic abuse, forced marriage, genital mutilation, disinheritance and widow rites. There have been efforts however, following advocacy, group pressures, international conventions interventions to reform the customary legal system and eliminate its adverse effect on women. Nevertheless, the majority of aggrieved women are not able to redress these rights abuses in regular courts due to some legal barriers.<sup>300</sup>

Apart from customary laws that adversely impact on women's rights and access to justice, some extant statutory laws are either discriminatory in nature or create a number of impediments to women having access to justice in the enforcement of their rights. For example under the criminal law, a man cannot be guilty of raping his wife. Also under the penal code, conjugal abuse or wife-battering is regarded as a legitimate practice under Section 55 of the penal code. The implication of all these is that women married under the native law and custom cannot access justice to enforce similar rights, not available to them in the first place either through customary courts or statutory law courts.<sup>301</sup>

Most Nigerian women are pitifully ignorant of their rights under the law. Illiteracy levels among women especially in the grassroots is very high and many women know next to nothing about the court system and how it works. They are uninformed and uneducated about their rights and how to enforce them in courts. Many rural women have limited access to courts due to the locations of the courts in places too far from their localities. Where access to court is readily available, most women are too poor to retain services of a qualified attorney

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<sup>300</sup> Ibid 120

<sup>301</sup> Ibid

and pay the requisite court or other administrative fees. The bar rules of the Nigerian Bar Association make it extremely difficult for paralegals to assist such women.<sup>302</sup> Also, many educated women married under the provisions of the Marriage Act know that their husbands have taken another wife under customary law, thereby committing bigamy, which is a criminal offence punishable by imprisonment, but very rarely does the aggrieved woman take steps to challenge this in court.<sup>303</sup>

The Nigerian legal System has failed to follow standards set forth in International instruments on women's rights particularly CEDAW which it has ratified but it is yet to domesticate. The courts in Nigeria are incapacitated in invoking the provisions of CEDAW in the determination of women's rights because under Section 12 of the 1999 Constitution, its provisions are not legally binding until it has been enacted into law by the National Assembly.<sup>304</sup>

Women who have access to courts do not automatically have access to justice. Ready examples are found in cases of women accused of adultery under Sharia law. Judicial bias is rampant in these courts usually populated by men. Most of them are denied their constitutional right to fair hearing when courts abdicate their duty to inform the accused of their right to legal representation.<sup>305</sup>

A fundamental, structural problem is that the entire justice system is stacked against the poor, especially women. With the consequence that access to justice in Nigeria is the preserve of the

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<sup>302</sup> Ibid

<sup>303</sup> Children und Women 's Right in Nigeria; A Wake-up Call. 241

<sup>304</sup> Victoria Onouha. Access to Justice, 10-11.

<sup>305</sup> Ibid

rich and privileged. Litigation is costly, the judicial process is cumbersome and unfriendly and the judicial process is compromised by institutional capacity weaknesses and corruption.<sup>306</sup>

Legal aid is available only for a few criminal cases and for civil claims in respect of accidents. This precludes legal aid for a wide range of civil claims that would be of importance for women's rights, including on matters relating to marriage, divorce and inheritance or for the suppression of harmful traditional practices on the basis of repugnancy doctrine. Furthermore, applicants for legal aid must have an annual income below ₦1,500, a figure that has become absurdly low as a result of inflation since the introduction of the Legal aid scheme 1977. These limitations highlight the need for immediate reform, including the extension of legal aid to a wide range of civil cases and public interest litigation to eliminate harmful cultural practices against girls and women, and the raising of the income ceilings for legal aid to a more reasonable level.<sup>307</sup>

## **4.5 Comparative Analysis of Gender-Based Violence in Other Jurisdictions**

### **4.5.1 Gender-based violence in the U.S**

Violence Against Women's Act (VAWA) the U.S Federal legislation that expanded the juridical tools to combat violence against women and provide protection to women who had suffered violent abuses. It was initially signed into law in September 1994 by U.S President Bill Clinton. Besides changing statutes, the VAWA, was notable for calling attention to the issues of Domestic violence, dating violence, sexual assault and stalking, The original VAWA was enacted in 1994 as Title IV of the Violent Crime Control and Law Enforcement Act. Its

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<sup>306</sup> Children and Women 's Rights in Nigeria; A wake up call, 241.

