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Law and The Status of Women in Nigeria

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CHAPTER I

INTRODUCTION

The role or rights of women in any society depend on the status accorded them by that society. In Nigeria, some informants hold the opinion that women spend their whole lives under male dominance, submitting first to the authority of their father or their mother's brother (according to the prevailing kinship system and later to that of their husband). Moreover, these informants will add, women never attain legal independence— a woman cannot sue or be sued in her own name and is not answerable for her actions. Her labour belongs to her husband if she earns any money (for instance from petty trading); only with his consent can she herself enjoy the profit. Apart from her quote and jewelry, even things the land belongs to her husband and can be claimed by his heir. A man may have several legal wives and will be allowed a mistress, but a woman must remain faithful to her husband. Finally, women lead secluded lives from puberty onwards, with their activities restricted to domestic tasks, this being particularly the case among Muslims. If this persuasively drawn picture did indeed correspond to reality, the status of women could certainly be said to be a subservient one. In fact, however, it merely expresses a fondly entertained masculine ideal which does not tally with the realities of everyday life. On the other hand, it would be equally erroneous to imagine that masculine dominance is entirely mythical.

Women's status in society as a topic of importance, its significance is perhaps best indicated by the fact that it would seem odd in most societies to discuss the status of men. Instead the rights and duties enjoyed or owned by men are generally the norm by differentiation from which women acquire their distinctive status.

The fast-changing position of women in the whole of Africa and in Nigeria in particular necessitates not only a review of their status but also a discussion as to whether their status can be improved in any way. This may serve to correct the accepted view that the man is lord and master and that the woman has no will or power of her own. The true position is that Nigerian women, because of their economic importance both as mothers and traders, have more rights than are generally realized.

A woman has been defined as "a human being of the female sex, especially an adult." 1 While there may not be any problem as to the determination of the sex of a human being, the question of determination of adulthood is subject to interpretation. Here we are concerned with the physiological means of determination only in so far as it affects the socio-legal consequences of attainment of womanhood.

It is accepted in most countries that a female becomes eligible for marriage when she attains the age of puberty, but few countries agree as to when the age of puberty is attained.
In Britain, statute law has fixed the age of marriage at 16 (and hence puberty by inference), it has been suggested that under customary law in Nigeria it is 14. But in almost no society in the world is the attainment of puberty taken as synonymous with the attainment of majority. In fact, in English law, although marriage at 16 is legal, for all other purposes persons under 17 are still regarded as infants, and it is not until they are 21 that they have full capacity, and therefore, are considered adults. Almost everywhere in African societies one finds that the attainment of puberty by the infants is the minimum condition for recognition as a member of the community and that, in fact, most societies insist on their waiting for much longer before they are regarded and accepted as adults. Sometimes the puberty initiation ceremony is only a prelude to further ceremonies which alone fix the legal and social status of the growing infant. For instance, among the Ekoik in the South Eastern State, even though it is admitted that a girl can marry as soon as she is 14, she is not regarded as an adult until she has gone through an initiation ceremony at age 16 or older.

As this analysis shows, although the attainment of puberty is a necessary minimum condition for marriage and certain other legal acts, it may be necessary, depending on the society, for infants to wait, sometimes for several more years before they are fully received into adulthood. In some societies, so long as children remain in their parent's home and unmarried, they are for all practical purposes regarded as infants. It is recognized, however, that if they remain with their parents after they are married, the new status of matrimony will usually mean the attainment of full legal capacity, at least in the case of women.

Age plays as important a part in Nigerian society as in English or any other society. Public initiation rites in many ways substitute for the absence of official birth records in traditional societies, but, even though age-grades play an important part in social life, it would be wrong to imagine that membership in every such group necessarily confers a legal status upon the individual. For instance, although marriage which is allowed after puberty may affect the status of a girl, a girl who remains unmarried after puberty may be in no better or worse legal position than her much younger sister.

While infancy is outside the scope of the study, the above discussion is necessary because when an "infant" by virtue of attaining puberty marries, she then falls within the scope of the topic.

Possible reasons for the assumed inferior status of women

To discuss the status of women under customary law is mainly to discuss the status of women in marriage, for remaining unmarried was rare in traditional societies. However, in the changed economic circumstances of today, the unmarried woman may attain a status superior to that of her married sister. A commonly expressed view in the past stressed the inferior status of
wives of customary law marriages. This inferior status is believed to be evident in the institutions of polygamy (and probably still more of polyandry wherever it is practiced) and in procedures whereby women can be deprived of their rights in certain classes of property. The general nature of customary law marriage is an alliance between two kinship groups and only in a secondary aspect is it a union between the two individuals. Where the husband is also not su juris within the kinship group, this may necessarily involve a further diminution of the wife's rights. But even under customary law it is by no means correct to assert that women are oppressed and exploited, without freedom of action and in low esteem.

Polygamy is still widespread in much of Nigeria and educated African women have yet to make a clear-cut demand for its prohibition. In some parts of Nigeria, e.g., among the Nupe and the Gbari of the Northern States and some parts of Iboland where wives are often responsible for the cultivation of both food and cash crops, the wife without co-wives may find herself at a serious economic disadvantage. Thus this feature which is common to most systems of customary law is of vital significance to the status of women. Each wife's contribution to the household is direct and indispensable. It is also a reason often alleged in support of polygamy.

Matrimonial property regimes vary from the typical customary law system under which the wife has no individual right to own property (and everything acquired by her belongs to her "house" within the wider polygamous family which is controlled by her husband) to the legal separation of the property of the spouses which is common among the matrilineal peoples. Some steer a middle course between these two extremes, with the wife's property being kept distinct, while others believe that wives should be allowed to keep their earning for themselves. Generally, customary law is still far from the rights granted to women under statutory or Christian marriage by the English Married Women's Property Acts (dating back to 1857) which are applicable in the whole of Nigeria, except the Western State which has a similar local legislation. As a result of recent decisions of the Judicial Committee of the Privy Council, the recognition of customary law marriages has been extended much further in allowing children and wives of customary law marriages to share in the distribution of a deceased husband's estate within the meaning of those terms in English statutes relating to succession as applied in Nigeria. This will be discussed at length below.

* Possessing full legal rights.
REFERENCES

1. Standan Oxford Dictionary


3. Under the Children and Young Persons Act they are tried for offences in juvenile courts and they have no vote till 18.


CHAPTER II
GENERAL PROBLEMS OF THE STATUS OF WOMEN AND THE LAW

The question of the status of women may not be treated as an issue isolated from the rest of human society. Yet the problems of women must not be obscured in the discussion of other pressing issues.

Women are, if you will, the submerged two thirds. It is women who give birth to children... women are more than half of the world's population... We cannot hope to create the necessary conditions for growth while leaving aside half of the human resources required of that growth. 1/

Most of our defined ways of behaving are the result of a complex socialisation pattern which schools the human being for a highly specific set of roles, expectations and responses. It is apparent that society has placed higher value on those roles and qualities which are defined as masculine and, correspondingly, denigrates those which it has identified as feminine. Having accepted the mythical stereotype and reinforced its continuance by deliberate social practice, it is elevated to natural law whose consequences are then seen as visibly and logically apparent. Men not only accept that they are aggressive but become more so. Women are told that they are weaker and less competent, and feel so.

In the economy, major control, power and key roles rest with men. Women are typically in subordinate and subservient positions. Their increased participation in the economic life of the nation is confined largely to trading, not requiring large outlay in capital. In employment, they are concentrated in semi-skilled and unskilled jobs.

In marriage, cultural and traditional institutions and customs still tend to reinforce the subservient status of women. Local customs mean more than distant legalities. Local religious practices, community norms and interpersonal peer pressures have greater weight than the remote legislation of rules concerning property and inheritance rights of elite groups. Polygamy gives the husband the right to dismiss his infertile wife in favour of a more fecund servant or concubine. Traditional strictures upon the roles and position of women have remained in spite of or sometimes through religious influence, one of the strongest barriers to female emancipation.

Sometimes writers speak as if two or more distinct and autonomous systems of law are to be found in Nigeria, but this presentation does not do justice to the legal position. Admittedly, there are two systems of jurisprudence, but they are neither separate nor are they administered in rivalry to each other. This is because, inevitably, the law administered in the courts is neither English law simpliciter nor customary law, but Nigerian law — an admixture of English law, customary law and rules derived elsewhere than from these two sources which, however, supply most of the law.
The loosening of kinship ties and obligations and, hence, the widening of the ambit of customary rights and the narrowing of the extent of the traditional duties of the individual - given as examples of the impact of English law - are inevitable in the light of economic and technical change. The cash economy and wage labour have increased the individual's self-reliance to a point that often makes him less solicitous of the welfare of other family members, particularly women, towards whom in the past he would have felt obligation. The extended family system of obligations is rapidly losing ground to more personal self-assertion and economic self-sufficiency. The movement is not confined to the men.

Particularly in the field of family law, English legal ideas have been absorbed to such an extent that some judges have ordered that the property of a man who has contracted a Christian marriage be divided in accordance with principles of English law, even though the deceased might have indicated a contrary intention by his mode of life. However, most judges are of the opinion that the fact of such a marriage merely created a rebuttable presumption in favour of the application of principles of English law. Most of the cases here are concerned with the estate of a man; one is bound to ask to what extent the same principles apply to women. Where the spouses are not living together, it is possible for them to manifest different intentions and thereby attract different laws to their property on death intestate. For a widow, her own mode of life should decide the applicable law of succession on her death intestate. But in respect of widows who are of Nigerian descent, a new marriage in customary law would mean that her husband's personal customary law would govern her intestacy. Also, although legal incapacity of certain classes of married women is tolerably familiar to customary law, here again there are some refinements. Some hold that customary law could advantageously be replaced by a European legal system, but the consensus of opinion is that customary law must be retained, at least for the present, in matters of family status, succession and land rights.

However, it is expected that with increasing social contact and political development, there must be a movement not only to improve this body of customary law rules of conduct but also for the evolution of a modern legal system, which will clearly define the extent of a woman's right and status in society. All law must be a reflection of the social consciousness of people who live under it, and changing social, economic and political conditions must inevitably affect the legal order.

Since the advent of the British in Nigeria, there has been a considerable amount of interaction between English law and customary law. Most of English law received has been by means of statute, but except in the former Western State (now split into Oyo, Ondo and Ogun States), these statutes merely state that the English law from particular date or on a particular subject matter shall apply in Nigeria. This can cause much uncertainty for one is not entirely sure how to determine which rules of English law should form part of the imported law relating to the position of women.
Unlike English law, customary law, which controls the lives of the great majority in Nigeria, does not consist of a single uniform set of legal principles. The courts are faced with the difficulty of ascertaining which system of customary law applies. Generally speaking, in areas which a particular ethnic group has traditionally occupied, the customary law of that group is dominant. Legislation has attempted to provide some guide. The Northern Region Native Courts Law 4/ and the Eastern Region Customary Courts Law 5/ both provide that in case of any conflict between the personal law of the parties and the law of the place in which the court is sitting, the Court is to administer "the law prevailing in the area of the jurisdiction of the court, or any law binding between the parties." 6/ This provision still leaves a choice between two alternatives. In Western Nigeria, the law specifically provides that, in certain specified matters, the appropriate customary law is the customary law binding between the parties. 7/

With regard to succession, neither the Northern Native Courts nor the Eastern customary Courts law make any express provision. It has, however, been held that, for purposes of intestacy, the "law binding between the parties" is the deceased's personal law, not the law of the area in which he died or in which his property is located. 8/ But in the Western State, Sec. 20(2) of the Customary Courts Law provides that "in causes and matters arising from inheritance the appropriate customary law shall be the customary law of the deceased." In spite of this, however, it is still not always easy to decide which law is binding between the parties where the parties have different personal laws. However, the various native and customary courts laws indicate that the appropriate choice of law is to be determined by the intention, express or implied, of the parties. 2/

Property right is also affected by the type of society, that is, whether the society is patrilineal or matrilineal or whether the society observes cognatic or agnatic descent. Where spouses come from different societies inheritance conflicts could arise; for example, a conflict might emerge where a man from a group practicing agnatic (through the male line) descent marries a woman from a group practicing cognatic (through the female line) descent. The wife might insist, at her husband's death intestate, that her daughters should receive an inalienable interest in the father's land and not a customary interest for life. However, such issue would rarely be presented in so clear-cut a fashion.

