

Abstract

Human Rights are inalienable claims, which every individual has or should have in the society. These Rights accrues to a person, without regard to the gender of individuals concerned and the peculiar status of such persons. There is plethora of Human Rights Instruments; at international, regional and domestic levels contending that all human beings are equal and are entitled to equal treatment as well as equal protection of the law, irrespective of gender. This paper carefully examines the connection international law and gender. Accordingly, women's Rights and discrimination against women, international human rights and female gender rights were explored. The resultant findings were Women's emancipation starts right from the home. Women have contributed to the perpetuation of domination and injustice against the female gender. There are linkages between International law and gender. Indigenous women are mostly the promoters of the cultural practices that discriminate and violate women's rights. Many things need to be done urgently to protect womanhood.

Keywords: Gender, Human Rights, Women, Discrimination, Identity

1. Introduction

'Human Rights' are claims, which every individual has or should have upon the society. They do not differ from geography or History; culture or ideology; political or economic system; or stage of development of any society. 'Fundamental Human Rights' include equal Rights and opportunities for all human beings, irrespective of race, colour, creed, political belief, status, class or gender.¹ These Rights attach to a person by virtue of his being human, without regard to the gender of individuals and persons concerned and the peculiar position of such persons, which positions are based on their gender. There is a plethora of Human Rights Instruments; at international, regional and domestic levels. All these instruments assume that all human beings are equal and are entitled to equal treatment as well as equal protection of the law, irrespective of gender. However, in the application of these instruments, inequality occurs and there are marked discriminations, based on gender. Often, women are at the receiving end of such gender-based discriminations; no thanks to religious and cultural practices. Recent developments in International Human Rights Law, particularly, in the last decade or more have shifted attention to issues of gender and Human Rights. There are efforts to have the claim that 'Women's Rights are Human Rights' accepted and to develop or transform existing concepts and practices to address, more effectively, violations of women's Rights. In recent times, women's Rights have been the central-features of international feminist struggle. On the other hand, gender Rights discourse, until recently, often focused, solely, on women's Rights and discrimination against women. Gender Rights now transcend the issue of women's Rights and go beyond discrimination against women. There is a new drive for upholding the Rights of gays, lesbians and transgender people. Focus in this seminar paper, therefore would be on international human rights and gender rights as they relate to women, even though, cursory look shall be taken at International Bill of Gender Rights ('IBGR'),² which strives to uphold the Rights of gays, lesbians and transgender people.

2. Definition of Gender

Sometimes, it is hard to understand, exactly, what is meant by the term: 'gender'; and how it differs from the closely-related term: 'sex', 'sex' refers to the biological and physiological characteristics that define men and women. 'Gender', on the other hand, refers to the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women. It refers to the social interpretation of one's biological sex³ and the sum of cultural values, attitudes, roles, practices and characteristics, based on sex; that is, the social interpretation of what it means to be male or female.⁴ 'Male' and 'female' are sex categories, while 'masculine' and 'feminine' are gender categories.⁵ The term has also been said to refer to economic, social and cultural attributes and opportunities associated with being male or female within the family, the workplace and in the public sphere.⁶ Gender identity is socially derived and it is formed through socialization and not by biology. The rules governing the behavior of male or female have nothing to do with the way our bodies are built. These rules are taught to us, continuously, from birth, the resulting behaviours become defining features of what it means to be male or female; and they have changed, very little, over time.⁷ Gender roles are culturally defined and determined and expectations affect behaviours in relationships, leisure activities and careers. It is common for women to be assigned gender roles that disregard their desires, needs and feelings. This is related to sexism; that is, the conscious or unconscious assumption that members of one sex are superior to members of the other sex by virtue of their biology. 'Sexism', clearly, reflects a confusion of biology with culture.⁸ 'Sexism' leads to creation of stereotypes; and this, in turn, leads to discrimination. Gender difference is seen as a manifestation of sexism and a patriarchal creation, used to rationalize inequality between the sexes.⁹ For instance, a woman is expected to be soft-spoken, motherly, a great cook, timid, frivolous, sentimental, more prone to tears, having

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¹ Henkins, L. 'Here and there' (1981) Columbia Law Review, 1582.

² IBGR was adopted by International Conference on Transgender Law and Employment Policy ('ICTLEP') on 17th June, 1995 at Houston Texas, United States of America. However, it is, at best, mere theoretical construction because it has no force of Law; see, IGBR, www.inquirer.gn.apc.org, accessed on 20th July, 2023.

³ See *Comprehensive Sexuality Education, Trainers' Resource Manual*, (Action Health Inc. Pub., 2003), 304

⁴ *Supra*

⁵ See, www.inquirer.gn.apc.org, *supra*, accessed on 14th August, 2023

⁶ See, Imasogie, M.O., A Comparative Study of Aspects of Gender Equality under the Nigerian and the South Africa Laws, Unpublished Doctoral Thesis (Faculty of Law, University of Pretoria, South Africa, 2000), 15.

⁷ *Comprehensive Sexuality Education, Supra*, 304

⁸ *Supra*

⁹ Imasogie, M.O. *Supra* 39

moods, less rational and being responsible for domestic chores. A man should be hard, a dominant partner in a relationship, strong, brave, rough and more rational. When men and women break these stereotypes, they are often forced, by their culture, to either accept them or be ostracized by the community.