<sup>307</sup> Ibid

passage provided the means for the creation in 1995 of the office on violence against women (OVW) within the Department of Justice (DOJ).<sup>308</sup>

The OVW was charged with implementing the VAWA legislation and along with the Department of Health and Human Services (HHS), administering grant programs to state and local governments. Grants administered by the DOJ primarily fund work to prevent and address Domestic Violence and child abuse and train victim advocates. Grants administered by the HHS provide funds for shelters, rape prevention and education programs to address and reduce the sexual abuse of runaway and the homeless youth and community programs to educate on domestic violence. The VAWA also mandates government funding for studies of violence against women.<sup>309</sup>

The LAWA was reauthorized in 2000, 2005 and 2013. Its initial passage and repeated authorization were spearheaded by groups such as National Organization for Women, the National Task Force to End Sexual and Domestic Violence Against Women, the Family Violence Prevention Fund and many state and local Organizations. The VAWA initially included civil rights remedies for gender-motivated crimes, which are hate crimes allowing individuals to in Federal court. However, the U.S Supreme court declared this part of the Act institutional under the commerce clause and the Fourteenth Amendment in the case of *U.S v Morrison*<sup>310</sup>, in a five to four decision. Reauthorization of the act in 2013 was strongly

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<sup>308</sup> Ami Lynch, Violence Against Women Act, <https://www.Britannica.comn/topic/violence-Against-Womnen-Act>. accessed February 22<sup>nd</sup>, 2024.

<sup>309</sup> Ibid

<sup>310</sup> (2000) U.S.L.W.R, I 730, 598,

opposed by conservatives, because of the expansion of the act to include American Indians and same-sex couples and increased protection for victims of sex trafficking.<sup>311</sup>

In addition, the VAWA, Congress in 1996, enacted the Domestic Violence Offender Gun Ban commonly referred to as “the Lautenberg Amendment” This act bans the shipment, transfer and ownership of guns and ammunition by persons convicted of misdemeanor, domestic violence or persons under a restraining or protection order for domestic violence.<sup>312</sup> Some of the state laws include:

#### **4.5.1.1 Minnesota's Domestic Abuse Act;**

Section 518 B.01 of Minnesota's Statutes creates a civil remedy of an Order For Protection (OFP), designates the procedures that must be followed in applying and granting an OFP and describes the kind of relief that can be granted. This act prescribes penalties for violation of both OFPs and No Contact Orders, Orders issued against a defendant in criminal proceedings for Domestic violence and describes how law enforcement officials should enforce such orders. In addition, the includes a number of persons that facilitate victims' access to the legal system. For example, the act waives the filing fees for orders of protection and provides that an individual filing for an OFP may request that his/her not be disclosed to the public.

Section 629.342 of Minnesota's Statutes provides that Police departments must develop policies and protocols for dealing with domestic violence and explicitly requires police

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<sup>311</sup> Ibid 124

<sup>312</sup> The Advocates for Human Right, [www.stopvaw.org/state and federal domestic\\_violence\\_laws in the United States](http://www.stopvaw.org/state_and_federal_domestic_violence_laws_in_the_United_States), accessed February 22<sup>nd</sup> 2024.

officers to assist victims in obtaining medical treatment and providing the victim with a notice of his or legal rights.<sup>313</sup>

#### **4.5.1.2 New york State Domestic Prevention Act (2004)**

It created a comprehensive network of services for victims of domestic violence in 2009, New York barred employment discrimination against victims of domestic violence. The New York state also passed a law creating an office for the prevention of domestic violence. The office is charged with advising the governor and legislature on effective ways for effective ways for state government to respond to the problem of domestic violence.<sup>314</sup>

#### **4.4.2 Gender-Based Violence In United Kingdom**

The first attempt to implement specific legislation on domestic violence in the U.K consisted of the Domestic violence and the Matrimonial Proceedings Act 1976 (repealed in 1997), which set up amongst other things the ways in which injunction could be granted by a judge to restrain one party from using violence against the other and the Domestic Proceedings and Magistrates Court Act of 1978 which dealt mainly with aspects of financial support of one party by another.