Education is institutionally-oriented, on the whole, to the needs of men. Only comparatively recently have women been admitted to the higher levels of education; participation is still very low. The educated woman has possibilities of self-fulfillment and status which are not directly tied to the number of children she bears and is more capable of bringing peer pressure to bear upon other members of her community and society. In terms of health, nutrition and child nurture, more education for more women is a vital prerequisite to the raising of standards of human welfare.
Even where access to such education is available at all levels, most educational institutions still tend to reinforce and perpetuate the more conventional roles of women by rewarding conformity, relative passivity and compliance with the given stereotypes.

In Nigeria, only a handful of women have policy-making positions in government whether legislative, judicial or executive. This particularly underlines the singularity of the relative paucity of those who comprise more than half the population.

The position of women is still inferior, they are often thought of as chattels, useful only for their work at home, in the fields or in the procreation of children. Even where their economic contribution to the family is equal to or greater than the men's their traditionally subordinate role is not affected.

In theory and in legal terms, women may have been given equal rights and opportunities to participate fully. In practice, these are more honoured in words than observance. The occasional female head of a corporation or firm or institution stands out because she is an exception. Legal inequalities in property ownership, status under the law, particularly under customary law still persist. Indigenous culture still functions as a brake on female emancipation. Better education, wider access to employment and total female suffrage are obvious measures. But they must be accompanied by more deliberate and conscious attempts towards changing attitudes.

REFERENCES
2. Cole V. Cole (1893) 1 N.L.R. 15
4. Laws of Northern Nigeria (1963) Cap. 75, Sec. 20 (a)
6. The provision was fully discussed in Osuag v. Dominic Soldier (1959) N.R.N.L.R. 39 a decision of the High Court of the former Northern Region of Nigeria.
7. Western Region Customary Courts Law, (1959) Cap. 31, Sec. 20 (3).
CHAPTER III
POLITICAL AND CIVIC RIGHTS

Voting and Public Office

In Nigeria, women did not face a long struggle to obtain political rights as they did in some Western countries. By the time the Nigerian constitution was being written, the rights of women to vote and hold office were by and large well established in many parts of the world. Hence long before independence, Nigerian women had been aware of and exercised political rights, usually through local councils and women's organizations. A well-known example of their strength and cohesion is the widespread nature of the movement for the assertion of their rights which Ibo women organized in 1929, known as the "Aba Riots", following a rumour that the government was on the point of introducing a tax on women's property. On the attainment of independence, the general principle of adult suffrage fought for by women in other parts of the world was written into the constitution.

However, political leadership has been the exclusive domain of men, and in propagation of the myth that politics is a man's game, section 44(b) of the Federal Constitution 1960 provides that only a male person is entitled to be voted for into the House of Representatives in the Northern parts of the country, and in further pursuance of the myth, the Northern Nigeria Constitution disqualifies women from voting. Thus in an age when various African states, not to speak of the world at large, guarantee political rights to every adult irrespective of sex, Nigeria continues to exclude a large proportion of women from such a basic right.

This situation has been corrected in the new Draft Constitution which is presently being considered by the Constituent Assembly, so that the principle of adult suffrage will be universal. In fact under the Electoral Decree 1977, 1/ all adults of 18 years and above are entitled to vote. 2/ Action for the emancipation of women and their increased participation in community life occurs at two levels. A small female elite - those with higher education and/or prominent positions in society - become active in politics and women's organizations. They are often involved in fighting injustices and restrictions which no longer apply to themselves. The majority of women, however, have little or no interest in participating in activities concerned with implementing their political, legal and social rights. They leave theory behind and "come out" in more practical ways to do as they wish rather than to try to change attitudes directly or to get laws passed. Both types of action, that on a small scale but organized and that on a larger, popular basis but haphazard, combine to produce progress. When women are active in politics and in government they may be more accented at the national rather than at the local level. There are a small number of women who have achieved prominence in the modern political and governmental spheres, but they are exceptional. Strong political participation is still the domain of men. The impact of traditional upbringing on the women themselves makes them timid about assuming positions of leadership and makes them as reluctant
as the men to vote other women into responsible positions. Women have
to be deeply convinced of the importance of their political participation
and of their ability to cope with political responsibilities if they are to
contribute to any appreciable degree to the political leadership of a
nation. This points to the important part that civic education needs to
play in order that women’s political rights do not become a legal fiction.

Nigerian women have been drawn into participation, in some instances
into political or quasi-political activity, through the women's organizations.3/
These organizations have been able to articulate women's needs and as organized
groups have had some impact on governmental decisions and national policy.
Their centres of organization and activity are usually urban areas although
some groups attempt to develop branches in rural communities. However,
because of difficulties in finding leadership and resources, development
of women's groups in rural areas is often left to Departments of Community
Development. This may be advantageous because educated women in cities
usually live in conditions far removed from those of rural life, and as a
result their ideas may be unrelated to the needs of rural women.

The aims and activities of the different women's organizations vary,
but in general the emphasis is on improving women's knowledge and skills so
that they can attain a higher standard of living and contribute more fully
to the development of their country. Their contributions are often in the
field of welfare, for example, running day-care centres, training programmes
and orphanages. The women's movements bring together progressive, forward-
looking women who are ready to make great efforts in self-improvement and
"nation building".

Constitutional Status

Any discussion of political and civic rights must consider fundamental
provides a group of rights which have been labelled fundamental human rights,
to which every citizen is entitled. The rights contained in Chapter III of the
Constitution provide

(a) the right not to be deprived intentionally of life (subject to
    various exceptions mainly dealing with killings as a result of
    war and court sentence),

(b) freedom from slavery and servitude and forced labour.

(c) the right to personal liberty (subject to various exceptions
    like detention in hospital and in prison by process of law).

(d) right to a fair hearing in any process before the court or a
    judicial tribunal,
(e) freedom of thought, conscience and religion (except on grounds of safety, health and state security)

(f) freedom of expression (subject to the laws of sedition, defamation and the official Secrets Act),

(g) freedom of assembly and association,

(h) freedom of movement (subject to state security restriction of movement), and

(i) freedom from discrimination

Women who are citizens of this country are entitled to all these rights and can challenge anybody who attempts to interfere with their exercise of any of the rights. But the written law is one thing, and the practical application of it is quite a different matter. The point here is not merely to enumerate fundamental human rights but to discuss to what extent a woman can claim, in all respects - to be able to exercise these rights as fully as a man.

Section 20(1) provides that no person shall be held in slavery or servitude; whilst it may be true that there is no slavery, to my mind there seem to be quite a lot of women who are held in servitude. This seems to be apparent in our system of customary marriage which allows a man to claim back his dowry when he is divorced from the women, whether or not he or the woman instituted the divorce proceedings. A woman who has been married to a man, for however short a time, has rendered the normal housewifery services which if calculated in terms of money paid to an employee would have amounted to a large amount. Yet whatever little amount the husband had expended to get her must be returned at the termination of the marriage. It is true that under some systems of the customary law, it is allowed that the sum to be claimed back should be calculated in accordance with the number of children she bore for the man; for instance, if one child equals N2, therefore the N2 or a multiple of N2 will be deducted from the total dowry paid. But what happens to the childless woman? This system inevitably makes a woman servile even where there is evidence of excessive cruelty by the man. This servitude is however justified by tradition and law under which it should normally be challenged. My contention here is that the law in respect of dissolution of customary law marriages needs to be reviewed. This provision is still in the same form in the proposed draft of the new Constitution - sec. 27

Section 28 provides that a citizen of Nigeria of a particular community, tribe, place of origin, religion or political opinion shall not, by reason only that he is such a person -
(a) be subjected either expressly by or in the practical application of, any law in force in Nigeria or any executive or administrative action of the Government of the Federation or the Government of a Region to disabilities or restrictions to which citizens of Nigeria or other communities, tribes, places of origin, religions or political opinions are not made subject or,

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive of administrative action any privilege or advantage that is not conferred on citizens of Nigeria or other communities, tribes, places of origin, religions or political opinions.

This provision as it stands would have worked well for women's liberation but the general proviso in sub-section 2, allows any employer to lay down whatever qualification or disqualifications he likes for employment. This has negative consequences for women because it is not illegal to refuse to employ a woman in spite of her qualifications. The same is, of course, true in respect of a man, but female prospective employees, most especially married women who have had the problem of looking for jobs, will realize that their qualifications may have become of secondary consideration in the normal course of things.

However, if the proposed draft of the New Constitution is adopted, in this regard - sec. 9 which provides inter alia that "discrimination on the grounds of place of origin, religion, sex, status, ethnic or linguistic association or ties shall be prohibited", this would go a long way to ameliorate the difficulties of women. However, as it is, the new provision is merely one of the stated political objectives of state and non-justiciable. It is, therefore, possible that there would be no change unless the discrimination on the ground of sex is made one of the specifically justiciable fundamental human rights.

Citizenship

At the time of independence in 1960 Nigerian citizenship was defined by reference to the colonial status of Nigeria. Hence, it was enacted in the Constitution that a person who was alive on the date of independence became a Nigerian citizen if he was, immediately before Independence, a citizen of the United Kingdom and Colonies or a British Protected Person. That definition was retained in the 1963 Constitution. Thus citizenship was acquired by every person, male and female, in the same way, that is, by birth within the domain, by birth abroad of a parent who is a Nigerian citizen or by being naturalized.
REFERENCES

1. Decree No. 77 of 1977, s 1(1).

2. Qualifying age for election to a Legislative House is 21 years.

3. Notably the National Council of Women's Societies which has branches all over the Federation.
CHAPTER IV

CIVIL LAW

A) Legal Capacity - Married and Unmarried Women

A legal person is any person who is accepted by law as a subject of legal rights and duties. In Nigeria, legal personality is practically synonymous with physical personality, in that every human being is a legal person. In our law, legal personality attaches to a human being on birth and ends with death. It is true that for certain purposes within the law of succession unborn children may be treated as legal persons, but only on the condition that the child is eventually born alive.

Legal capacity, however, is an index of status and power, the measure of a person's ability to take decision and perform acts that a court will recognize and uphold or penalize. A woman has full legal capacity when she may legally exercise the maximum amount of power permitted in the society: acting in her own name and without assistance to enter into contracts, to acquire and own property, to enter into other legal transactions, sue or be sued. In Nigeria, it cannot be categorically affirmed that women - married and unmarried have full legal capacity as defined.

The age of majority in Nigeria until now remains 21. Upon attaining this age a person supposedly sheds all legal incapacities, but under the law women are classified with children and slaves as being of defective capacities. This stems from the English common law notions that women were chattels and had no proprietary capacity. Added to this the inequalities inherent in the traditional role of women were intensified in the colonial era.

However, the civil law does not in general distinguish between a man and an unmarried woman. She can sue and be sued in both contract and tort to the same extent as a man. She is liable for her debts and she can acquire rights in property in the same way and to the same extent as a man. She may engage in business, a profession, choose her own residence and generally make her own decisions.

A married woman's independent legal status, however, is not so unlimited in law. Many of these limitations will be discussed in the subsequent chapters but some of them can be briefly sketched here.

Domicile is of considerable importance for a person's legal status. Since everybody must have a domicile, a child acquires his domicile at birth. Thus, a legitimate female child, like a male, follows her father in this respect, while an illegitimate child follows the mother. But once married, her domicile changes to the husband's and always follows that of the husband even if she is not living with him. Wherever a husband changes his domicile, the wife is assumed to acquire the new domicile even if she never sets foot in the country in which the husband has chosen to settle. One instance in
which this may cause hardship to the woman in her right to seek divorce. Since domicile affects the right of the courts to have jurisdiction in divorce matters, it is not difficult to imagine how a recalcitrant husband can prevent his wife's divorce action.

Through marriage, by law the husband controls the wife's property, in particular property acquired by her after marriage, and she cannot enter into contracts which would jeopardize the husband's right in such property. In practice she cannot enter into loan or hire purchase agreements without the husband's consent nor can she obtain a passport without such consent. Although there are no specific laws protecting such practices it would seem that even Government agencies indulge in them. Couples married under the Statute or by Christian ceremony may claim privilege against being compelled to give evidence against one's spouse and they cannot sue each other for debt for the duration of the marriage.

B. Family Law and Related Problems

Marriage

Marriage is a universal institution, recognized all over the world, and deeply rooted in the law of the State and religion. Consequently marriage is the root of the family and society. Each society regulates the marriage governing it. But the law regulating marriage can only retain or possess validity and command if such laws reflect moral values, economic conditions and religious beliefs of the people to which the law applies.

Forms of Marriage

Nigeria recognises two systems of marriage, - monogamy and polygamy.

The monogamous marriage is often wrongly referred to as Christian marriage, although it is a facet of Christian beliefs, it is not confined to Christians. A monogamous marriage is one which does not recognize a plurality of wives and the definition "voluntary union for life of one man and one woman to the exclusion of other" has become accepted under most common law systems. In Nigeria, such marriage is governed by the Marriage Act, 1914 and the Matrimonial Causes Decree, 1970.