‘Gender Rights’ are a group of Rights attaching to a person, not just by virtue of his or her humanity, but also, more importantly, because of sexual differentiation between male and female. The status of women has, of recent, been a cause of great concern in every culture and in every society and gender Rights advocacy is becoming stronger, vocal and louder. Millions of women throughout the world live in conditions of abject deprivation of, and attacks against, their Fundamental Human Rights for no other reason than that they are women.¹⁰ More than fifty-eight years after Universal Declaration of Human Rights, (‘UDHR’) has been adopted, Governments, all over the world, are yet to acknowledge the pervasive violations of women’s Rights and their duty to stop them. There are, at present, many women’s Rights Movements and government’s articulation of policies supporting women’s right, yet, many Governments fail to reform laws that discriminate against women.¹¹

3. Rights to Define Gender Identity

Having discussed extensively the meaning of gender, we shall now consider Gender Rights from the perspective of the Gays, Lesbians and Transgender People. This is particularly imperative because of the proposed criminalization of same-sex relationship in Nigeria. IBGR¹² strives to express Human and Civil Rights from a gender perspective. However, the ten Rights enunciated in it are not to be viewed as Special Rights applicable to a particular interest group, nor are these Rights limited, in application, to person for who gender-identity and gender-role issues are of paramount concern. IBGR was first drafted in Committee and adopted by ICTLEP¹³ at that organization’s second Annual Meeting, held in Houston, Texas, United States of America in 1993.¹⁴ IBGR, however, remains mere theoretical construction which has no force of law except it is, specifically, adopted by Legislative Bodies or its principles are specifically recognized by Courts of Law, Administrative Agencies and International Bodies, such as United Nations. As indicated earlier, the Bill enumerates ten Rights, which are as follows: right to define gender identity; right to free expression of gender identity; right to secure and retain employment and to receive just compensation; right to access to gendered space and participation in gendered activity; right to control and change one’s own body; right to competent medical and professional care; right to freedom from psychiatric diagnosis or treatment; right to sexual expression; right to form committed, loving relationships and to enter into marital contracts; and right to conceive, bear, or adopt children; right to nurture and have custody of children and to exercise parental capacity.

IBGR declares that all human beings carry within themselves every unfolding idea of who they are and what they are capable of achieving. The individual’s sense of ‘self’ is not determined by chromosomal sex, genitalia, assigned birth sex, or initial gender role. Thus, the individual’s identity and capabilities cannot be circumscribed by what/society deems to be masculine or feminine behavior. It is fundamental that individuals have the Right to define, and to redefine as their lives; unfold their own gender identities, without regard to chromosomal sex, genitalia, assigned birth sex, or initial gender role.¹⁵ Therefore, all human beings have the right to define their own gender-identity, regardless of chromosomal sex, genitalia, assigned birth sex, or initial gender role; and further, no individual must be denied Human or Civil Rights by virtue of a self-defined gender-identity, which is not in accord with chromosomal sex, genitalia, assigned birth sex, or initial gender role. All the ten Rights enumerated carry, basically, the same prohibition of discrimination, on the basis of a self-define gender-identity. However, of these Rights, the one that is most important to us in this Chapter is Article 9, which is ‘Right to Form Committed, Loving Relationships and to Enter into Marital Contracts’. In January 2006, the Attorney-General and Minister of Justice of Nigeria, Chief Bayo Ojo, proposed a Bill, entitled: ‘Same Sex Marriage (Prohibition) Act.’ It was approved by the Federal Executive Council and was sent to the country’s National Assembly for ‘expeditious consideration’ ‘because the problem has become topical and embarrassing in recent times’.¹⁶ Among other things, the Bill provides for five-years imprisonment term for any person who ‘goes through the ceremony of marriage with a person of the same sex,’ ‘performs, witnesses, aids or abets the ceremony of same sex marriage,’ or ‘is involved in the registration of gay clubs, societies and organizations.’ The Bill also prohibits any public display of a ‘same-sex amorous relationship’, as well as any form of adoption by Lesbians or Gays.¹⁷ This Bill generated heated debates amongst Gay Rights’ Groups on the one hand and Religious Organizations on the other. The Bill, virtually, polarized the Anglican Church, for instance. It is noteworthy, here, that Archbishop Peter Akinola, the Primate of Nigeria’s Anglican Church, is one of the world’s most vocal opponents of homosexuality and supporter of the Bill. He denounced same-sex marriage and is the leader of a conservative movement within the worldwide denomination that sprang-up, following the election of a Gay Bishop of New Hampshire in the United States. On the other hand, an American Bishop, Chane, was critical of Akinola’s support of the Bill, accusing him of supporting a harsh Bill which suppresses Rights of the minority.¹⁸ In response to Chane, Rt. Rev. Robert Duncan, Bishop of Pittsburgh came to Akinola’s rescue. He opined as follows:

Bishop Chane’s comments betray a profound lack of empathy or understanding for the position that Archbishop Akinola and all Christians find themselves in It should be noted that while the proposed law sounds harsh to American ears, the penalty for homosexual activities in those parts of Africa under Islamic Sharia Law (such as the Sudan and portions of Northern Nigeria for that matter) is death. It is precisely the imposition of these

¹⁰ Women’s Inheritance Rights in Africa Initiative, www.hrlawgrp.com, accessed on 11th July, 2023

¹¹ Imasogie, M.O. Supra 3

¹² Supra

¹³ Supra

¹⁴ See, International Bill of Gender Rights, www.inquirer.gn.apc.org, accessed on 11th July, 2023, Supra

¹⁵ Article 1, IBGR Supra

¹⁶ See Letter to His Excellency, Joseph U. Ayalogu, Ambassador, the Permanent Mission of the Federal Republic of Nigeria, www.ilganews.org, accessed on 11th July, 2023.

¹⁷ See, Nigeria: Obasanjo Must Withdraw Bill to Criminalize Gay Rights, www.hrw.org, accessed on 11th July, 2023.