This legislation, while attempting to improve the judicial responses to domestic violence, lacked an overall underlying rationale for example; although removal orders were available, these were hard to obtain and there was no protection for former cohabitants. Moreover,

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<sup>313</sup> Ibid 125

<sup>314</sup> Ibid

judges tended to be conservative in the application of the legislation especially when property rights were involved.<sup>315</sup>

In order to address the lack of underlying coherence of existing legislation, Part IV of the family Law Act 1996 was introduced and since then, updated by the Domestic Violence, Crime and Victims Act 2004. The two main ways for addressing domestic violence in terms of civil law consist of non-molestation and occupation orders. A non-molestation order is an order by a court for one party not to molest the other. The breach of a non-molestation order is a criminal offence, the proof of these violations must be beyond reasonable doubt and not on the balance of probabilities.

Unlike the breach of a non-molestation order, the breach of an occupation order is not a criminal offence but is subject to only penalty for contempt of court, at the instigation of the applicant. Recently, two new orders were introduced by the Crime and Security Act 2010: Domestic Violence Protection notices and Domestic Protection Orders. Their aim is to enable police to act quickly to protect victims and to allow victims time to resort to other forms of safeguarding their interests without interference from the abuser.<sup>316</sup>

Some other legislative provisions for the protection from gender-based violence in the U.K include.<sup>317</sup>

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<sup>315</sup> Domestic violence policy and legislation in the U.K: 1 Discussion of Immigrant women's Vulnerabilities *European Journal of Current Legal Issues*, 23, no. 1, (2017),

<sup>316</sup> Ibid

<sup>317</sup> National Gender Based Violence and Health Programme, <https://www.gbv.scot.nhs.uk/national-gender-based-violence-and-health-programme>, accessed February 22<sup>nd</sup>, 2024.



**i. Protection from Abuse (Scotland) Act 2001**

This act is designed to afford greater protection to individuals who have left abusive relationships by allowing for a power of arrest to be attached to an interdict.

**ii. Human Rights Act (1998), Article 3**

Affords an absolute right not to be tortured or inhumanely or degradingly treated or punished.

**iii. Domestic Abuse (Scotland) Act 2011**

Amends the protection from Harassment Act (1997) by making provision in relation to harassment amounting to domestic abuse: makes it an offence to breach an interdict relating to domestic abuse with a power of arrest attached.

**iv. Protection from Harassment Act 1997**

Criminalizes and creates a right to protection from stalking and persistent bullying in the workplace. Employers may be vicariously liable for harassment under the act.

**v. Sexual Offences (Scotland) Act 2009**

Criminalizes a range of sexual offences including rape and sexual assault. More generally the Act provides that any sexual activity that takes place without consent is a criminal offence.

**vi. Criminal Justice and Licensing (Scotland) Act 2010**

Provides for new statutory offence of stalking. Conduct constituting stalking may, depending the circumstances, be prosecuted using a number of common law and statutory offences. The offence of engaging in threatening or abusive behaviour in the act also provides more protection for victims of domestic abuse.

#### **vii. Forced Marriage (Protection and Jurisdiction) (Scotland) Act 2011**

Provides a specific civil remedy for those threatened with forced marriage and those already in such a marriage.

#### **vii. Trafficking**

The Scottish government is bound by the Council of Europe Convention on Action Against Trafficking in Human Beings. The U.K Government as the member state has opted into the European Union Directive on Preventing and Combating trafficking in human beings and protecting its victims.

#### **ix. Prohibition of Female Genital Mutilation (Scotland) Act**

Provides a definition of female genital mutilation which is unlawful and makes it an offence for UK nationals or permanent UK residents to carry out or aid and abet female genital mutilation abroad.

#### **4.5.1.3 Gender-based violence in India<sup>318</sup>**

Widespread and rampant violence against women is one of the most pressing problems India struggles with as a society. It is estimated that around 37 percent of Indian women have experienced either physical or sexual violence in their lifetime. In 2013 alone, there were nearly hundred and twenty reports of domestic violence against women, according to India's National Crime Records Bureau. Furthermore, a 2015 study conducted by the Planning Commission of India surmised that a whopping 84 percent of women have been abused in their homes at least once.