A polygamous marriage may also be defined as the voluntary union for life of one man with one (or more) woman. The essential characteristic of this is the ability of the man to take as many wives as he wishes. The mere fact that at any given moment he has chosen to have only one does not imply that the marriage stops being polygamous. It is, therefore, the formalities that determine whether the marriage is polygamous and not the number of wives.
Polygamy is a customary law institution, hence the incidence of the system is governed by customary law, including Islamic law. However, there is no uniform system of customary law prevailing throughout Nigeria, thus, in discussing marriage under customary law one must always bear in mind that there are various kinds. Normally one of the distinctive features of customary law is the fact that it is an unwritten law, but this is not generally so today. In many parts of the country, customary law is now being written. For example, in the Northern States, Native Authorities are empowered to record in writing any declaration of what, in their opinion, is the native law and custom relating to any part of native law in their area of jurisdiction. Such a declaration may apply throughout the area of its authority or a specified part. 2/ Similar provisions exist in Western, Midwestern and Lagos States. In these States, Local Government Councils have the power to make Bye Laws regulating customary marriages, the quantum of dowry, child betrothal and the custody and maintenance of children of customary law marriages. 3/

Capacity to Marry

The parties to a marriage must possess the necessary capacity. Capacity to marry under the statute may be divided into four aspects.

1. Age

Despite the Matrimonial Causes Decree, 1970, the law governing the formation of a Monogamous or Statutory Marriage is still the Marriage Act, 1/ because no amendment was made to the Act. However, one major effect of the Decree on the Marriage Act is that it has removed some of the uncertainties existing in the application of that Act in so far as some requirements of a valid marriage are concerned.

Thus, before the Decree, there was much uncertainty as to the required age of marriage. Since the Marriage Act itself makes no provision for age, the practice was to fall back on the common law ages of 14 for the male and 12 for females. Section 3(e) of the Decree now provides that a marriage is void if either of the two parties is not of marriageable age. But the Decree does not define "marriageable age" and therefore in view of the fact that the current English statute law no longer applies in Nigeria, 6/ "marriageable age" will have to be interpreted to mean the common law ages. Thus the age of statutory marriage is 14 for boys and 12 for girls.

2. Prohibited Degrees

Schedule I of Section 3 of the Decree gives a list of the prohibited degree of affinity and consanguinity. Any marriage between such persons is by virtue of section 3(b) of the Decree void. Thus, a marriage between a man and his ancestress, his descendants or his sister's, his father's sister, his mother's sister, his brother's sister, his wife's mother, and grandmother are prohibited.
But it is well known under our customary law that in some areas children do take on the marital responsibility of their father's wife other than their own mother. However the prohibition imposed as a result of the affinity can be waived since by virtue of section 14 (1) of the Decree, a judge could in exceptional circumstances permit a marriage on an application by both parties for a waiver of the affinity rules.

3. Subsisting Marriage

A party to a subsisting statutory marriage or customary marriage lacks capacity to enter into another statutory marriage with another person. Similarly a party to a subsisting statutory marriage cannot enter into another customary law marriage. However, where there is a subsisting customary law marriage, parties to such marriage may nevertheless marry each other under the statute. Any breach of this provision will render the marriage void and may also subject the guilty party to punishment by imprisonment.

4. Consent

The parties consent is necessary before a statutory marriage can be valid. Where there is no mutual consent or where it is given under duress or where it is induced by fraud or mistake, the marriage is void. 8/

If either of the parties is under 21 years and not being a widow or widower, he or she must obtain written consent of the father. This consent cannot be dispensed with unless the father is dead or of unsound mind or absent from Nigeria, in which case, the mother must consent also in writing. If she is dead, of unsound mind or absent from Nigeria, then the guardian's consent must be sought. If any of these persons is an illiterate he or she may affix his or her mark to the written document in the presence of a High Court Judge or a Magistrate or a Registrar or a Notary Public. 9/ Where there is no such person capable of giving consent, then the consent of a State Governor or a High Court judge may be obtained.

It is interesting to note that whereas a widow or widower of 21 is considered capable of making his or her own decision without parental consent, a single person of 21 getting married for the first time is not considered so capable.

The problem here, however, is whether a divorcee requires parental consent. Another question is whether the word 'widow' or 'widower' relates only to statutory marriage. For instance suppose A who had previously married under customary law becomes a widow and now wishes to make a statutory marriage. If the term 'widow' or 'widower' is restricted to statutory marriage then A would require parental consent because her previous marriage had been a customary law marriage. It would appear that the courts favour the liberal approach and regard the terms as applying to both types of marriage 10/
Customary Law Marriage

Marriage under customary law is the union of one man and one or more women for the duration of the women's life. The fact that the husband dies does not mean that the customary law marriage is ended. Unlike statutory marriage, customary law marriage is an inter-family affair, hence it is sometimes referred to as a union between two families.

Capacity

Age

There is no age at which a person can marry under customary law which is fixed by statute except in the former Eastern Region of Nigeria. It will be found that apart from that exception, the marriageable age is the age of puberty. There have been suggestions that the age of puberty is 14 11/ but if one considers that in almost all European countries and under common law that the age of marriage is 12 years for girls and 14 for boys, then by inference, the age of puberty should be the same.

In at least 3 of the Northern States, - Biu in the North East, Idoma and Tiv in the Plateau and Borgu in Kwara, the marriage age has been fixed by declaration of native law. In Biu it is 14 for girls, in Idoma 12 years and in Borgu 13 years.

However in the Eastern States, the Age of Marriage Law passed in 1956 provides in Section 3(1) that "a marriage between or in respect of persons either of whom is under the age of 16 years shall be void."

Consent

Traditionally consent of the parties was not an essential prerequisite to a valid customary law marriage because such marriages were arranged by parents and guardians and the children had no choice.

Today, however, such consent is sought before fixing bride price. In fact in the Declaration of Customary law in Biu, Idoma, Tiv and Borgu Native Authority Areas, the consent of the girl is a very important element in the celebration of the marriage.

In fact in other areas where there are no such declarations, if a girl is married out without her consent - and there is no guarantee that the consent will be voluntary - one may be running afoul of the law because section 361 of the Criminal Code provides inter alia "Any person who with intent to marry... a female of any age or to cause her to be married... by any other person takes her away or detains her against her will is guilty of a felony and is liable to imprisonment for seven years." This section was originally intended to combat the practice of marriage by capture which was prevalent in most parts of Yorubaland in those days.
Parental consent is necessary and in some cases mandatory for the validity of a customary law marriage. This consent is usually that of the father but any other male elder of the family may give the required consent. Where there is absence of such consent it may be difficult to comply with other requirements of a valid marriage. For instance, the fixing of the bride price and the formal handing-over of the bride are usually the parents' duties.

In certain areas, the consent is only required in respect of the first marriage of the girl. According to the Declaration of Customary Law of Marriage in Biu, Idoma, Tiv and Borgu, parental consent is necessary for a girl's first marriage and the father may refuse his consent without any need to give any reasons for such refusal. But in the case of a second or subsequent marriage, the father or guardian, as the case may be, will be consulted but his refusal will not invalidate the marriage.

In the areas of Western and Lagos State where there has been an adoption of the Marriage, Divorce and Custody of Children Adoptive Bye Law Order, 1958, a customary law marriage may be performed without necessarily having parental consent. Section 5 of the Bye Law Order provides:

When any parent or guardian of a bride refuses his or her consent to a marriage or refuses to accept his or her share of the dowry, the bride, if she is 18 years of age or above and the bride-groom, jointly may institute legal proceedings in a competent court against the parent or guardian to show cause why he or she should refuse consent or to accept his or her share of the dowry and if the court is of the opinion that no sufficient cause has been shown it shall order that the marriage may proceed without the consent of such parent.

It is implied in this provision that the consent of a mother ranks equally with that of a father. But the problem in the provision is in its application. As earlier indicated parents play other vital roles in the marriage, e.g. fixing bride price and the handing over. Now that the court is empowered to dispense with parental consent, would the other two requirements be dispensed with by court order? Or would the parents be forced to perform these other duties? Or would the customary court itself take over these other duties? Unfortunately the Adoptive Bye Law is silent on this. One might suggest that once the courts has intervened, it will fully step into the parents' shoes.

There is authority to support the view that parental consent is only necessary on the girl's side. 12/
Prohibited Degrees

The rules regarding prohibited degrees on the basis of affinity or consanguinity are not the same for all societies in Nigeria. It should be noted that these rules are much wider than those applicable to statutory marriage.

The general rule for most areas is that marriage is forbidden between two persons who are related by blood, no matter how remote the degree of relationship. For example, among the Itsekiri marriage among blood relations however remote is forbidden. But the Efik and the Annag merely prohibit such union if it is between a man and the man's mother or sister or daughter, or between a man and his brother's wife or between cousins.

The Ibo, Ijaw, and Yoruba have something closely related. Among the Yoruba marriage is forbidden between two parties who are related on either the mother or father's side. The same pertains among the Ibo. But relationship by affinity, that is by marriage, is not forbidden among the Yoruba. Thus it is not unknown for a man to be married to two sisters although he may not marry his wife's mother.

Among the Ibo, a man may not marry either in his wife's or his wife's mother's family.

Dowry or Bride Price

The Limitation of Dowry Law 1956 of Eastern Nigeria defined the word "dowry" in Section 2 as "any gift or payment in money, natural produce, brass rods, cowries, or in any other kind or property whatsoever to a parent or guardian of a female person on account of the marriage of that person which is intended or has taken place."

Clause 2 of the Marriage, Divorce, and Custody of Children Adoptive Bye-Law Order, 1958 of the Western and Mid-Western States define dowry as "a customary gift by a husband to or in respect of a woman at or before marriage."

Thus whereas in the West and Midwest the gift is paid before or at the marriage, in the Eastern States, it is a concept of Ibo custom that in spite of the fact that an initial payment may be made, bride price is a continuous obligation.

In all areas, it is not the husband but his family who pays and it is normally paid to the family of the girl and not to her directly. Bride price may be waived by the girl's family and in fact more often waived in modern times particularly in enlightened Yoruba circles.
Bride price is subject to statutory limits of £30 in the Eastern Region and £35 in the West and Mid-West. But in spite of the imposition of penalty for exceeding the limit, the provisions are honoured more in their breach than in their observance.

In matrilineal societies, mainly centered around Afikpo and Ohafia areas of the Eastern States, the wife of a small dowry marriage and her children belong to her own family.

Formal Handing Over of Bride

The ceremony varies from tribe to tribe, but in most places takes place at night. In most cases, the husband must not be there when his family take delivery of his bride. The ceremony is usually attended with festivities and pouring of libation.

Islamic Law Marriage

This is essentially a customary law marriage and therefore all the prerequisites of a customary law marriage are relevant. But under the Maliki school of thought, a father has the right to conclude a marriage on behalf of his son and his virgin daughters even without their consent. However, any of the children can repudiate the contract on reaching the age of puberty.

In addition Islamic law prohibits a marriage between a Muslim man and an animist woman, but not a Christian woman. However, a Muslim woman is precluded from marrying any person other than a Muslim.

Registration

Customary law itself does not require the registration of a customary law marriage. The various steps leading up to and including the marriage itself are attended by such wide publicity that the question of the existence of the marriage is usually never in doubt. However, because reliance is placed on the memory of people which may become less accurate as years pass, the value of such evidence is very much restricted. Hence various efforts have been made in some parts of the country to see to the registration of customary law marriages. In the Eastern States the Local Government Law Cap. 79 authorises Local Authorities to make Bye Laws for the registration of customary law marriage within their jurisdiction. However, most of the bye laws do not make registration compulsory. The result is that very few people avail themselves of the law.

In the Western and Midwestern States (now Oyo, Ogun, Ondo and Bendel States), by the Marriage Adoptive Bye Law, 1958, a husband must register the marriage within one month of its celebration. Failure to register incurs a penalty of four Naira (N4) fine.
I the Northern States, the Native Authority Law 16/ empowers Native Authorities to provide for the registration of marriage within their area of jurisdiction. Some of the bye-laws made in pursuance of the power provide sanction for failure to register.

The overall picture of registration of customary law marriages is unsatisfactory because there is no systematic compulsory system throughout the country and even in those areas where registration has been provided, the particulars registered are those supplied by the husband himself. There is no means by which the registrar can check the authenticity of the particulars.