¹⁸ See, the Moderator’s Defense of the Archbishop, www.anglicanfuture.blogspot.org; www.thelivingchurch, accessed on 11th July, 2023.

much harsher Sharia laws that Archbishop Akinola and other Anglican leaders in Africa have resisted so strongly for many years with little publicity or support from the West. It is jarring, to say the least, to see church leaders, who claim to champion the primacy of local understanding and culture, demanding that foreign sister churches give up their own local understanding and culture and be judged by an American understanding of individual rights. There is a word for the one-way imposition of values – colonialism.¹⁹

Several arguments have been proffered against the Bill. It has been argued, for instance, that the Bill would violate the principle of non-discrimination, enshrined in all main International Human Rights Instruments, which is, also, a cornerstone of Human Rights Law. It would also, clearly, restrict freedoms of expression and association of Human Rights Defenders and members of Civil Society, when advocating Rights of Gays and Lesbians. The Bill will, also, potentially, criminalize Civil Society Groups that engage in fighting against HIV/AIDS through prevention programme. It is difficult, however, to see how homosexuality will help prevent HIV/AIDS. Another argument against the Bill is that homosexuality is already a crime in Nigeria. Under Islamic Law, Gay-sex is punishable by death.²⁰ Section 214 of the criminal code²¹ also penalizes consensual homosexual conduct between adults with fourteen years imprisonment. They wonder at the need for another legislation on the matter. However, according to Frank Nweke, Jr., Nigeria's Information Minister, Government took the 'pre-emptive step' because of developments, elsewhere, in the world-a tacit reference to legalization of same-sex marriage in countries like Belgium, Spain, The Netherlands and Canada.²² Nigeria is not alone in this regard. In Uganda, the criminalization of those in same-sex marriage came as an unannounced change to the constitution. The purpose of this, and perhaps the Nigerian Legislation, is to take care of those who have contracted partnerships, elsewhere. One the issue of violation of freedom of Association, Government can, hardly, make an act unlawful and allow for the lawful campaigns of such act. Everything must stand or fall together if government, indeed, desires to succeed in its aim. The most vocal opponents of the Bill are Americans who, invariably, would not be affected by the Bill. From cultural-relativism point of view, Western concept of Human Rights is not the same as Africans'. In most cultures in Nigeria, same-sex relationships, lesbianism, homosexuality and its likes, are regarded as reprehensible and abominable. To impose western values on the country is a direct attack on our cultural identity, and as Rt. Rev. Robert Duncan insisted,²³ smirks of colonialism. According to Reynold:

Sorry to have to pour cold water on so many liberals' feelings, but I would like to point out in the clearest terms possible that Human Rights are just the 'rights' that governments have currently agreed to give their citizens. There is nothing magic or sacred about them! as far as Christians are concerned, 'Human Rights' do not have canonical authority; they are just human made laws, or maybe the ruling principles of this world, by another (prettier) name..²⁴

4. The Position of ECOSOC on the Elimination of All Forms of Discriminations against Women

It is worthy to note that the commission on the status of women was established in 1946 as one of the functional commission of ECOSOC and has played a role both in standard settling and in, the elaboration of further relevant instruments.²⁵ The committee on the Elimination of all forms of discrimination against women was established under article 22 of the 1979 convention on the elimination of all forms of discrimination against women²⁶. This convention is implemented by means of states reports. It reports annually to the UN General Assembly through ECOSOC.²⁷ The committee, in addition to hearing states reports, may make suggestions and general recommendations, which are included in the report.²⁸ Since 1997 the process of adopting a general recommendation is proceed by an open dialogue between the committee, non-governmental organizations and others regarding the topic of the general recommendation and a discussion of a draft prepared by a committee member. General recommendation N0.5 called upon states parties to make more use of temporary special measures such as positive action, preferential treatment or quota systems to advance women's integration into education, the economy, politics and employment, while General recommendation No. 8 provides that states parties should take further measures to ensure to women, on equal terms with men and without discrimination, the opportunity to represent their government at the international level.²⁹ General recommendation No. 12 called upon states parties to include in their reports information on measures taken to deal with violence against women, while general recommendation No. 14 called for measures to be taken to eradicate the practice of female circumcision. General recommendation No. 19 (1992) dealt at some length with the problem of violence against women in general and specific terms, and general recommendation No. 21 is concerned with equality in marriage and family relations.³⁰ In 1999, the committee adopted a general recommendation No. 24 on women and health. General recommendation No. 25 was adopted in 2004 and concerned temporary special measures.³¹ An optional protocol adopted in 1999 and in force as from December 2000 allows for the right of individual petition provided a number of conditions are met including the requirement for the exhaustion of demostic remedies.

¹⁹ Supra

²⁰ See www.globalgayz.com, accessed on 11th August, 2023

²¹ Applicable in states constituting defunct Southern Nigeria

²² See www.fidh.org, accessed on 11th August, 2023

²³ Supra

²⁴ See Reynold, M., comments on same Sex Marriage Bill, www.thinkinganglican.com.

²⁵ See ECOSOC resolutions 1/5 (1946), 2/11 (1946) and 48 (iv) (1947); see also Reanda, L. 'The commission on the status of women in Alston, United Nations and Human Rights, P. 265. The mandate of the commission was revised by ECOSOC resolution 1987 22 and 1996/6. There is also an individual petition procedure by which complaints are considered by a working Group on communications which then reports to the commission. The commission in turn reports to ECOSOC.