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<sup>318</sup> 3 Crucial Law Against Domestic Violence in India <https://www.naaree.com/domestic-violence-laws.india> accessed February 22nd, 2024

## Some of India's Legislation Against Gender-based Violence

### **1. The Indian Penal Code Amendment in 1983**

A special section numbered 498-A, that officially made domestic violence a criminal offense was added to the Indian Penal Code in 1983. This section of the law specifically covers cruelty towards married women by their husbands or their husbands families. A helpful clause in this section allows women's relatives to make the complaint for them. This is extremely beneficial in cases where the woman is too afraid to speak up for herself for reasons such as she could get caught by her husband or simply cannot leave the house.

Under the policy, acts of cruelty include, but are not limited to the following:

- i. Physical abuse
- ii. . Mental torture through threats to her or her loved ones
- iii. Denying the woman food
- iv. Locking her in or out. .of the house as punishment
- v. Demanding perverse sexual acts against the woman's will

Convicted offenders will be charged with up to three years of prison as well as a hefty fine.

### **2. The 2005 Protection of Women from Domestic Violence Act**

This is the first law in India to specifically acknowledge every woman's right to be in a home without violence. In fact, it was seen as a major step forward in securing women's rights and more effective protection. Violators of this law will either be mandated to compensate the woman financially or will be served a restraining order to keep them away from the complainant.

### **3. The 2013 Criminal Law Amendment**

As a response to the requests made by the Justice Verma Committee, a small commission named after and headed by one India's most highly regarded jurists, a lengthy list of amendments to the Indian Penal Code, Code of Criminal Procedure and the Indian Evidence Act were introduced in this 2013 act.

The aim of the amendment was to provide harsher and swifter punishment for those criminals who committed abuse against women. Rape was given a better and more exhaustive legal definition, to include non-consensual penetration using non-sexual objects as well as non-penetrative sexual acts. Penalties for offenses such as rape, assault and sexual harassment were increased. In particular, heavier sentences were declared for rapists including the death sentence for particularly disturbing cases, such as gang rape where the victim was left in a vegetative state after the crime.

### **4. Crime Against Women Cells**

This is an initiative of the Indian government to better help female victims of domestic abuse. In every district's police station, a crime against women cell was put in place. Women suffering from domestic violence may approach these specialized help desks for direct assistance from the police, whether to file an official complaint or follow up on one.<sup>319</sup>

#### **4.6 Shortcomings in Nigerian Laws**

The shortcomings in Nigeria laws have been exhaustively examined in earlier in this chapter. But it will also be highlighted here again and they are;

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<sup>319</sup> Ibid 145

Section 23 of the 1999 constitution provides that a person under the age of 18 years is incapable of contracting a valid marriage. If such marriage takes place it should be declared null and void and of no effect. This is contradictory with Section 29 (4) (b) of the 1999 constitution which technically approves child marriage. It provides that by this provision that any woman who is married shall be deemed to be of full age. This creates a lapse in the constitution and imbalance as it technically approves child marriage.

Another lapse in Nigerian laws is in Section 32 of the criminal code which provides that corroboration should be given by the victim in order to convict the accused for rape. This makes difficult for the victim to prove and get justice. This is somewhat discriminatory against women because it favors the male.

Furthermore, certain police regulations discriminate against women and it is a lapse in our Nigerian laws, Section 122 of the police act which provides that the employment for women shall be for certain categories such as telephone duties, clerical duties and so on, this is discriminatory because women are given the lowest position because they are seen as weak. Also Section 124 of the Police Regulation provides that women must apply for permission to marry, this is not same for men. Also section 118(g) provides that a woman should be unmarried to qualify for employment in the police force.

Section 26 (2) (a) of the 1999 Constitution provides that a male Nigerian may confer citizenship on his wife who is a foreigner by registration but there's no such provision for a Nigerian woman married to a foreigner.

Criminal code provides for common assault and considers assault on a woman as a misdemeanor while -assault on a man is termed felony, section 353 prescribes three years

punishment for indecent assault on a man, section 360 prescribes two years for the same offence or women. This is clearly discriminatory against women and a lapse in our criminal law. Section 6 of the criminal code does not offer protection for married women for rape or assault.

Section 55 of Penal code condones wife chastisement and this is a major lapse in our laws, section 282 of the same Penal code condones marital rape and went on to provide that sexual intercourse by a man with his own wife is not rape if she has not attained puberty.

Section 55 of the labor Act provides that women shall not be employed on night work in a public and private industrial undertaking and also in any agricultural undertaking, Section 56 of the same act further provided that women shall not be employed for any underground work in mines.