Right to Family Name

There is no law regulating the right of a woman to use either her family name or upon marriage her husband's family name. It is accepted convention however that a woman on marriage changes her family name for that of her husband. Many educated women, however, find it more convenient to retain their family name for professional life and are known by their husband's for social occasions. Many others have adopted the system of hyphenating their family's and their husband's name to form a compound name.

Rights of Spouses During Marriage

The common law rule that spouses cannot sue each other in tort, whether ante-nuptial, applies throughout the Federation. As regards a post-nuptial contract, in the former Western and Mid-Western States where the Married Women's Property Law Cap. 76 applies, they can sue each other and the wife's liability in such a case is a personal one. In the rest of the Federation where the Married Women's Property Acts 1870-93 applies, they can sue each other and the wife's liability in such a case is a personal one.

As regards an ante-nuptial contract, it would seem that spouses cannot sue each other on this in the Federation excluding the former West and Mid-West States. However, it has been suggested that in England and a fortiori in the former Western and Mid-Western States spouses can now sue each other on such a contract in view of the fact that the 1935 Act is differently worded from the 1882 Act. However, most of the above rules have been altered to a large extent, particularly in regard to an action in tort, by section 42(1) of the Decree which provides that "while a decree of judicial separation is in operation either party to the marriage may bring proceedings in contract or tort against the other party." Therefore since it is not stated that the liability of the wife on a post-separation contract shall be limited to the value of her separate estate, it is assumed that the liability of a wife on such post separation contract is a personal one.

At common law, the wife's agency of necessity which enables her to pledge her husband's credit arises only where she is living apart from the
husband (other than by reason of an order of court) either because she has been deserted by him or she is otherwise justified in living apart from him.

**Incidents of Customary Law Marriage**

Marriage under customary law is polygynous and, except under Islamic law which allows only four wives, there is no limit to the number of wives a man may take. A husband must treat each wife equally and cannot show favouritism, even to the senior wife.

Each wife must be given a separate room or hut as the case may be. A husband has the duty to support each of his wives and to provide her with at least the bare essentials. He, in turn, has the right to the services of his wives. They must cook, care for the house, and if he is a farmer, work with him on the farm. He also has the right to discipline them, if necessary, using slight corporal punishment, to achieve this end. For example, he may slap her but he could not strike her with a stick.

Normally a girl brings property with her, such as cooking utensils, clothing and perhaps jewelry. If a wife obtains money or property by trading, she is entitled to keep it and the husband has no special claim to it, nor can he compel her to turn it over to him. But any ante-nuptial property which the wife brings to the matrimonial home belongs either to both husband and wife, as in most Hausa areas, or to the husband entirely as in some parts of Yorubaland.

A wife cannot sue the husband in debt, and the husband is not liable to pay the debts which the wife owes to third persons, or to answer for her torts. Ordinarily, however, a husband will feel honour bound to fulfill his wife's obligations. This is merely a moral duty and not enforceable in any court of law.

Thus, even though a husband has rights in the wife's property, a wife has absolutely no rights in her husband's property or income.

An interesting deviation from the absolute subservience of the wife as indicated above is found in the Igbirra law which states

12(2) A wife has the right to:

1. (a) conjugal rights with her husband,
2. (b) maintenance by her husband of herself and her children including housing, clothing, food, at a standard consistent with his means.
(c) one-third of the young of her husband's live-
stock if she looks after them,

(d) reasonable assistance from her husband for her
family in times of need.

Islamic Law Marriage

In the Sharia (a School of Islamic Law) there are certain persons
who are legally incapable of managing their property (mal), and the Maliki
law classifies women among those of defective capacity. Thus a married
woman is not allowed to give away gratuitously more than one-third of her
property without her husband's consent. In fact, however, womanhood is not
a great disadvantage. If a woman is married, she has the right to trade
with her property, which will not form part of her husband's property, for
it is said that Islam does not create any community of property. It is said
that "the husband has the right to use the household property, that is, to
enjoy together with the wife what she has brought, such as bedspreads, covers,
carpets and clothes". But, in another context, the interpretation given to
the expression "he has the right to use her property" is that he can deny
her right to dispose freely of all her property for, if she is allowed to do
that, the husband cannot make use of it any longer. It is doubtful, however,
whether this right extends to property which she acquired by her own labour,
without any contribution from him.

Maliki law, unlike all other systems of customary law, also restricts
the right of the woman over her dower. In other systems, the 'dowry' is
usually the payment made to the family of the woman in gratitude for the
giving of the woman in marriage, and is regarded as one of the requirements
of a valid marriage. But in Maliki law, although the dower is given to the
woman, it is nevertheless intended to provide the trousseau and household
goods for the whole family.

Duties and Right of Parents

In discussing the duties and rights of parents, it is worthwhile to
emphasise that our tradition and moral rules handed down through the ages
are the basis of most of our law in this respect. It is, therefore, the
duty and at the same time the right of the parents to protect, support and
educate their minor children. For the benefit of the children, the parents
also have a right to punish their children within reasonable limits.

Parental rights and duties shall be exercised and performed jointly by
the parents except otherwise stipulated by law. But where and if the
opinions of the parents are different with respect to exercising parental
rights, the opinion of the father will govern or prevail.
Minor children may own property if such property is acquired by inheritance or gift. Such property, however, will be managed by the father or by the mother if the father is not in a position to do so. Whilst the parents are entitled to use and collect proceeds from their children's special property, they are not allowed to dispose of the property except for the benefit of the children.

Parents are considered as the legal representatives of their minor children and therefore where there is a father who is not legally incapacitated in any way, he is the legal representative of the minor children, in the absence of such father, then the mother.

All these rights are important, in fact, since any interference with a parent's right would be actionable in court, so also any dereliction of duty towards a child is actionable in court. It is impossible to discuss in detail all rights and duties but we would like to put particular emphasis on the right to custody and maintenance.

Custody of legitimate children

Under the general law, a father was absolutely entitled to the custody of his child until the child is 21, or marries under that age and unless it could be proved that he was unfit in character and/or conduct, this right cannot be interfered with even by the mother. This right of the father prevailed even after his death. So, a father could defeat the mother's right to appoint a guardian for an infant child on his death. The guardian so appointed has a better right to custody than the mother. This strict common law position has however been modified by various statutory provisions, e.g. the Custody of Infants Act 1839 allows the court to award the custody of an infant under 7 to the mother, provided that she has not committed adultery. The Infants Act 1873 extended the age limit to 16, and the mother's adultery was no longer a bar to her claim. The Guardianship of Infants Act 1886 further extended the mother's right by providing that the court could give her custody of a child under 21, and it also provided that if the father died but appointed a guardian, the guardian must act jointly with the mother. The mother herself was given the power to appoint a testamentary guardian to act jointly with one appointed by the father. The law governing the custody of children in the former West and Mid-West (by virtue of Infants Law which incorporates Guardianship of Infants Act 1925 of England) differs from the rest of the Federation.

1. The mother now has equal rights with the father. (This is not the case for the rest of the Federation where the mother's right to appoint a testamentary guardian is restricted).

2. The court can make an order about the custody of a child even when the mother is living with the father.
However, s. 7(1) of the Matrimonial Causes Decree, 1970 provides that in deciding to whom to grant the custody of the children, the court shall regard the interest of the children of paramount importance. Thus the court usually takes into consideration a number of factors and these include the ages of the children, the arrangements made for their accommodation, education, welfare and general upbringing as well as the conduct of the claimants. The fact that a child is of tender age does not necessarily mean that its custody will be granted to the mother.

Moreover by s. 7(3) if the court considers it desirable, it may make an order placing the children in the custody of a person other than the mother or father. This is exceptional: usually where a child is under age, the mother is usually granted custody unless she is considered absolutely unfit.

Custody of Illegitimate Children

In common law an illegitimate child was filius nullius, (child of none) and no one had a right to the custody of such a child. However, since the mother has the duty of maintaining such a child, she also has the right to custody. That still remains the law in the federation except in the former West and Mid-West states, where under their Infants Law, all infants are treated alike.

Custody of Children under Customary Law

The generally accepted principle under customary law is that the father is entitled to the custody of the child. On the death of the father, his family is entitled to take custody. But it is accepted that a mother has temporary custody while she is still nursing the baby. In some areas, this has been put in legal form, e.g. section 33 of the Igbirra declaration provides that "all children must have a woman's care until they reach the age of 7". A woman's care is not necessarily the mother's care and if the father is able to make provision to have a woman to look after the child he may take the child.

Under Maliki law, however, it is the mother who gets the custody when there is a separation; this right exists until the age of puberty (fixed at 14) for a male child or until marriage in case of a female child.

Maintenance

Notwithstanding the legal emancipation of women and their increased participation in the economic world, the husband and father is primarily responsible for the support of the family. Therefore, it is a woman's right to claim maintenance from the father of her child, whether legitimate or illegitimate. The mother need only prove that the man is the father of the child. The current law on maintenance is under the Matrimonial Causes Decree, 1970 Section 69 of which provided that in any proceedings for financial relief, a maintenance order could be made in favour of the children.
of the marriage. The phrase 'children of the marriage' is widely defined and includes:

(a) any child adopted since the marriage by the husband and wife or by either of them with the consent of the other,

(b) any child of the husband and wife born before the marriage, whether legitimated by the marriage or not, and

(c) any child of either the husband and wife (including an illegitimate child of either of them and a child adopted by them) if at the relevant time, the child was ordinarily a member of the household of the husband and wife.

From the above provisions, it is obvious that the phrase "children of the marriage" has a meaning wider than its natural sense, since it is not confined to children born to a lawful marriage between the spouses. The phrase covers natural but illegitimate or legitimated children born by either of the two spouses. However, a natural child of the spouses (whether legitimate, illegitimate or legitimated) who has been adopted by a third party or third parties is not a child of the marriage.

Dissolution of Marriage

There are many ways in which a marriage can be dissolved and these include divorce, annulment and judicial separation.

The law now governing the dissolution of marriage is the Matrimonial Causes Decree, 1970. Most of the provisions of this Decree have been borrowed with certain modifications, partly from the Matrimonial Causes Act, 1959 of Australia and partly from the Divorce Reform Act, 1969 of England.

The Decree, whilst allowing a marriage to be judicially dissolved on the ground of irretrievable breakdown, thought however that some steps should be taken to see if the parties could be reconciled. So there is a reconciliation provision (Section 11) which empowers the court after the institution of the proceedings, if it appears to the judge that there is a reasonable possibility of reconciliation, to do any or such acts as to effect such reconciliation.

The question here is why the attempts at reconciliation should come after proceedings have begun rather than before. The Australian experience of similar provision has shown that only on the rarest occasion have attempts made to effect a reconciliation after hearing had begun been successful, "because usually by this time, the parties would have grown too far apart and one of them if not both would have become anxious to see a final determination of the suit".
Divorce

Except where divorce proceedings are based on (a) wilful and persistent refusal to consummate (b) adultery (c) commission of rape, sodomy and bestiality, no proceedings for divorce may be instituted within two years of the marriage without the leave of court. The rationale behind this is that people should not rush into divorce because of the initial strains and stresses of sharing life with a stranger without giving themselves reasonable opportunity for adjustment.

In dealing with an application for leave to petition within a two year period, the court is expected to have regard to any children of the marriage, if any, and the probability of reconciliation between the parties before the expiration of the two years period.

Grounds for Divorce

Some writers have been tempted to conclude that there is now only one ground for divorce under the Decree, because the text of section 15(1) of the Decree says that a petition for decree of dissolution of marriage may be presented upon the ground that the marriage has broken down irretrievably. This view is however doubtful and has in fact been rejected by the Courts, not only in Nigeria but by English courts where similar provision exists. For example, in Williams V. Williams in the High Court of Lagos, P.J. Dosumu observed thus:

"Time it is that the new Matrimonial Causes Decree introduced some radical changes in the law of divorce, but a party must come within its four walls before he will succeed. It is not sufficient for him or her to say 'my marriage has irretrievably broken down and I can no longer live with my partner'."

Besides section 15(e) of the Decree declares that the court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably "if, but only if, the petitioner satisfies the court of one or more of the following facts..." Therefore, facts must be shown which would indicate the irretrievable breakdown. Such facts include

(a) That the respondent has wilfully and persistently refused to consummate the marriage - s 15(2)(a).

(b) That since the marriage the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent - s. 15(2)(b).

(c) That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the respondent - Sec. 15(2)(d).
(d) That the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition - Sec. 15(2)(d).

(e) That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted - Sec. 15(2)(e).

(f) That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition - Sec. 15(2)(f).

(g) That the other party to the marriage has, for a period of not less than one year, failed to comply with a decree of restitution of conjugal rights made under this Decree - Sec. 15(2)(g).