²⁶ This came into force in 1981. See R. Jacobson, 'The committee on the elimination of discrimination against women in Alston, United Nations and Human Rights, P. 444

²⁷ See Articles 17 – 21 of the convention and the first report of the committee, A/38/45 and UN chronicle, November 1983, PP. 65-86

²⁸ Article 21

²⁹ A/43/38/(1988)

³⁰ HRI/GEN/1/REV. 1, 1994, PP.72 FF

³¹ HRI/GEN/1/Rev. 7, 2004, P. 282

In recent years, the importance of women's rights has received greater recognition. The Vienna Declaration and Programme of Action adopted in 1993 emphasized that the human rights of women should be brought into the mainstream of UN system-wide activity and that women's rights should be regularly and systematically addressed throughout the UN bodies and mechanisms.³² In the light of this, the fifth meeting of chairpersons of human rights of women by each treaty body within the competence of its mandate should be closely monitored. Each of the treaty bodies took steps to examine its guidelines with this in mind.³³ It should also be noted, for example, that the special Rapporteur on torture was called upon by the commission on Human Rights in 1994 to examine questions concerning torture directed disproportionately or primarily against women.³⁴ In addition, the General Assembly adopted a Declaration on the Elimination of Violence Against Women in February 1994,³⁵ and a special Rapporteur on violence against women, its causes and consequences was appointed in 1994.³⁶ The International Labour Organization established the promotion of equality of opportunity and treatment of men and women in employment as a priority item in its programme and budget for 1994/5.³⁷ The committee on the Rights of the Child has also discussed the issue of the 'girl-child' and the question of child prostitution.³⁸

5. Women's Rights

Throughout the history of most countries, women only played limited roles in the society; and discrimination against them limited the scope of their Rights. The causes of women's subordination and unequal gender-relations are deeply rooted in history, religions, culture, legal systems, political institutions and social attitudes.³⁹ The subjugation of women stretches to the dawn of pre-historic culture and it is built into myths, folklore, culture, tradition and in the way of life of many communities. Women were considered to be better suited for childbearing and homemaking, rather than for involvement in the public life of business or politics. The widespread presumption that women were not fully rational was, repeatedly, used as justification for continuing to exclude them from the public sphere. Most times, women find themselves living within traditional and largely patriarchal societies, which dictate that a woman is subordinate to the man. From birth, females are considered inferior to males. A woman is viewed as being there to bear children, to serve her father, her brother and later her husband and her family, including her in-laws, in some cases. In most cases, women do not have any Property Rights, or if they do, they cannot inherit any property. Patriarchy made man the centre of society, from the level of family unit to the public sphere. Authority derived from the male, the woman was, first, her father's property and then, her husband's property.⁴⁰ In Kenya, when a girl is born, a sheep is slaughtered as compared to the cow or bull for a boy.⁴¹ Their representation and participation in various issues, is minimal. Their main role is to give birth to children – preferably boys – who will bear the family name. Polygamy is the order of the day and they get married from as young as fifteen years of age. The marriages are often arranged marriages to elderly men. Women's Rights are Rights that establish the same social, economic, and political status for women as for men. Women's Rights guarantee that women will not face discrimination on the basis of their sex. In appraising women's Rights in Nigeria, several issues come up for consideration, such as Right to Property and Inheritance, Right to Education, Reproductive Rights, Freedom from Violence and all forms of discrimination amongst others. These issues will, now, be discussed, sequentially.

Right to Property and Inheritance

In many parts of the world, women's Right to inherit land and other property was severely limited. Women could not own property, independently of their husbands. In the United States of America, Married women gradually got greater control over their property from the 1830s, when states passed laws and statutes granting them such Rights. New York State passed Married Women's Property Act in 1848, which allowed women to acquire and retain assets, independently, of their husbands. This was the first law that, clearly, established the idea that a married woman had an independent legal identity and this inspired nearly all other states to eventually pass similar legislation.⁴² Under most customary laws in many parts of Africa, Nigeria inclusive, women were not entitled to own property, independently, of their husbands. At a man's death, his property is either inherited by his adult sons or, if his children are minors, repossessed by his family. Customary laws, cultural practices and traditional norms are used to justify the disinheritance of girls and widows. Custom is invoked to override statutory or constitutional provisions that may provide women with legal right to inherit. In Nigeria, for example, customary law settles approximately, eight-percent of land disputes, at the expense of women's rights.⁴³ However, inheritance practices differ from culture to culture. For instance, a female child may inherit her father's property under the Yoruba culture in equal shares with her male siblings. She cannot inherit, at all, under the Igbo Culture. In *Uboma v. Ibeneme*,⁴⁴ the Court held that women had no rights to inherit under the Igbo culture. Women may be allotted farmland for farming purposes; however, they cannot call such lands their

³² See Part II, Section 3, 32 ILM, 1993, P. 1678. See the Beijing Conference 1995, Cook, 'Elimination of sexual apartheid', the Beijing plus 5 process.

³³ See HRI/MC/1995/2

³⁴ See resolution 1994/37. See also the report of the special Rapporteur of January 1995, E/CN. 4/1995 34, P. 8

³⁵ Resolution 48/104, See 33 ILM, 1994, P. 1049. Note also the adoption of the Inter-American Convention on the prevention punishment and eradication of violence against women in June 1994.

³⁶ See E/CN. 4/2003/75

³⁷ E/CN. 4/Sub. 2/1994/5, P. 6

³⁸ See further P. 331

³⁹ Mullenkei, L., 'Indigenous Women's Rights in Africa' www.cpsu.com, accessed on 29th September, 2023

⁴⁰ Ikpenne, A., 'Legislative Advocacy on the National Bill on Violence against Women' being paper delivered at Regional Workshop, organized by Federal of International Women. Lawyers (FIDA) on 24th June, 2004, 1; see also, Imasogie, M.O., Supra, 289.