This a lapse in the Labor Act because it discriminates women and specifies the area they should not be employed in.

Furthermore, Article 5(a) of the NDLEA Act 2000 provides that 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. Women when caught with drugs and charged to court are given harsher punishment than men.

Customary Law does not recognize inheritance of property by women. Although the Married women Property Act 1882 now provides for women to acquire and own properties but some customary practices still forbid women from obtaining property. Also, under customary law, the woman has no right to the custody of the child upon dissolution of marriage.

Section 5 (1) (a) of the Matrimonial Causes Act is discriminatory as it provides that a marriage shall be voidable where the wife is pregnant by a person other than the husband. The Joint Tax Board policy which provides that women who wish to claim tax relief on expenditure of children must show documentary evidence that the father is not responsible for their support.

The Nigerian Law and the Constitution does not specifically provide for gender-based violence and even some of the laws provided for certain forms of gender-based violence is not properly implemented and enforced for instance NAPTIP which prohibits trafficking upon its enactment, it is still prevalent in Nigeria.

#### **4.7 Recommendation**

Discrimination in all forms will not be abated until the inhabitants of the Earth are well-informed, enlightened, educated cultural or social prejudices eliminated and every right that is accorded to individuals are respected, then we will have a better world where women, girl child will be free from discrimination. All states should encourage the incorporation of a gender perspective on national programs of action and human rights and national institutions.<sup>320</sup>

Information on gender-based human rights violations should be included in all the activities and programs of states. Customary laws and practices that are repugnant to natural justice, equity and good conscience should be done away with. The implementation of laws should be taken seriously. Most often than not the problem is not with availability of the laws but we lack the political will to implement and enforce these laws.

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<sup>320</sup> Akpoghome T.U, Brenda S.M. "Gender-Based Violence: The Dangers and Effects of Harmful and Unhealthy Practices Against Women's Rights." *Ahmadu Bello University Law Journal*, 4 and 5, (2010-201), 166-167.

There is an urgent need to protect women against violence in the home as in most cases, the woman faces imminent danger of losing her life if it persists, National laws that have been examined show inadequacy in terms of protecting women from violence, there is need to put in place legislation that would cater for this. The Nigerian Government has shown Apathy towards violence against women as it has failed to domesticate CEDAW rather NGOs have been at the forefront to press for its domestication offences of violence are treated with levity by the law enforcement agency as it is termed a family issue and do not take serious steps in curbing it.

Government must be alive to its responsibility by domesticating CEDAW and adapting it to suit our peculiar environment.<sup>321</sup>

In rape cases and other sexual offences requiring corroboration, this requirement is very difficult to establish as in most cases of rape, there are no witnesses. Justice therefore requires that this accused friendly requirement of the law as it presently exists should be done away with. The alternative to the removal of the corroboration requirement is that the judge must put the defense fairly and adequately.<sup>322</sup>

Patriarchy must be eliminated. The notion that men must be in control has in no small measure informed the existence of discriminatory laws against women. It is very pertinent that we have a form of the old laws and make legislations that do not bear the vestiges of patriarchy.<sup>323</sup>

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<sup>321</sup> S.O Idehen, "Domestic Violence Against Women in Nigeria: A Critique," *Nasarawa State University Law Journal*, 4, no. 1, (2011),

<sup>322</sup> Olugbenga A. Olatunji, Penetration, Corroboration and Non-Consent: Examining the Nigerian Laws of Rape and Addressing its Shortcomings, *University of Ilorin Law Journal*, 6, (2010), 103-104.

<sup>323</sup> Felicia Anyogu, Carol Arinze Umobi, Achieving Gender Equality in Public Voice in Nigeria, *Gender Discrimination and Fundamental Human Rights of Women in Nigeria*, 5, (2012), 115-16.



The need for Affirmative Action when it comes to rights issues in relation to women can never be over emphasized. Affirmative Action is a temporary measure taken to remove de facto inequalities. Until this Affirmative Action are enshrined in the Constitution, making it a baseline for rights protection, the quest for equal rights between men and women in all fields of endeavor shall remain a mirage.<sup>324</sup>

Section 55 (1) (d) and Section 55 (2) of the Penal code which permits the reasonable chastisement should be expunged. Correction of a woman through assault or hurt is a gross violation of the woman's right and should not be entertained or permitted under the law in Nigeria.