(h) That the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead. The minimum period for presumption of death is seven years - Sec. 15(2)(h).

The Decree has put an end to the anomaly (which was a survival of the common law action for criminal conversion) whereby the husband could claim damages for adultery with his wife from a co-respondent, whereas, the wife did not have such a right. Now sec. 31(1) says "a party to a marriage, whether husband or wife, may, in a petition for a decree of dissolution of marriage alleging that the other party to the marriage has committed adultery with a person or including that allegation, claim damages from that person on the ground that that person has committed adultery with the other party to the marriage...". Thus either spouse may now claim damages from a co-respondent or woman - named. However by sec. 31(2) damages cannot be awarded in respect of a condoned adultery whether or not it has been condoned. But where there are more than one acts of adultery some of which have been condoned, damages will be awarded for the uncondoned acts. 17/

Moreover, by sec. 31(3) damages cannot be awarded in respect of adultery committed more than three years before the date of the petition.

In the assessment of damages, however, despite the fact that the law apparently intends to place husband and wife on the same footing, a distinction is still being drawn whereby the pecuniary value of the husband is not normally taken into account because the husband is still usually regarded as the breadwinner of the family.
One interesting interpretation and application of s. 15(2) must be mentioned. Under this section, the kinds of conduct which would be regarded as of grave and weighty character, sufficient to make it intolerable for the petitioner to live with the respondent, are innumerable. It has been held in Edalere v. Edalere, 18/ that childlessness of the wife which resulted in her resentment and occasional maltreatment by the respondent/husband amounted to intolerable behaviour on the part of the husband. It is clear, however, that subject to the various discretionary bars, the application of section 15(2)(e) and (f) is independent of any element of fault. Generally, therefore, a respondent irrespective of his or her innocence can, even against his or her wish, be divorced by a "guilty" spouse. This is the concept of absence of guilt.

Nullity

A marriage may be annulled either because it is void or voidable. In short, a void marriage is one which does not produce the intended legal consequences while a voidable marriage is one which produces the intended legal consequences but these consequences may be neutralised at the instance of the petitioner by the exercise of a countervailing power vested in him. 19/

There are important distinctions between the two types of marriages. Where the marriage is voidable the wife automatically acquires the domicile of the husband by reason of the marriage, whereas she does not if the marriage is void. Only the parties to a voidable marriage can apply for its annulment.

Void Marriage

The grounds on which a marriage is void are contained in sec. 3(1) of the Decree which provides an exhaustive list. Subject to the provision of that section, a marriage that takes place after the commencement of the Decree is void in any of the following cases where

(a) either of the parties is, at the time of the marriage, lawfully married to some other person,

(b) the parties are within the prohibited degrees of consanguinity or affinity (subject to s. 4 of the Decree),

(c) there is failure to comply with the law of the place where the marriage takes place with respect to the form of solemnisation of marriages,

(d) the consent of either of the parties is not real,

(e) either of the parties is not of marriageable age.
Voidable Marriages

S. 5 of the Decree provides grounds on which a marriage is voidable. These are where

(a) either party to the marriage is incapable of consummating the marriage,

(b) either party to the marriage is

(i) of unsound mind, or
(ii) a mental defective, or
(iii) subject to recurrent attacks of insanity or epilepsy;

(c) either party to the marriage is suffering from a venereal disease in a communicable form, or

(d) the wife is pregnant by a person other than the husband.

Statutory Bars

By s. 35 of the Decree the grounds that prevent a marriage from being declared void include the petition:

(a) of a party suffering from the incapacity to consummate the marriage, on the ground that the marriage is voidable by virtue of s.5(1)(a) of this Decree, unless the party was not aware of the existence of the incapacity at the time of the marriage,

(b) of the party suffering from the disability or the disease, on the ground that the marriage is voidable by virtue of section 5(1)(b) or (c) of the Decree; or

(c) of the wife on the ground that the marriage is voidable by virtue of s.5(1)(d) of the Decree.

And section 36(4) of the Decree provides that a decree of nullity shall not be made on the ground that the marriage is voidable by virtue of s.5(1)(a) of this Decree where the court is of the opinion that

(a) by reason of -

(i) the petitioner's knowledge of the incapacity at the time of the marriage, or

(ii) the conduct of the petitioner since the marriage; or

(iii) the lapse of time, or
(b) by any other reason.

It would, in the particular circumstance of the case, be harsh and oppressive to the correspondent or contrary to the public interest, to make a decree.

Judicial Separation

The Decree now provides that the same facts that would result in or bar dissolution of a marriage are applicable in proceedings for judicial separation.20/

Before the commencement of the Decree there was no minimum period after which a petition for judicial separation could be presented. But now the two year restriction on the presentation of a petition for divorce contained in s 30 of the Decree has been made applicable to proceedings for judicial separation by s.40 which incorporated the provisions of ss. 18 to 24 and ss. 26 to 32 to such proceedings.

The imposition of this restriction may work hardship where, for example within two years of the marriage one spouse persistently treats the other with gross brutality the aggrieved party might be forced to withdraw from cohabitation without the aid of the court unless an exception to present a petition within two years were granted. It would have been a fairer approach to allow such a petition within two years. It would then be possible for a spouse, invariably the wife, who obtains a decree of judicial separation following brutal treatment by the husband within two years of the marriage to obtain some form of ancillary relief such as maintenance.

The primary effect of a decree of judicial separation has been clearly stated in sec. 41 which provides

A decree of judicial separation relieves the petitioner from the obligation to cohabit with the other party to the marriage while the decree remains in operation.

Besides it is provided by sec. 44(1) that

a decree of judicial separation shall not prevent the institution by either party to the marriage of proceedings for a decree of dissolution of marriage.

The rights and obligations of husband and wife inter se in contract and tort while a decree of judicial separation is in operation are governed by s. 42(1) which provides that they may sue each other.
As for their estate rights, the Decree has made a drastic alteration in the law. Previously where a decree of judicial separation had been granted upon the wife's petition, any property which the wife acquired after the date of the separation decree, if she died intestate (without a will) would devolve as if her husband had been dead. The provision was designed to avoid the rule whereby the whole of an intestate woman's property vested in her husband as her widower. There was no corresponding provision in favour of the husband. However, s.42(2) of the Decree has put an end to this anomaly by providing that "where a party to a marriage die, intestate as to any property while a decree of judicial separation is in operation, that property shall devolve as if that party had survived the other party to the marriage". Moreover, where a power has been given to husband and wife jointly, one spouse can still join the other in the exercise of that power even if they have been legally separated.

Matrimonial Reliefs

There are two principal types of relief which may be granted on the dissolution of marriage: financial and custodial. The latter has already been discussed.

Financial Reliefs

The duty of one spouse to maintain the other is governed partly by common law and partly by statute.

Common Law

In common law, as a result of the doctrine of unity of husband and wife, the wife lacks the capacity to hold property and to enter into contract. The unavoidable consequence of this is that the husband as the head of the family is bound to maintain her - there is no corresponding duty on the wife to maintain the husband. This common law duty involves providing the wife with necessities of life, that is, food, clothing, and shelter.

The duty to maintain the wife is co-extensive with the wife's right to the husband's consortium. Thus if she loses the husband's consortium by committing any matrimonial offence, she loses also the right to maintenance.

As a means of enforcing the right to maintenance where the husband has failed to do so, the law creates in favour of the wife an agency of necessity. This enables her to pledge her husband's credit for necessities as long as she is entitled to be maintained by the husband. A husband who
has failed to maintain his wife cannot terminate the agency by giving
en instruction to a tradesman that he should not deal with his wife.

By virtue of s.42(3) of the Matrimonial Causes Decree which provides
that if "in consequence of making a decree of judicial separation a husband
is ordered to pay maintenance to his wife, and the maintenance is not duly
paid, the husband shall be liable for necessaries supplied for the wife's
use", it would seem irrelevant if the wife has sufficient means of her own
so long as the maintenance ordered has not been paid by the husband.

Statutory

Before the commencement of the Matrimonial Causes Act (1857), in
matrimonial proceedings for a decree of divorce the ecclesiastical courts
used to order the husband to pay the wife alimony pending suit, and on grant
of the decree, permanent alimony. That Act not only transferred this power
to the Divorce Court, it also empowered the court on grant of a Decree of
divorce to order the husband to secure maintenance for the wife's life. 22/
The court was also given additional power to order the husband to pay the
wife an unsecured maintenance. All these powers were later extended to
nullity proceedings. By 1963 the court could order a lump sum payment in
proceedings for divorce, nullity and judicial separation. 23/

It was not until 1937 24/ that the wife became obliged to maintain her
husband, and this was under very limited circumstances, namely in proceedings
for judicial separation, or divorce on the ground of the husband's insanity.

The current law on maintenance is contained in part IV of the Matrimonial
Causes Decree, sec. 70. A number of important changes have been made by the
Decree. First husband and wife, in so far as the rights and duties to make
financial provisions are concerned are now on equal footing, in theory at
least. Therefore, the courts are no longer restricted to the old rule
whereby they virtually ordered financial provision in favour of the wife.
Secondly, the confusing terminologies of 'alimony' and maintenance have been
avoided, and the only recognised term for financial relief is 'maintenance'.
Thirdly, a marriage includes a purported marriage that is void. Finally,
an award can be in the nature of a lump sum or a periodic payment. Whatever
the form, it may be secured and the court can order the execution and -
depositing of documents of title as guarantee against the due performance
of any order made. Unlike the position before the Decree, Section 75(2)
subject to the conditions laid down in that section an' 75(3), now makes it
possible for the courts to make a maintenance award to the party who loses
the substantive action. 25/
Customary Law

Nullity

Void Marriages

A customary law marriage will be void on any of the following grounds:

(a) If the parties to the marriage are within the prohibited degree of consanguinity or affinity as laid down in the law in the particular area.

In some areas such a situation may be saved by the ceremony of severance of family ties, performed before the marriage ceremony.

(b) If the marriage is between a Nigerian and a foreigner other than a "native foreigner". 26/

(c) If the bride price is not paid where it is demanded. Payment of bride price may be postponed either in whole or in part for an indefinite period. Indeed, among the Igbo speaking peoples, bride price could be paid after marriage.

(d) If the bride's parents or guardians withhold their consent to the marriage with the exception of the former Western Region. 27/

(e) If at the time of the celebration of the customary law marriage the other party is already lawfully married under the Act to another person and that marriage is still subsisting.

Voidable Marriages

Except in the Eastern States where infant marriage is no longer valid because of the Age of Marriage Law which fixes the marriagable age at 16 years and also some parts of the former Western Region which have adopted the Bye-Law Order, any marriage between an infant and an adult or between two infants which is arranged by their parents, would be voidable, in that either of the infants may, within a reasonable time of becoming an adult, repudiate or confirm such marriage. It is significant to note that unlike under English law, such a marriage may be voided by the infant’s refusal to cohabit with the other spouse. 28/

Divorce

A customary law marriage may be dissolved by judicial or non-judicial means. Under the latter, if the husband tells the wife to leave the house and she goes, or if the wife leaves and the husband says nothing in protest, the parties are considered divorced.
Today, however, most persons seeking a divorce apply to the native courts. They feel that a judicial decree will make things "official" and will prevent a divorced husband from attempting to reclaim his bride-price when in fact it has already been refunded.

In most parts of the country, there are no definite grounds for granting a judicial divorce. It would appear that the refusal of one of the parties to continue living with the other is sufficient reason. Usually, however, the parties give a number of facts, e.g. inadequate maintenance, cruelty, physical violence, bad temper, quarrelsomeness, dirtiness or slovenliness to justify their inability to continue living together. Usually the courts only grant the decree when all efforts at reconciliation have failed.

Consequences

Aside from the dissolution of the marital bond, a divorce under customary law has three main consequences: return of bride-price, custody of the children and right to remarriage. We have already discussed custody.

(a) Return of Bride-Price

One of the important consequence of divorce is that the bride-price must be returned to the husband. Most of the disputes which arise in divorce proceedings involve the amount to be refunded. Usually and generally, the full amount must be returned, but some areas have made some exceptions. For example among the Birom, the amount to be refunded will be reduced if the wife has given birth to children during the marriage. In 1955 the Jos Native Authority passed a resolution stating that the maximum refundable bride-price was £6 (thirty-two Naira). The purpose of the resolution was to avoid arguments over the amount actually paid and to prevent inflation in the general level of bride-price. This resolution is still in force. The Igbirra Native Law also makes provision for the refund of bride-price at divorce. See.19(1) provides

If the court decides that a divorce is inevitable, it must then assess the bride-price that the wife is to refund to the husband. Proof of the amount he paid for her must be adduced, but no refund exceeding ten pounds and one pound traditional gift (ochurubo) may be ordered...