⁴¹ Munkelie, Lucy, Supra

⁴² Schultheiss, K., Infra

⁴³ Women's Inheritance Rights in Africa Initiative, www.hrlawgrp.com accessed on 24th September, 2023

⁴⁴ Suit No. 0/150/61 of 12/4/67; (unreported) cited by Niki Tobi, J.S.C., 'Woman and the Law: the Judicial Approach' Akinseye-George, Y. and Gbadamosi, G. (eds.), *The Pursuit of Justice and Development* (Diamond Pub., 2004) 183

own. Under the Islamic law, a woman may inherit the estate of her father though she is entitled to one-half of the share of a male child. The rationale for this method of sharing is that a male would take care of dependants while a female will have someone take care of her.

Under most cultures, a woman cannot inherit the property of her dead husband except under the Islamic Law where she is entitled to one-fourth of her husband's estate. On the other hand, a widower is entitled to half of his wife's property. This is gross inequality. Although a woman may inherit her husband's property under statutory marriage, several laws dispossess them of this Right as these laws make the cultural practices prevalent in the area override the common law provisions.⁴⁵ In *Mojekwu v. Mojekwu*,⁴⁶ the Court of Appeal held that the *oli-ekpe* custom of Nnewi which permits the son of the brother of a deceased to inherit the property of the deceased to the exclusion of his female child, is repugnant to natural justice, equity and good conscience. Niki Tobi, J.C.A.⁴⁷ said as follows:

We need not travel to Beijing to know that some of our customs include the Nnewi-Oliekpe custom relied upon by the appellant are not consistent with our civilized world in which we live in today, including the appellant. In my humble view, it is a monopoly of God to determine sex of a baby and not the parents. Although the scientific world disagrees with this divine truth, I believe that God, the Creator of human being, is also the final authority on who should be male or female.

The same position was held in the case of *Muojekwu v Ejikeme*.⁴⁸ Here, the Respondent sought to rely on the *Nrachi* custom by which a father may keep a female child in his house upon performing the *Nrachi* rites. Such a female child then takes the position of a male child. She cannot marry and she continues to bear children in her father's house for her father. In such an instance, such a female child may inherit the father's property to the exclusion of her other female siblings. Olatunji, J.C.A., in his contribution, said:

Oli-ekpe custom with its moderating antidote of *Nrachi* ceremony flaunted by the respondents as the winning gambit has been roundly condemned in no uncertain terms in the leading judgement in much the same strain as was done earlier by this court in its celebrated pronouncements on the custom in *Augustine Mojekwu V. Caroline Mojekwu* (1997) 7 N.W.L.R. (Pt. 512) 283 at 304 – 305. I endorse without reservations those structures which are justified by the vicious potentials of such custom in an era in which moral suasion is becoming disturbingly lax. The contribution of the women folk as a proactive medium in the annals of human race imposes a duty on mankind to accord that special breed of *Homo sapiens* a dignity for which advanced culture provides a model worth emulating.

However, in *Mojekwu v. Iwuchukwu*,⁴⁹ the Supreme Court Reversed the decision in *Mojekwu v. Mojekwu* and held that the *oli-ekpe* custom was not repugnant to equity and good conscience and that it is not all customs that can be regarded as repugnant to equity and good conscience. One wonders at the rationale behind the decision. The Constitution guarantees Right to freedom from any form of discrimination which may be based on sex.⁵⁰ Their Lordships should have averted their mind to this provision and the provisions of Convention for the Eradication of all forms of discrimination against women ('CEDAW'). On the other hand, the *Nrachi* custom legalizes prostitution as the female child involved must not marry, yet, she must bear children in the name of her father, which is often by different men. It also confers undue advantage on the person who performed the rites over the other female children. The practice of *Nrachi* may be compared to the Indian practice of *Jogini* where a female child is dedicated to the Yellama goddess. A *Jogini* rite is usually performed when the child is young and unable to appreciate the import of the performance. Once the rite is performed, 'the *jogini*' becomes the wife of the goddess and cannot marry. She is seen as public property, free for any male who wishes to have her for as long as he wishes, without any form of responsibility towards her. She has no right to refuse any male advances. Her children are her own and the male have no responsibility towards the children. Most often, they live in abject poverty and as beggars.⁵¹ Although the practice has been banned, nonetheless, it still exists in some places.

Right to Education

Widespread belief that women were intellectually inferior to men led most societies to limit women's education to learning domestic skills. Well educated, upper-class men controlled most positions of employment and power in society.⁵² The claim was that women were sentimental and frivolous and were, naturally, suited to be subordinate companions of men. Women were seen to be less intelligent than men. In response to these claims, an English writer, Mary Wollstonecraft wrote *A Vindication of the Rights of Woman*.⁵³ In this book, Wollstonecraft argued that, like men, women were natural, national but their inferior education often taught them to be silly and emotional. Education, she believed, should cultivate the natural reasoning capacity in girls. She also claimed that the best marriages were marriages of equals, in which husband and wife were friends as well as legal partners. Wollstonecraft argued, further, and this writer agrees with her, that equality in marriage would only come about with equality of education.

In Africa, the education of the girl child in most communities was seen as waste of resources as women's roles were meant for the kitchen. Until recently, the percentage of educated women to men was quite low. Also, poverty is a cause for non-education

⁴⁵ See section, Wills Law of Lagos State. The Ogun State equivalent also has the same provision.

⁴⁶ (1997) 7 N.W.L.R. (Pt. 512) 283

⁴⁷ As he then was.

⁴⁸ (2000) 5 N.W.L.R. (Pt. 657) 402

⁴⁹ (2004) 11 N.W.L.R. 193

⁵⁰ Section 42 (1) 1999 Constitution of the Federal Republic of Nigeria. (CFRN)

⁵¹ True Love Magazine, April 2006 ed.