The equality clause of the Nigerian Constitution must be amended to give better protection to Nigerian women. Discrimination should not only be prohibited on the basis of sex, it should also be prohibited on the basis of gender, pregnancy, marital status, age and sexual orientation.<sup>325</sup>

Nigeria should change its laws to make it more gender sensitive and to provide better protection for women so that men who violate their women can be prosecuted and punished. Domestic Violence Act should be enacted. Domestic violence should be made a crime, the offence of rape should be made gender neutral, marital rape should be criminalized and the cautionary rule in rape cases should be abolished.<sup>326</sup>

Participation of women in politics in Nigeria should be enhanced. Politically, women in Nigeria are still being regulated to the background. Women constitute less than ten percent in

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<sup>324</sup> Ibid 135

<sup>325</sup> Imasogie M.O, Gender Sensitivity And Discrimination Against Women Under Statute And Common Law. *The Silk, A Journal of Legal Issues for Contemporary Justice in Nigeria*, (2012),8.

<sup>326</sup> Ibid

both the Senate and the House of Representatives. There are no female governors and women constitute less than fifteen percent of the Ministers. Participation of women in politics in Nigeria can best be described as government of men by men and for men.<sup>327</sup>

The Citizen provision of the Constitution should be amended to accord full citizenship rights to women, so that Nigerian women married to foreign spouses can also transmit their citizenship to their husbands by mere registration and its various regulations should be amended to repeal all provisions that are discriminatory against women. Also, the Labor Act should be amended, the discriminatory sections of. Section 55 and 56 of the Act should be reviewed.

Customary Law, especially that on succession and inheritance in Nigeria has been used as instrument of male chauvinism, containing discriminatory harmful cultural practices against women. Since the law of Succession and inheritance under customary law negatively affect women who constitute the majority of Nigeria's population, there is an urgent need for its reform to address its inadequacies. A society can be socially engineered if absolute and barbaric laws are eliminated, with inhumane and non-discriminatory laws passed to regulate the conduct of all the members of that society.<sup>328</sup>

Women must have a voice in the implementation of equality standards and cultural practices and norms. Effective, facilitated dialogue together with careful litigation will allow women to shape the customary law and cultural practices that dramatically affect their daily lives.

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<sup>327</sup> Ibid 136

<sup>328</sup> J .A.M Agbonika, The Right of Women to Succession and Inheritance Under Customary Law in Nigeria, 184-187.

Women must also be recognized as both members of their cultural communities and advocates for gender equality within those Communities.<sup>329</sup>

The Sharia law, other customary practices in Nigeria should be made to fall within the context of the supreme law of the land (the constitution) through the repeal of all customary laws that are repugnant equity, justice and good conscience. States must also be encouraged to pass into law, provisions of the ratified international instruments advocating for the right of women.<sup>330</sup>

The contradictory part of the constitution of Section 29 and Section 23 should be reviewed and amended to protect young girls from early marriage. There should be an enactment of gender- based specific laws on different forms of violence against women and girls in Nigeria and the existing specific laws be strengthened and there be should be an establishment of Gender Rights Violation Monitoring Agencies to ensure proper implementation and enforcement of the laws. Access to justice is fundamental to the protection of human rights and remains the climax of all human development. No legal right or legal mechanism for its protection is of any practical significance if such right is not enforced, or if those seeking redress cannot obtain justice through the legal system especially the police and the courts. True access to justice is curative, cost- effective, corrective as well as remedial for all types of people, rich or poor, elite or common, male or female. Undoubtedly, the existence of an efficient justice system is at the delivery of access to justice for women or any other social group. To achieve this, there must be rule of law, poverty reduction and eradication and

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<sup>329</sup> Foluke O. Dada, "The Justiciability and Enforceability of Women's Rights in Nigeria," *Akungba Law Journal*, 2. no.1, (2013), 223-232.