One further departure from traditional customary law created by the Igbirra Declaration is the Settlement of Debts. Although a husband and wife may not sue each other in debt during the marriage, a court divorcing them will consider claims of either party against the other for debts or property. The Declaration provides that when a divorce is granted
44. (a) A refund will be ordered of all loans of case proved to have been made by one party to the other for any purpose, including trading capital, but not any profits thereon.

(b) A refund will be ordered of any goods, including produce, proved to have been given by one party to the other for the purpose of sale on behalf on the first party.

In almost all cases, the person responsible for repaying the bride-price is the person who received it at the time of the marriage, but especially among the Yoruba it is not unknown for the new or prospective husband to refund the dowry. In any case, the marriage is not accepted as dissolved until the dowry has been refunded, so that any association with another man before repayment is regarded as adultery. Indeed, any children born to the other man may be regarded as the children of the divorced husband.

(b) Right to Remarriage

Once a woman has been divorced she has a right to remarry any other person. However, convention has it among the Anga that she cannot remarry into the family or the village of her former husband even if she was completely without fault in the divorce.

Islamic Law

In all the customary law systems, when a marriage is terminated by divorce, the divorced wife has no right to the husband's estate. In this respect, Muslim law seems to have made a departure in that it recognizes two types of divorce. It says a divorce is either revocable or irrevocable, the latter is final but the former may be revoked by the husband unilaterally, if he has a change of heart. Thus it is provided that a revocably divorced woman has the right to inherit from her husband's estate if he dies intestate during her idda period, the time - usually three menstrual cycles - during which marriage to another person is forbidden. Thus, it is said, is to prevent any disputes as to the paternity of any child conceived after a divorce.

C. Property Law and Inheritance Rights

The question of a woman's right in property is a difficult one. It used to be thought that a woman had no classifiable right in property, but that view no longer represents the true state even of customary law. Generally there is no longer any doubt that a woman may own property in her own-right - property which she has acquired before marriage by her own money or by inheritance or by gift.
abomination for a married woman to plant or own a kolanut tree during her husband's lifetime. It is doubtful whether she could legally be prevented from doing so, but she might be unable to find anybody bold enough to disregard superstition and sell her such a tree.

Because wives are not regarded as members of their husband's family, they have no absolute right in their husband's property, but they have the right of maintenance which includes accommodation, clothing, food and other material comforts, for the duration of the marriage.

The General Law

This does not distinguish between the right of an married and any other adult to acquire property, but the same cannot be said of a married woman. During the last century, considerable legislation has been enacted raising the status of wife from that of a subservient member of the family to that of a co-partner with her husband. Now she has the capacity to acquire rights in property in the same way and to the same extent as an adult male. Once this is recognized various problems may arise where a woman acquires property during the marriage. Where the wife has a separate income, for example, personal earnings, these are her personal property, if she acquires property with it, the property will prima facie remain her own property. But where the spouses pool their income for the purchase, they both acquire a joint interest in the whole property, even where the contributions are not equal. Similarly where the spouses maintain a 'common purse,' they have a joint interest in the funds.

An interesting point, however, here relates to house-keeping allowances. Where a husband provides a house-keeping allowance, it could be regarded as a 'gift' which he would not normally expect to get back. It has been consistently held by the Courts that any balance of house-keeping allowance and any property acquired with the allowance remain the husband's property. This is an instance when the legislature needs to make reforms in the law to meet the modern economic conditions of our society. A wife who does not work must necessarily manage the house-keeping allowance to allow some savings for her own use at present, she could be deprived of these savings by the husband.

Derivative Rights in Property

Inheritance Rights

In almost all our societies, except the matrilineal ones found around Afikpo areas of the Anambra State, women have always been regarded as the weaker vessels, and because succession laws have evolved in such a way as to promote family cohesion, the laws of most of our societies ensure that males derive succession rights in the family and in the community to
which they belong and deny females rights to land in particular and to a lesser degree in other goods. The exogamous system of marriage removes a daughter from the parents' to the husband's family. The result is that daughters are not regarded as permanent members of their father's family, and for that reason they are denied rights of succession to a man's property. In the case of an unmarried daughter, the possibility of a future marriage subjects her to the same consequences. In her husband's family, the possibility of a divorce and the fact that she is not a blood descendant deprive her of succession right in the family. It is still necessary to see what rights, if any, a woman can claim by inheritance, (i) as children in relation to their parents' property, (ii) as wives and widows in relation to their husband's property, and (iii) as mothers in relation to their children's property.

Customary Law

Testate Succession (Inheritance by will)

Under the various bodies of customary law, there is no distinction between male and female under a testamentary (by will) disposition, and it is quite possible to grant women rights by will to which they might not ordinarily be entitled. There is also virtually no difference between the sexes in the matter of their rights of inheritance under a testamentary disposition. Although it has been said that in some Ibo societies, some items of property must not be inherited by women, e.g. a man's umbrella and knife, this is more likely unconventional rather than illegal.

Intestate Succession

Since it is impossible to find a general pattern in customary law on this issue, it is therefore more convenient to base our discussion on the assumption that a common pattern can be found among the major ethnic groups in Nigeria.

Yoruba Speaking Peoples

Traditionally, the brothers and sisters of the deceased were entitled to succeed to his property, but that has changed and children now succeed. The property of the founder of the family is divided in equal shares according to the number of wives. In admitting the right of children, the courts have held that all children regardless of sex are entitled. However, this is a modern concept and there are still difficulties in its application.
In this connection, it is necessary to note ss 20(4) of the Western Nigeria Customary Courts Law, which provides that

Where the customary law applying to land prohibits, restricts or regulates the devolution on death to any particular class of persons of the right to occupy such land, it shall not operate to deprive any person of any beneficial interest in such land other than the right to which he may be entitled under the rules of inheritance of any other customary law.

The effect of this seems to be that even when a female child is not entitled to occupy land under the succession laws of any areas in the State, she is still entitled to the profits accruing from that land.

A wife in Yorubaland by the rules of exogamy belongs to a different descent group from her husband and hence cannot share in any property held by the deceased as a member of his descent group. 31/ Thus, although the wives of the father and founder of the family are held entitled to live in the family house after his death, they have no other rights in the property.

Under Yoruba rules of inheritance, it would seem that the mother of a child who dies intestate is entitled to her deceased child’s estate. 32/ However, where the father is alive, he shares equally with the mother, provided that the deceased has no surviving brothers or sisters of the same mother.

Northern Group of States other than Yoruba Speaking Areas

The position of Northern Nigeria, particularly in Hausaland, is made more complex by strict religious adherence. When discussing customary law here, one has to distinguish between the ‘general’ customs and Muslim law. The Muslim Hausa would regard himself as primarily bound by Muslim law under the Maliki code, and although this law seems to have been absorbed to a large extent into the indigenous system of inheritance, some divergencies still remain.

Generally, under Maliki Code, women are classified as persons of defective capacity, but even then a woman normally takes half the share of a male relative equal in order and degree to herself. The reason usually given for this inequality is that greater responsibilities rest on a man.

By local custom, however, only the sons of the deceased are entitled to divide up land among themselves. Where a land-owner leaves only female offspring, his brothers occupy the land in their own right. But female children are entitled to the proceeds of farmland. Many of the various ethnic groups within the states follow, by and large, one of these customs.
An interesting variant of "custom" involving women's right of inheritance in land appears in Zaria district, where women have a right to an equal share in land. It would seem, however, that among the Muslims, wife seclusion or purdah may be a contributory factor which underlies the conditions of female inheritance of land.

Among the Muslim Hausa, the Qur'an 33/ specifically confers on a widow the right to inherit whether or not there are children, because she is not to be condemned to a state of dependence on others, and because the husband's family have no right over her after his death. It is, however, uncertain what share of the husband's estate she is supposed to inherit. Perhaps in practical terms this right is no more than the right of a widow under Yoruba customary law to use, occupy and live on the family property during her lifetime or until she remarries outside the kinship group.

Among the non-Muslim communities, the position of a wife seems to correspond roughly to that of her Yoruba counterpart, but with the important exception that she is not given a choice as to whether or not she wishes to remain in the family after her husband's death. It is said that she is "handed over to one of the husband's agnatic heirs who is interested....and must remain within the family because she is regarded as part of the deceased's estate". 38/ There are, however, areas where wives are given the right to succeed to their husband's property on intestacy. Among the Igbirra an attempt has been made, in the official declaration of customary law, to give one spouse rights to personal property on the death of the other. Section 46 provides, inter alia, that "if a husband dies

(a) without issue, one sixth of his effects go to his wife or wives...."
(b) with issue, one eighth of his effects go to his wife or wives...."

As regards the rights of a mother to inherit her child's estate, the position in non-Muslim communities is similar to that of the Yoruba—but in the Muslim areas, where Islamic law of the Maliks school is upheld, there seems to be only a vague reference to the right of a woman to share in the estate of a child; this is perhaps because a Muslim woman, if she grows old and cannot maintain herself, has a legal right to claim maintenance from her children. 39/

The Eastern States

In the Eastern States of Nigeria where the Ibo predominate, succession is mainly patrilocal, as in Yorubaland. There are, however, at least seven known matrilineal societies in and around Afikpo and Oha\l\a where women have full legal capacity to own land and to transmit their rights in property. But our discussion will concentrate on the patrilineal societies.
As in all other systems of customary law, it is the children generally who succeed on an intestacy. Succession by children is based, however, on the principle of primogeniture, which means that it is only the first male child of the deceased who succeeds where there is only one wife, but, where there is a plurality of wives, the eldest sons of the wives succeed jointly to the property. This is common among the Edo in Benin and the Nupe in the North. Thus the general rule is that a daughter has no right of inheritance to her father's property.

But this rule is subject to exceptions among the Western Ibo, where custom has probably been influenced by close proximity to Yoruba-speaking peoples. Here the interesting institution known as "idegbe" is found whereby a daughter may choose to remain unmarried in her father's house in order to raise children in her father's name. This happens when the father dies intestate without any male issue to inherit his estate. Thus, an "idegbe", a daughter inherits her father's estate but, if she dies without male issue, the normal law of succession operates as if she had never existed.

However, in non-Ibo areas, for example in parts of Calabar, both male and female can succeed to their father's property.

In most parts of these States, a wife does not inherit her deceased husband's estate. In Nezianya v. Okagbue, 36/ the Supreme Court upheld the contention that under the customary law of Onitsha a married woman has no right to succeed to the property of her deceased husband. In that case evidence was given that it is the rule of customary law in all parts of Iboland that a woman cannot inherit a man's estate. It follows from this that under no circumstances will the mother of a deceased son be able to inherit his property on intestacy. But as regards her daughter's property, she has an absolute right to her personal property unless the intestate has a surviving sister of full blood. Her real property is, in any case, always inherited by the males of the family. It makes no difference whatsoever that the woman is unmarried and that, therefore, her children are illegitimate. In the case of an illegitimate son, the property must go to his brother or his mother's brother or male relations, and in the case of a girl, to her sister or mother.

General Law

Testate Succession

The absence of a written will does not make it almost meaningless to distinguish between testate and intestate succession as suggested by Lloyd 37/ even though one would concede that disposition by will is not popular, probably because of the superstitious belief that the making of a will hastens the maker's death, 38/ or that if property is not shared according to the rules well-known in the community, the spirit of the deceased would visit with evil whoever might have been responsible for the departure from customary law. 39/
Intestate Succession

Where a marriage contracted is either statutory or Christian, the applicable law of succession to the estate of the parties to such a marriage is the general law of the state in which they are domiciled, that is, permanently resident.

However, all decisions on this aspect of the law have been based on the grounds that Nigerian law on intestate succession is contained in the provisions of the Statutes of Distribution of 1670 and 1685. 

These Statutes of Distribution provide that if a man dies intestate leaving a widow and issue, the widow is entitled to one-third of his personal estate and the remaining two-thirds is distributed in equal proportion among his issue. If, however, a man dies without issue, the widow is entitled to one-half, the other half going to the father of the deceased. If there is no widow, but issue, the property is divided among the issue in equal portions. There is thus no distinction between male and female issues. The only inequality is in respect of making the father but not the mother succeed where there is no issue. On the basis of the provision, however, a wife gets definite rights to her husband’s property. Admittedly, the provision was made to cover wives of statutory marriages, but it would seem that a liberal interpretation of the provision could include a "wife" or "widow" under customary law. Unlike the provision relating to issues, there is no provision that the widow must be a widow of that marriage. Therefore, for instance, if A contracts a marriage with a woman B in accordance with the provisions of the statute and, if on the death of B, A contracts a customary marriage with C, who survives him, then C should be entitled to claim as A’s widow. This view seems to be supported by decisions of the Judicial Committee of the Privy Council. 