⁵² See, Schultheiss, K., 'Women's Right' Microsoft Encarta Encyclopedia (2002)

⁵³ Cited by Schultheiss, K. Supra

of the female. A situation where having three square meals is seen as luxury in most homes, under such tight economic condition, the girl child in the family is most likely to bear the brunt, as she is the one that is likely to have her education truncated, through early marriage, or forced into hawking of wares and prostitution, to keep the family.⁵⁴ This is the cause of early marriages by women. Many parts of Africa still practice child marriages where female children are given out in marriage to men who, often times are old enough to be their fathers and such marriages are mostly polygamous. The African Charter on the Rights and Welfare of the Child prohibits child marriages in an attempt to stem this ugly practice. Nigeria has also enacted Child's Rights Act, 2003 in order to curb this menace. It is now an offence in Nigeria to give out a child in marriage or marry a child. Both the father and the husband would be criminally liable. This is a step in the right direction; however, compliance must be strictly monitored to ensure the effectiveness of the law.

There have been several attempts to improve the educational standard of women in Africa, through the introduction of several policies and affirmative action's. In Nigeria, for instance, several Government policies exist that are geared towards increasing the number of educated women. The enrolment requirements for girls into schools are lower than those of boys, in order to encourage higher enrolment of girls. Some communities offer scholarship to girls to further encourage the education of women. The Federal Government has two Unity schools in each state of the federation, one of which is devoted to girls whilst the other is co-educational. All these are steps that are geared towards the improvement of girls' education. The Universal Basic Education programme of Government is also laudable. However, it is one thing to declare free education; it is another to provide qualitative education. A situation where children go to school without books and other necessary learning materials is little better than no education at all; as a child without books is a child not in school. Therefore, more need to be done to improve the quality of education. In addition, Government should introduce financial measures aimed at assisting indigent students and substantial percentage of this should be allocated to the female sex.

Reproductive Rights

Reproductive health is a state of complete physical, mental and social well-being. It is not merely the absence of disease or infirmity in all matters relating to the reproductive system, its functions and process. It is the ability to have a satisfying and safe sex life, capability to reproduce and freedom to decide if, when, and how often to do so.⁵⁵ Reproductive Rights have been defined as those which protect the health and well-being of both men and women.⁵⁶ However, Reproductive Rights are more fundamentally important to women than men, by virtue of the fact that they carry the burden of pregnancy and motherhood. Reproductive Rights include access to voluntary, quality reproductive and sexual health information, education and services.⁵⁷ Women have, long, been seen as useful, mainly, for reproductive means. This is illustrated by the fact that most Africans marry for the purpose of procreation. In many ethnic groups in Nigeria, marriage ceremonies are performed, only, when the wife is pregnant. It has been argued that it is this reproductive role of women that has been the major cause of acts of oppression against them.⁵⁸ Reproductive Rights include Right to decide on whether to have children or not, Right to privacy, which includes Fundamental Right to terminate a pregnancy. CEDAW expressly entitles women to have access to family planning services and these Rights are widely recognized to include abortion.⁵⁹ However, in most African countries, abortion is viewed as morally wrong and abortion Rights are faced with restrictive laws. In Nigeria, abortion is illegal, except under certain medical conditions. Nearly half of all abortions carried out, worldwide, are done illegally; and in such situations, the death toll is usually very high. Another aspect of women's Reproductive Rights is the issue of Female Genital Mutilation ('FGM'), which term refers to removal of part or all of the female genitalia.

Another form of FGM is infibulations which consists of clitoridectomy. All or part of the Clitoris is removed, all or part of the labia minora and the labia majora are cut in order to create raw surfaces which are then stitched together in order to form a cover over the vagina. A small hole is left to allow urine and menstrual flow to escape.⁶⁰ The method differs from society to society and oftentimes, leads to death from hemorrhage as they are often carried out under un-sterilized and crude conditions. Other serious diseases often occur as a result of this ugly practice. The practice of FGM is, perhaps, one of the cruellest infringements of women's Rights in Africa. The major reason for the practice is allegedly to reduce promiscuity amongst females. This is grossly unfair, as male children are not subjected to the same form of torture. In most societies where FGM is practiced, a woman who refuses to be circumcised is often ostracized and may not be able to get married. In Nigeria, FGM is common, mainly, in the Eastern part of the country. Although some parts of Western Nigeria practice FGM, this is usually done when the girl is a baby as is done in male circumcision. The practice is an infringement of the Right to the Dignity of the Persons, particularly as women are often subjected to cruel and inhuman conditions in the process.

Freedom from violence and other Forms of Discrimination

Violence against women is defined as 'any act of gender based violence that results in or is likely to result in physical, sexual, or psychological harm or suffering to women including threats of such acts, coercion, or arbitrary deprivation of liberty whether occurring in public or private life.'⁶¹ In the past, violence against women was accepted as part of everyday life, especially in the home. Most African cultures allow a man to chastise his wife by beating her. This is, sometimes, backed by law. For

⁵⁴See, Adebimpe, T. a professor highlighting factors which impede education of the girl child, *Thisday Newspaper* Comment, www.allafrica.com, accessed on 24th July, 2023T.

⁵⁵ Comprehensive Sexuality Education, Supra 226

⁵⁶ Imasogie, M.O., 'Reproductive Rights As Human Rights', Nwazuo, A.N. (ed.), *Essays in Human Rights Law* (Faculty of Law, Ebonyi State Pub., 2004) 98.