<sup>330</sup> Ibid 138.

protection of human rights. This is because poverty and absence of rule of law undermines human rights particularly of a more vulnerable group of women.<sup>331</sup>

Just as important is the need to redress the chronic institutional capacity weaknesses of the judicial system, so that cases are brought to court in a timely manner and opportunities for corrupt practices are eliminated. In addition, judges and other members of the legal profession training in family law and the principles enshrined in the various international conventions signed and ratified by Nigeria, including CEDAW and CRC.<sup>332</sup>

#### **4.8 Conclusion**

Gender-based in Nigeria, the laws discriminatory against women, comparative analysis of gender-based violence in Nigeria, enforcement of Nigerian laws and remedies and solution of gender-based violence in Nigeria have been examined exhaustively in this chapter. So many lapses are in Nigerian laws and certain laws while protecting women are actually discriminatory while some laws are outrightly discriminatory and should be reviewed and reformed to ensure women are better protected in the society. More recommendations will be given in the next chapter.

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<sup>331</sup> Victoria Onuoha, *The Nigerian Society and Issues for Justice for Women*, 14.

<sup>332</sup> *Children and Women's Rights in Nigeria: A wake-up Call*, 241.

## **CHAPTER FIVE**

### **SUMMARY RECOMMENDATION AND CONCLUSION**

#### **5.1 Introduction**

Gender-based violence or violence against women has been critically discussed in the preceding chapters. This last chapter entails summary and recommendation. More recommendations will be examined here.

#### **5.2 Summary**

Chapter one entailed general introduction of gender-based violence, definition of terms, history of gender-based violence and nature and scope of gender-based violence. How gender-based violence metamorphosed was effectively examined, the features of gender-based violence, its extent of effect on the society was also critically examined in this chapter.

Chapter two examined the forms, causes and effects of gender-based violence. The various types of gender-based violence such as the physical, sexual, psychological, verbal and emotional violence were explained exhaustively. The causes of gender-based violence, how gender-based violence comes about, what triggers gender-based violence in the society and then the effect of gender-based violence, the negative impact gender-based violence has on women, girls and the society at large was effectively discussed.

Chapter three examined the international legal framework of gender-based violence. The various regional and international treaties, convention, articles and statutes and how it relates to gender-based violence was also discussed.

Chapter four discussed the overview of gender-based violence in Nigeria. "The Nigerian laws discriminatory against women, analysis of gender-based violence in Nigeria, enforcement of Nigerian laws by the police and legislature and also the Nigerian judicial approach to gender-based violence access to justice by women, the shortcomings of Nigerian laws in other words, the inadequacies of gender-based violence, remedy and solution of gender-based violations towards achieving an efficient and effective system of law against gender-based violence.

Gender-based violence is a growing problem in Nigeria, women are being tortured physically, sexually, verbally, financially, emotionally and spiritually by the male folks. It stems from the patriarchal standard the society has set, where the Women are seen as inferior to the men and are subjugated. Child marriage is practiced and young girls are given out at a very young age. So many harmful traditional practices are carried out on females due to the cultural belief of the society. The laws put in place to fight discrimination for instance Section 42 of the 1999 constitution is inadequate and also most of the Nigerian laws contradict each other and subtly encourages gender-based violence.

Certain laws in the field of health, labor and commerce are highly discriminatory against women which have been discussed earlier the government should do everything possible to implement efficient and effective laws to curb gender-based violence.

### **5.3 Recommendations**

Formal education must be made compulsory at least up to secondary school level through local government, state and federal government policies. Adult education program should be established for adults who had no opportunity of formal education at childhood. Educational programs should be run on state owned television from time to time for awareness campaigns

and to improve literacy.<sup>333</sup> Economic empowerment of women: Poverty and financial dependence contributes to gender-based violence and discrimination against women, it makes women vulnerable establishment of skill acquisition programmes, encouragement of co-operative societies, creating jobs for women in the private sector will go a long way in eradicating gender- -based violence.

The role of civil societies and stakeholders in advocating for the rights of women cannot be overstated. Lawyers should also be encouraged to undertake more pro bono cases to assist women who really need legal representatives and advice. This will help to create the enabling environment which includes laws, structures, laws and policies.<sup>334</sup>

The media has a role to play in combating gender-based violence, by giving information to the public about gender-based violence. Various programmes and talk shows on television and radio about discrimination against women can go a long way in combating gender-based violence.