The court did not commit itself, however, on what would happen if there had been more than one widow. Presumably, the widow’s share would be divided equally among the several widows. In any case, practical difficulty of distribution should not deter the granting of a right. In Bambose v. Daniel, the Court itself said that "it would be strange result that in the converse case where a marriage of the parents were (sic) recognised as valid, the children should be deprived of their rights of succession because of a difficulty in working out the rights of the wife." But one must point out that in Goodings v. Martine, the West Africa Court of Appeal denied the issue of a valid customary law marriage, subsequent to the dissolution of a marriage under the Act, the right to share in his deceased father's estate.

When a marriage is celebrated in any other way than in compliance with the Act, or if such a marriage is celebrated outside Nigeria, it will still be governed by English law. Sections 14 and 17 of the Supreme Court Ordinance 1914 provide for the general reception of English law and specifically
provide that no party shall be entitled to claim the benefit of any local custom if there is any indication or inference that the transaction should be regulated by English law or that such transaction is not known to customary law. Therefore, if one of the spouses to such a Christian marriage dies intestate, succession to his or her property will be governed by English law. The result, therefore, is that where in any given case it is established that the parties by the act of contracting a Christian marriage clothed themselves with a status unknown to customary law, then they cannot claim that their relationship should still be governed by customary law.

Under the common law of England, the real estate descended on intestacy to the eldest son as heir and the personal estate to the other children. But since the enactment of the Administration of Estates Act, (1952) the position has changed. But since the changes introduced by that Act would not affect the devolution of real estate in Nigeria except in the Western and Mid-Western States where the Administration of Estates Law (1959) applies. Thus Nigerians who contract Christian marriages outside Nigeria and those who contract marriage within Nigeria 45/ - but whose property is outside Lagos or the West and Mid-Western States, and who die intestate domiciled outside these places, - will have their property distributed in accordance with English law, that is, the Statutes of Distribution.

The Statutes of Distribution make no differentiation between female and male children and they also grant to the widow rights of succession but the common law of England does not give any rights of succession to realty in respect of females. Only the eldest son is entitled to this, but the widow is entitled to dower, that is, to an estate for life in a third of all her husband's freehold of which he had possession at any time during coverture; promised that she could have borne a child capable of inheriting, whether or not such a child was ever actually born.

As mentioned earlier, succession in the Western and Mid-Western States is based on local legislation, that is the Administration of Estates Law (1959). This enactment applies to immovable property left in the areas to which it applies irrespective of the domicile of the propositus, and also the movables left by a deceased who dies domiciled in those areas, irrespective of the location of the property.

This enactment is based on the English Intestates Estates Act, (1952) but the range of persons entitled and the proportion of their entitlements differ from those specified in the provisions of the English counterpart. Under s. 49(1) of the law, children are entitled to share only the residuary estate with the spouse of the deceased, with the latter taking the greater share of the of the deceased's personal chattels. Where there is no surviving spouse the
children share equally. Thus, not only is there no discrimination against the female, but also a surviving widow is in the same position as a surviving widower. It would seem that a widow under a monogamous type of marriage in this circumstance is in a better position than other monogamous widows in the rest of the country.

By s. 50(2)(c) of the same enactment, where an issue or child dies before the intestate, his children, that is the grandchildren of the intestate, take the share of their parents in equal shares subject to the one qualification that such grandchildren must attain the age of 21 or marry under that age. By this latter qualification a female child would seem to have a slight though indirect advantage, for females reach the age of puberty earlier than their male brothers. Thus a situation could arise where a 15 year-old married female child would be entitled to her parents share of an intestate's estate, whereas a 15 year-old boy would not be so entitled because he has not attained puberty and cannot contract a legal marriage.

One must mention that mothers are not entirely left out of their children's estates. If a woman's issue dies intestate unmarried and without issue, the mother is entitled to share the estate with the deceased brothers and sisters provided the father has died.

Finally, section 42(2) of the Matrimonial Causes Decree provides that "where a party to a marriage dies intestate as to any property while a decree of judicial separation is in operation, that property shall devolve as if that party had survived the other party to the marriage".

Right of Disposition of Property

An unmarried woman has the right to dispose of her property in the same way and to the same extent as a man. But the act of matrimony creates a new status. Under the common law of England, which is part of the received English law in Nigeria, a wife had no power to dispose of her realty at all during coverture, and all purely personal goods whether belonging to her at the time of the marriage or acquired by her during coverture vested absolutely in the husband. This position has now been modified by legislation, and she is now in the same position as an unmarried woman. It is now provided by law that a married woman shall be capable of disposing by will or otherwise, of any real or personal property as her separate property. This provision, however, applies only to women who contract monogamous marriages.

Customary Law

The right to dispose of her property is affected by the type of society, that is, whether the society is matrilineal or patrilineal or whether the society observes the cognate or agnatic descent.
The position is further complicated by the fact that under traditional customary law the idea that a woman who lived with her husband could acquire individually owned property otherwise than by inheritance was virtually unknown. But in the modern era, the idea is no longer so novel or rare even in the remotest villages and hamlets. Thus it is now generally accepted that where a married woman acquires movable property, post-nuptially and during coverture, the property will be regarded as her own absolutely, provided that she intended it to be so at the time of purchase. She must prove this intention and the strongest evidence is that the consideration for the property was exclusively her own and independent of any contribution, whether in cash or kind from the husband.

But then under most of the customary law system a woman still cannot dispose of her property without her husband’s consent, and in particular under the Maliki Code Muslim law, she could not in any case give away more than one-third. When she dies, all her post nuptial property of which she has not disposed passes to her children, if childless, to her husband. In some parts of Iboland, however, whether she has children or not, her husband has a life interest in such property.
REFERENCES

2. Native Authority Law Cap. 77 of the Laws of Northern Region S. 49.
3. For example Marriage, Divorce and Custody of Children Adoptive Bye Laws Order, 1956 of the Western Region, and ss. 84 and 90 of the Local Government Law of Eastern Region.
5. There have been arguments that 16 being the current age of marriage in England, a marriage under that age in Nigeria would be void.
6. Section 4 of the Regional Courts (Federal Jurisdiction) Act has been replaced.
7. SS. 35 and 48 of the Marriage Act lays down 5 years but s. 370 of the Criminal Code prescribes 7 years for the offence known as "bigamy".
8. Marriage Act, Cap. 115
10. Ugboza v. Morah 1940, 15 N.I.R. 78
12. Re Sapara (1911) C.J. Osborne observed _ 'I am unable to accept the proposition which is contradicted by one of the most reliable expert witnesses that the consent of the man's family is a legal essential to his marriage.'
15. Ibid, s. 4(a) and (b)
18. Unreported WD/2/71 of April 1971 Lagos High Court.
19. See Newark, 'The Operation of Nullity Decrees', 19, N.L.R., 203.
20. Ss. 39 and 40.
21. E.g. adultery, cruelty, desertion.
24. Matrimonial Causes Act, 1937, sec. 10(2)
25. See e.g. Brown v. Brown (1965) 7 E.L.R. 225
26. Native foreigner is defined as "a person of African descent". But they have tended to limit this definition to a person who is a member of a native community. See Brown v. Miller (1921) F.S.C. 50.
27. Section 5 Marriage, Divorce and Adoption of Children Adoptive Bye Law, 1958.
28. Edet v. Essien (1932) 11, N.R., 47
29. Oloko v. Giva (1939) 15 N.L.R. 31, where it was suggested that although a man may not validly make a gift of land to his wife during his life-time, he may so do by testamentary disposition.
33. Qur'an 4 verse 11.
37. Yoruba Land Law, p. 290
39. Lloyd, Yoruba Land Law, p. 290


43. (1942) 8 W.A.C.A. 108

44. "Common law of England, the principles of equity and statutes of General application in force on 1st January, 1900".

45. Since the only valid non-customary law marriage in Nigeria would necessarily be the statutory marriage.
A major portion of Nigerian penal law was enacted by the British over a century ago, consequently it reflects in large measure the social conditions and mores of that era. Some amendments have however been made since independence.

The existing penal laws do not distinguish between all citizens in the protection of their property, freedom, reputation and personal safety. But in conformity with prevailing social mores, there are some special provisions which govern women.

Rape

The most heinous offence that may be committed against a woman is rape. There are the usual rules, such as the one that consent negates rape and tests as to what constitutes consent, but it would seem that in view of the definition of unlawful carnal knowledge in section 6 of the Criminal Code as "carnal connection which takes place otherwise than between husband and wife", that in Nigeria, a husband cannot in general be guilty of rape of his wife.

But a husband is not entitled to use force or violence for the purpose of exercising his right to intercourse, and if he does so, although he is not guilty of rape, he may be guilty of wounding, or doing grievous harm or assault, according to the circumstances.

Consent in rape may be negated by evidence that such consent was obtained by force or by means of threat or intimidation or by fear of harm. The fact that the woman involved is a common prostitute is no excuse, although in such cases a court may be unwilling to believe that the woman did not give her consent. Also where the victim is a young girl, the court is entitled to hold that there was no consent if it is of the opinion that the victim was incapable of determining or deciding whether to resist or not and where the surrounding circumstances justify such a course.

The punishment is a maximum of 14 years imprisonment with or without whipping.

Prostitution

It is generally recognised that prostitution cannot be completely eradicated. Consequently, authorities have focussed on the control and
prevention of the increase of prostitution. 5/ All forms of soliciting are forbidden. The exploiter's liability includes imprisonment. It might be expected that strict enforcement of the laws would make it impossible to practice prostitution, but this has not been found to be so.

Abduction

Anyone who with intent to marry or carnally know a female of any age or to cause her to be married or carnally known by any other person takes a woman away or detains her against her will is guilty of a felony and liable to seven years imprisonment.6/

Similarly anyone who unlawfully takes an unmarried girl under the age of 16 years out of the custody or protection of her father or mother or other person is guilty of a misdemeanour and liable to imprisonment for two years. It is no defence that the girl was taken with her consent or at her own suggestion or that the defender believed the girl to be of or about the age of sixteen years.7/

Offences against morality

There are various other provisions in the penal laws protecting females alone. These laws follow in general the laws of England as contained in the common law as to public nuisances and in various sections of the offences against the Persons Act (1861) and the Sexual Offences Act (1956).

Adultery

Adultery is not specifically a crime but by Section 518(b) of the Criminal Code, "intercourse between two unmarried people who are not husband and wife is a crime as a conspiracy to effect an unlawful purpose".

Section 6 defines "unlawful purpose" by reference to the fact of the intercourse taking place "otherwise than between husband and wife". But the offence has never been prosecuted, nor almost ever reported, except by parents who feel horrified about the violation of their daughters.

A husband, however, has certain rights against a man who seduces his wife and upon obtaining a decree of divorce he may recover damages from the male correspondent. Since the promulgation of the Matrimonial Causes Decree (1970) a wife now has the same right to damages.
Criminal Responsibility

A married woman is not free from criminal responsibility for doing or omitting an act merely because the act or omission takes place in the presence of her husband. However the wife of a Christian or statutory marriage is not criminally responsible for doing or omitting an act which she is actually compelled by her husband to do or omit. 8/

A husband and wife of a Christian marriage are not criminally responsible for a conspiracy between themselves alone. 9/ Also, where husband and wife of a Christian marriage are living together, neither of them incurs any criminal responsibility for doing or omitting to do any act with respect to the property of the other. Each are criminally responsible for any act done by him or her. But while living together neither can initiate criminal proceedings against the other. 10/

All these provisions seem to indicate an acceptance of a higher status for women who contract an essentially monogamous marriage.

Sentencing Patterns

The data available about sentences of imprisonment on women offenders is very scanty. However it would appear that the length of imprisonment for women in the South, particularly in the former Western and Eastern Regions, is lower than for men.

About 46 per cent of those convicted of indictable offences were fined, and only about three per cent were sentenced to imprisonment of more than 3 years. Among those sentenced to imprisonment about 44 per cent incurred sentences ranging between 3-6 months.