⁵⁷ Supra

⁵⁸ Supra

⁵⁹ Cited by Imasogie, M.O. Supra 100

⁶⁰ Supra, 105

⁶¹ CEDAW, cited by Ikpenne, A., Supra

instance, the Penal Code⁶² and the Shari'ah Legal System, which operate in Northern parts of Nigeria, allow a man to chastise his wife as long as it does not amount to grievous hurt. Where a woman reports a case of assault on her person against her husband to the police, the matter is often treated as domestic conflict which should be resolved at home between the parties and the woman, often, has no recourse to Law. On the issue of rape, it has been said that a married woman cannot be raped by her consent. According to Katherine Whitethorn, 'the right to reject or accept a man's advances is the most fundamental right a woman can have'.⁶³ Until recently, a man could not be guilty of raping his wife. In *R.V. Mile*,⁶⁴ It was held that there is implied consent to intercourse which the wife gives at marriage which can only be revoked by Order of Court or by a separation agreement. The husband was, therefore, held not liable for rape. However, since he was not entitled to use force or violence for the purpose of exercising his Right of intercourse, if he did so, he was liable for assault. It was not until 1992, in *Regina v. R*,⁶⁵ that the House Lords, in a landmark manner, overruled the previous common law position that a man could not rape his wife. Even in the case of rape against unmarried women or girls, the victim is, often, seen as the culprit and blamed for the assault on her person. Also, because of the secondary victimization attached to it, rape cases, often, go unreported and the victim is left to bear the burden for the rest of her life. Another form of harmful cultural practices is widowhood rites practiced in most parts of Nigeria. In some cultures, women have to shave their hair, sleep on bare floor for a number of days, and sometimes, when suspected of complicity in the death of their husbands, may be asked to sleep in the same room with their husband's corpses for several days amongst other acts of torture.⁶⁶ Meanwhile, same treatment is not applicable to a widower. In fact, in some cultures, a widower is given a woman to keep him company immediately his wife dies.⁶⁷

Social and Political Rights

Oppression of women has not only been cultural, rather it has, also, extended to Social and Political Rights. There are several behaviours which are acceptable for men and are frowned upon for women. On the political scene, women are still at the backstage in spite of the increased awareness of their Rights. The percentage of African women in place of high authority is still very low. One reason for lack of women in places of seniority and authority is, undoubtedly, the fact of women still have the primary responsibility for both housekeeping and child care. Despite the changing patterns of the workplace, women still, routinely, perform a higher proportion, if not all of the household chores. Africa only produced her first Female President in 2005, that is, Helen Johnson-Sirleaf of Liberia. Most of the political positions held by women are minimal and are, merely, to placate the women from complaining of oppression. For instance, in Nigeria, we have never had a female governor and presently out of 36 State Governors, none is female and only two female are Deputy Governors. Most women who venture into politics are often seen as easy prey for men's sexual targets. In spite of the fact that nearly forty percent of those called to the Bar are women, in Nigeria, a woman has never been Chief Justice of the Supreme Court of Nigeria.⁶⁸ This phenomenon is not limited to Nigeria alone. Even Western countries which claim to have better women's Rights face the same sort of discrimination. For instance, in Britain, out of one hundred and twenty one Queen's Counsel appointed in 2003, only nine were female and the first ever female member was appointed to the House of Lords, only, in 2003.⁶⁹ The oppression mentioned above is worst for rural women who are a minority in any society in Africa. It is a difficult situation to enable them to be visible. Despite legal reforms in most of the African countries, women's social and economic status continues to be defined, largely, by customary rules that are deeply rooted in a country's specific historical, economic and social factors.⁷⁰

Even though women have always been partners in the struggle especially, in the last few years, they have taken responsibilities for the survival of their people, in bringing the family together, even in times of conflict; they have been in the forefront of giving hopes to their families. Poverty, which has drastically increased over time, due to over exploitation of the scarce natural resources available, has resulted in frequent droughts; due to sudden climatic changes, conflicts in some parts of the African Region, illiteracy, funding, lack of access to better health care and HIV/AIDS. There are several other forms of discrimination against women on the basis of religion. In some places, women are restricted from movement because of one festival or the other, for instance, Oro and Agemo Festivals in Ijebuland in the South-West Geo-Political Zone of Nigeria, whose demands restrict the movement of women. Some towns place a curfew on women for some days during some of these festivals.⁷¹ It would be recalled that the Sagamu Mayhem of 1999 between the Hausa settlers and the indigenes was a result of a curfew imposed owing to an Oro Festival. Hundreds of lives were lost in the process. In spite of these, there has been no legislation against such practices.

6. Discriminatory Legislation against Women

Aside from the cultural forms discrimination, there exists, also, several discrimination legislation against women. For instance, the Nigeria Police Regulation⁷² provides the qualification which must be possessed by a woman in order to be eligible for enlistment in Nigeria police force as recruit constable. Subsection (g) thereof provides that the women must be unmarried. Thus, married women are precluded from enlistment. Meanwhile, on similar provision is applicable to male. Section 127 of

⁶² Section 55 (1), Penal Code

⁶³ Cited by Niki Tobi, *Supra*, 164

⁶⁴ (1954) 2 Q.B. 282, Cited by Niki Tobi, *Supra*, 166

⁶⁵ (1992) 1 A.C. 599

⁶⁶ This is prevalent among the Igbo people

⁶⁷ This practice is common among the Yoruba People. The man is not expected to sleep alone so that the ghost of the dead wife would not disturb him.

⁶⁸ Booth, C., 'Women's Rights are Human Rights' *Access to Justice*, (British Council in Nigeria, 2003), 11.

⁶⁹ *Supra*, 10.

⁷⁰ Women's Inheritance Rights Initiative, *Supra*.

⁷¹ For instance, in Odogbolu, Okun-Owa, Aiyeye, towns and some other parts of Ijebuland in the South-West Geo-Political Zone of Nigeria, there exists what is called: 'asemo', literally meaning: 'Curfew', which restricts the movement of women from Friday night until Sunday morning.