The churches as well as community leaders should take interest in what obtains in their different congregations and communities, for it has been said that religion is the opium of the masses. If this is properly applied, there should be no problem fighting domestic violence against women through the pulpit, particularly when the clergy is properly sensitized, and where traditional rulers devise information centers for such reports in the societies for onward transmission to police or women friendly NGOs, the scourge will be greatly reduced.<sup>335</sup>

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<sup>333</sup> Adanna Chincdu Madu, "Women Empowerment: Its Relation to National Development and Human Rights," (Enugu, SNAAP Press Ltd 2010), 52-53.

<sup>334</sup> Foluke O. Dada, "The Justiciability and Enforceability of Women's Rights in Nigeria," *Akunba Law Journal*, 1, no.2, (2013), 223-232.

<sup>335</sup> Carol Dame Arinze-Umobi, *Domestic Violence Against Women in Nigeria; A Legal Anatomy*, (Onitsha: Folmech Printing and Publishing Co Ltd 2008), 339.

The legislative arm of government vested with the powers of law making, must be able to watch situations and circumstances and enact laws that will fit into societal yearnings at this point in time of development. All the basic and international tenets and standards as advanced by United Nations must be closely followed by the legislative arms in any given country, so as to make laws that will not be in conflict with standard customary international laws.<sup>336</sup>

Broad Spectrum advocacy, enlightenment and education of members of the legislative arm of government are very necessary, so that it does not amount to putting a square peg in a round hole or a new wine in an old skin. International standard must be synchronized with local legislative stands in order to tackle issues relating to gender-based violence.<sup>337</sup>

The domestication of CEDAW comes to focus in order to achieve a standard benchmark towards eradication of gender-based violence. The current legal situation regarding women's right reveals a range of deviations from the obligations accruing from Nigeria's ratification of CEDAW in 1986. One fundamental hurdle is that CEDAW has not been domesticated into Nigerian law. As a result, it is not possible in a Nigerian court to uphold women's rights on the basis of CEDAW or to strike down legal provisions that are inconsistent with CEDAW. The domestication of CEDAW would the general anti-discriminatory or anti-violence provisions of the Constitution, and the repugnancy doctrine by establishing clear, uniform rules on the rights of women and girls, This would be an important step forward, opening the way to striking down the wide range of discriminatory laws and violent practices still subjecting women to disadvantages and indignity.<sup>338</sup>

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<sup>336</sup> Ibid, 137

<sup>337</sup> ibid

<sup>338</sup> Ibid



The enforceability and justiciability of women's rights in Nigeria must commence with the codification and appropriate laws and instruments that are fair and equitable and not repugnant to justice and good conscience. In *Magit v University of Agriculture Makurdi*, it is said that the function of the court is to interpret law made by the legislature and not to make laws. In theory, that is so, but it must be equally admitted that judges are not robots who have no mind of their own except to follow precedents.

They are intrepid by their great learning and training and can distinguish in order to render justice to whom it is due. As the society is eternally dynamic and with fast changing nature of things in the ever changing world and their attendant complexities, the court should empirically speaking situate its discussions on realistic premise regard being had to the society's construct and understanding of issues that affect the development of jurisprudence.<sup>339</sup>

Furthermore, where the aggrieved woman cannot afford to take her grievances to the court, Alternative Dispute Resolution may be used to settle such disputes especially in the rural areas (Customary Alternative Dispute Resolution). Gender-based violence Bill and Domestic violence bill should be passed in the legislature and enacted into law. This would help prevent discrimination and violence against women in the society.

Finally, the 1995 Fourth World Conference on Women in Beijing in its non-binding Declaration and platform for Action supported the Cairo Programme's definition of reproductive health, but established a broader context of reproductive rights. The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual

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<sup>339</sup> Foluke O. Dada, "The Justiciability and Enforceability of Women's Rights in Nigeria," 232.

relations and reproduction including, full respect for the integrity of the person, require mutual consent and shared responsibility for sexual behaviours and its consequences.<sup>340</sup> This declaration should be domesticated in Nigeria to help fight for women 's sexuality and reproductive rights.

#### **5.4 Conclusion**

Violence against women is a human right issue that extremely hinders women and girls from contributing to national development. Government and stakeholders should put heads together in order to combat gender-based violence. The organs of government should make and enforce laws should be effective in the society and to ensure women have a stand in the society.

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<sup>340</sup> O.A Oniyinde, “Reproductive and Sexual Rights of Women,” *Akungba Law Journal*, 1, no.4, (2010), 270.

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