⁷² Section 118, Cap. N359, Laws of the Federation of Nigeria, 2004.

the regulation provides that an unmarried women police who becomes pregnant shall not be re-enlisted except with the approval of the inspector-general of police. A women police desirous of marrying shall apply to the commissioner of police for the state command in which she is serving, requesting to marry and also supply the name, address and occupation of the spouse to be. Permission may be granted if the intended spouse is adjusted to be of character and the women police have served for minimum of three years. Again, no similar provision is applicable to males.⁷³ The Constitution⁷⁴ gives backing to what would otherwise be an unconstitutional provision. Section 42 (1) provision that:

a citizen of Nigeria of a particular community, ethnic group, place of origin, sex⁷⁵, religion or political opinion shall not be reason only that he is such a person,

(a) Be subjected either expressly, or in the practical application of, any law in force in Nigeria or any executives or administration action of the government, to disabilities or restrictions to which citizen of Nigeria of other communities, ethnic groups, places of origin, sex,⁷⁶ religions, or political opinion are not made subject'

Section 42 (1) (b) provides that a person shall not be accorded any privilege or advantage on the same basis. However, what the constitution gave with one hand, it took with the other hand, by the provisions of section 43 (4), which states that 'nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restriction with respect to the appointment of any person to any office under the state or as a member of the armed force the federation or a member of the Nigeria police to any law in force in Nigeria. In another way, the criminal code also contains discriminatory legislation against women. According to section 353: 'Any person who unlawfully and indecently assaults any male person is guilty a felony and liable to imprisonment for three years'. On the other hand, section 360 provides that 'Any person whom unlawfully indecently assault a women or girl is guilty of a misdemeanor and liable to imprisonment for two years'

It is submitted that this is the height of male chauvinism. It means the male is seen as superior to the female; hence, the different degrees and punishment attached to same offence. Another area of discrimination against women is issues of acquiring citizenship by marriage. A foreign woman married to a Nigeria man may become a citizen merely by an act of registration.⁷⁷ However, a Nigeria woman's foreign husband has no such right, such a person may become citizen, only, by naturalization and the conditions are much more stringent. As such, the Nigeria woman is not afforded the same opportunity as her male counterpart:

Women have also been discriminated against in application of Shari'ah Penal Code. The flogging of Bariya Magazu in Zamfara State who was convicted for adultery and the death sentence passed on Safiya Hussaini Tungari by the Tudubya Shari'ah Court in Sokoto on similar charge of adultery, are some of the cases normally cited. The case of Amina Lawal is also a notorious case being cited by human right groups against the Shari'ah. The fact that these women were convicted on mere charges of being pregnant out of wedlock and the men were left to go free after denying any relation with the women, without more has led credence to this fact. In the present age, there are several methods confirming the paternity of a child the courts should have had recourse to these methods before discharging the men. One of the most prominent principles in human rights' discourse is that all persons are equal before the law and entitled to same legal protection. This principle is also embodied in Section 42 of the Constitution. The same principle is expressed in international human instruments. For instance, International Covenant on Civil and Political Rights ('ICCPR') provides that 'all persons shall be equal before the courts and tribunals.'⁷⁸ It provides further that 'all persons are equal before the law and are entitled without any discrimination to equal protection of the law.'⁷⁹ African Charter on Human and People' Rights (ACHPR) also provides that 'every individual shall be equal before the law and every individual shall be entitled to equal protection of the law.'⁸⁰ Nigeria is a signatory to these instruments yet, these discriminations exit in favour of the male gender.

7. Conclusion

Women's emancipation should starts right from the home. Women are their own worst enemy as they have contributed to the perpetuation of domination by training their sons to be lords of the manor and female children to be glorified cooks. Women should start the reorientation of their children. Males should be taught to respect womanhood. There should be no segregated training and treatment for male and female children. They should teach boys to cook, sew, sweep and do all such works that are, generally, taught to girls. Although, these may seem to be little steps, they would go a long way, in changing the male perception of women on the long run. In the words of Lord IRVINE, family responsibilities are not just women's responsibilities.⁸¹ In addition, Women Organizations seek to educate the indigenous women who are mostly the keepers of the cultural practices that discriminate and violate women's right, with right education and faithful implementation of pro-women policies, women's rights will improve. In addition, women should be encouraged to take part in politics in their countries. Women groups should sponsor candidates for elective posts at all levels so that they can have a voice in affairs of the country. They should not be satisfied with the crumbs being handed down by men. Women should also protect womanhood. Advertising practitioners should be educated on need to 'cover-up' their models. A situation where women are portrayed as mere sex objects is unsatisfying. Women's rights advocacy should also go against use go nude or semi-nude ladies to advertise products. The train of change should also go to university campuses. Girls should be taught on need to respect and protest the dignity of womanhood, which should be portrayed in the way they dress and act.

⁷³ Nwazuo, A.N., Equality and Discriminatory Legislation Against Women in Nigeria', Nwazuo, A.N. (ed.), *Essays in Human Rights Law* (Faculty of Law, Ebonyi State, 2004), 142.

⁷⁴ Section 47(3), 1999 Constitution of the Federal Republic of Nigeria

⁷⁵ Emphasis supplied

⁷⁶ Emphasis supplied

⁷⁷ Section 26 (1) and (2), 1999 Constitution of the Federal Republic of Nigeria, *Supra*.

⁷⁸ Article 14, ICCPR.

⁷⁹ Article 26, ICCPR

⁸⁰ Article 3, ACHPR

⁸¹ Quoted by Booth, C., *Supra*, 9