Of course, the number of women involved in prosecutions either for indictable and non-indictable offences is much smaller than for men. The annual averages from available data are 586 (Eastern Region) 1958-63, 453 (Western Region) 1958-60, 7 (Northern Region) 1958-60, 85 (Mid-West) 1963. 11/

The substantial difference appears in the North where between 1958-63 only 43 women were imprisoned on the order of the Magistrate Courts. The explanation is probably to be found partly in the social structure of most northern communities, which assigns a completely domestic role to women and so reduces delinquent opportunities, and partly in the administrative relationship between the Federal and Native Authority Police Force. Magistrates Courts deal almost exclusively with cases brought by the Nigerian Police Force, and the bulk of this force's investigations are limited to complex cases and those arising in townships whereas the bulk of the offences committed by women, that is, stealing, minor assaults, and prostitution are dealt with by the Native Authority Police and brought before their courts.
One of the classes of persons exempted from capital punishment is that of pregnant women. Section 368(2) of the Criminal Procedure Act and Section 270 of the Criminal Procedure Code preclude the passing of the death sentence on any woman found to be pregnant. Instead, under each piece of legislation, she must be sentenced to life imprisonment.

The exemption is based upon the belief that it would be unjust to take away not only the offender's life but also that of her unborn child.

Where the offender alleges that she is pregnant, or in any case in which the court thinks fit to do so, the court should determine whether she is or is not pregnant. But there is in effect a statutory presumption that she is not pregnant which must be overturned by affirmative evidence "to the satisfaction of the court". 12/
REFERENCES


2. Sec. 357 of the Criminal Code.


7. Ibid.

8. S. 33 Criminal Code


12. Criminal Procedure Act s. 376(2), Criminal Procedure Code s. 271(2).
CHAPTER VI

HEALTH AND FAMILY PLANNING

Introduction

The issue of family planning has attracted world-wide attention during the last decade and many countries have introduced new laws on the subject. The desire to control conception and achieve acceptable family spacing patterns is growing rapidly. In this movement the methods and norms that each culture over the years has developed must be taken into account.

Unfortunately, these norms are mostly determined to a great extent by social, cultural and other environmental factors such as the survival of children, the sex of living children, the unchallenged male dominance at all levels of life, and the subjugated role of women in the societies.

In Nigeria, family planning is still an emotionally charged subject among some groups who have made it a political, moral and/or religious issue, in spite of the fact that the concept of family planning itself is neither new nor illegal.

Various methods have been practised for ages, namely, the physical separation of husband and wife immediately after child is born, the prolonged breast feeding coupled with complete abstinence from sexual intercourse by the mother during the period a child is being breast fed, and the traditional polygynous pattern of most marriage which ensure an adequate supply of female partners to satisfy the sexual needs of the male during this period.

Child bearing is associated with multiple pathological risks to mothers and their children. To minimise these risks requires various precautions, for example, regulation of the optimal maternal age, moderate birth order, reasonably spaced pregnancies and adequate health facilities.

To relieve themselves of the drudgery of unplanned pregnancies, women have always resorted to induced abortion. Induced abortion with its sequel is fast becoming an important medico-social problem in Nigeria, and it is probably the most widespread crime committed by women in many countries.

The number of women dying unnecessarily and from preventable causes which are the effects of pregnancy and family child-bearing in Nigeria is catastrophic. It has been estimated that one Nigerian woman dies every 45 minutes from pregnancy or its related causes. It is therefore obvious that substantial reduction in maternal and child mortality and morbidity can be achieved through the adoption of effective family planning.
Family Planning And Status of Women

Numerous factors determine the survival of women in any environment. These factors are multiple and interacting, and they include educational status, economic status, the availability of adequate medical care, their utilization of the available services and the existing traditions and beliefs of the societies in which they live. These factors -part, from determining their survival, also determine their status as individuals within the family structure and society.

It is of primary importance to reiterate the fact that the traditional Nigerian family is patriarchal and patrilocally. Therefore, in the home, there is unchallenged male dominance.

The main role of the women in the household is to reproduce, to look after the house, to clothe and feed the children and generally care for the other members of the household. Procreation is regarded as the chief goal of marriage, and most women take a positive attitude toward child-bearing. The average Nigerian woman is expected to have no other primary interest except her home and her reproductive achievements. Yet ironically she is usually ignorant of the numerous risks involved in her accepted role as a "baby factory". Even many of those who know the risks are still being subdued by their husbands and parents and by the existing traditional practices and beliefs. It is taboo for a married woman to purposely prevent having children, a childless marriage is regarded as a curse. It would be unthinkable for a wife to use any contraceptive device without the consent of the husband. To be a "career woman" and shun marriage is a social stigma.

The need to enhance and upgrade the status of women in this regard has long been recognised. In 1968 the International Conference on Human Rights proclaimed the basic right of couples to determine freely and responsibly the number and spacing of their children. But unfortunately the rights of women in developing countries is a complex issue. In the context of Nigerian society, the terminology "couple" as stipulated in the declaration seems to be synonymous with "husband". This situation appears to be so far many reasons.

Ignorance

Although the first family planning clinic in Nigeria was opened in Lagos in 1958, there was no formal family planning programme until 1964. Prior to 1964, the Marriage Guidance Council was inaugurated by the Social Welfare Department to advise women about family life. In the Council's task family planning work was an extension of the maternal and child health
services of the Lagos City Council. In 1964, the National Council of Women's Societies with headquarters in Lagos agreed to sponsor family planning. In November of that year, the Family Planning Council of Nigeria was formed with the National Council of Women's Societies as the advisory council on family planning. For sometime, the Family Planning Council had no branches outside Lagos. Since 1968, however, many branches of the Council have been established in many towns particularly in the Old Western State (that is, Oyo, Ogun and Ondo States), in Bendel state and in Imo, Anambra, Cross River and Calabar States, and in Kano, Kaduna and Borno States. But the concentration has been in urban rather than rural areas, hence by and large, the rural woman is still left with the traditional methods only

But even in the urban areas where family planning clinics and facilities are available, there is generally poor knowledge of contraception among both the educated and the uneducated. Educated women usually know about the different methods that exist, while uneducated women, even where they know of some of the modern methods - e.g. the pill, still believe in the traditional methods. Unfortunately, the availability of modern conception methods is tied to maternal health and the belief that only married women should be concerned.

Male Attitudes

In spite of more widely spread education and the changing pattern of family organisation, there is still a tendency of the men to regard that a man's wealth is measured by the number of wives and children he has. There is also the widely held belief that family planning - which they see only in terms of the use of contraception to prevent unwanted pregnancies - will encourage promiscuity in their wives and, therefore, they refuse to give the required consent to have their wives given any family planning devices.

Apathy of Women

Most Nigerian women still live in the rural areas, and the difficulty of getting either knowledge or practical assistance with family planning to them makes the attitude of these women towards family planning less favourable than in the urban area. But aside from this, the question of child mortality makes most women unfavourably disposed to family planning. Despite the rise in life expectancy during the last quarter of a century, the developing countries have relatively higher levels of infant and child mortality than the developed countries. Of deaths in all age groups, approximately 55 per cent occur in children under five years of age.

To offset child loss under these conditions, a woman desiring a given number of surviving children needs more than that number of births. However,
in a study of family planning acceptors in Kaduna, there appears to be a
relationship between child mortality and a subsequent desire to practice
family planning. Most family planning acceptors never had miscarriages or
abortions, though results further suggest that the occurrence of a miscarriage
or a still birth does not absolutely deter women from practising family
planning.

Religious Objections

This is mainly confined to persons of the Roman Catholic faith. Even
within this group, however, there is some acceptance in principle of the
traditional methods. There is evidence to show that where the husband is not
a practising Roman Catholic he is much more receptive to his wife accepting
family planning than in cases where both are of the same faith.

A Nigerian View of Family Planning

In order to get a fairly representative view of opinions on family planning
in general, some field work involving sampling attitudes of both men and women
was undertaken. In all about 450 samples were processed, and the results are
very interesting indeed.

(a) In reply to our question whether family planning clinics should
exist in all parts of the country, 73 per cent gave an affirmative
reply, while only 24 per cent were against.

(b) As to whether all females should have easy access either to these
clinics or to other places where they could seek family planning
advice, 68 per cent gave the affirmative reply and 25 per cent
were against.

(c) 60 per cent believed that contraceptives should be readily available
whilst 36 per cent felt they should be available only on a doctor's
recommendation and prescription.

In accessing the value of these samples, it is important to mention that
in all cases the majority of those who gave affirmative replies were women.
One would be justified in coming to the conclusion that if given the
opportunity many more women would be favourably disposed towards family
planning.

There is a direct and positive relationship between the status of women
and family planning. The past and present status of Nigerian women in family
planning had been and is still being determined to a large extent by the social,
economic, educational and inherited traditional role of women.
In the first place, child rearing practices in Nigeria should be seen as the joint responsibility of both husband and wife. Men should participate more actively in matters pertaining to the family. Education and health facilities should be within easy reach of village women. Such facilities would result in the lowering of the rural rates of illiteracy and child mortality. The high rate of child mortality will not decrease unless positive efforts are made to provide health facilities in urban and rural areas alike. To this end, more emphasis needs to be put on preventive rather than curative medical care.

There is no doubt that better education and less economic dependence would enhance the status of a vast majority of women sufficiently for them to feel the need to exercise the right to determine the number of children they could cope with.

Women all over the world are now on the verge of a new era. The universal enhancement of educational opportunities for women will upgrade their status and give them the independence which will take them out of their limited traditional roles to bring about long awaited changes in the family structure.

The questions are, however, how soon will all Nigerian women be able to free themselves from the drudgery and servitude of unplanned pregnancies? How soon will they be able to attain individual dignity as human beings to control their destiny and the fate of their children? How soon will they have the full right to happiness and to survive a healthier and longer life - to prevent the unnecessary loss of life and the misery resulting from unplanned parenthood?

An eminent doctor in the Family Planning World once said thus:

Share the desperation of the mother who cannot provide for those children she has but who is carrying yet another life within her body. Do you think that you could deny her the right to control her destiny and the fate of her family by using safe and scientific means to limit its size? Do you think you could do this and return to your life with an untroubled heart?

Adoption of family planning may enhance and advance the status of women. It may improve the survival and health of mothers and children, as may also enable women to complete their education, in general to improve maternal and infant nutrition and relieve the drudgery without leisure or relaxation through which many women live their lives. But adequate and good general medical maternal and child care must precede any successful widespread implementation of family planning not only in the interest of the family but also of a nation.
Abortion or Termination of Pregnancy

Associated with the issue of family planning is the question of abortion, which is really family planning after impregnation. In Nigeria an abortion may be permitted if such surgical operation is performed in good faith and with reasonable care and skill for the preservation of the mother's life. In any other circumstances, abortion is a crime, punishable with varying terms of imprisonment from seven to fourteen years depending on the means used to procure the abortion. 5/

In 1975 National Population Council recommended that women should have access to abortion on request for health and welfare reasons. This was supported by the Nigeria Medical Association and the Society of Gynaecologists and Obstetricians of Nigeria. The issue generated fresh controversy in 1976 as a result of an address of the then Federal Commissioner for Health, to the ninth yearly Conference of the Society of Gynaecologists and Obstetricians, to the effect that the Federal Government was considering a decree to reform the national law on abortion, a speech which many people interpreted to mean that the Government was thinking of legalising abortion.

The problem of unwanted pregnancies is world-wide and the number of lives lost through illegal abortions every year is astronomical. In Nigeria in 1970 Dr. A. S. Gbajumo /7/ discovered that of 155 abortions taking place over a five year period at Lagos University Teaching Hospital on women 12-30 years old, 108 that is 69.7 per cent were procurred. Ninety four per cent were performed on single women. Twelve deaths were reported. For areas where there are no statistics and inadequate medical facilities the mortality rate would be much greater.

There are various reasons why women seek abortion, many of which can be attributed to the role which society has ascribed to women.

Among unmarried school girls, reasons include certainty of expulsion from school, disgrace to the family and social ostracism. Among unmarried working girls, uncertainty about security of employment and embarrassment to parents and family are their main reasons. With married women their reasons include the fact that the pregnancy is a result of infidelity, that the family either does not want or cannot afford another baby, that the conception came too soon after the last birth, or that the mother is regarded by custom or culture as too old for such things. Women generally do not make the choice freely without direct or indirect pressure.
The problem of unwanted pregnancy, hence the need for abortion is the result of the various factors which have been mentioned in the discussion on family planning.

Opinion as to liberalising the law on abortion is aligned along three main approaches, the restrictive, the intermediate and the liberal. The difference between these approaches lies, to a large extent, in the order of priorities attached by each approach to the conflicting interests at stake.

The restrictive approach is more concerned with the protection of the potential human life. Those in support of this approach are mainly religious objectors. The intermediate approach places emphasis on guarding the woman against health hazards and is therefore in favour of legalising abortion subject to several limiting conditions, including making it available only to married women and carried out under the supervision of medical doctors in clinical conditions. This approach is concerned with wastage of life but wishes to prevent the situation where people will treat abortion as a normal form of family planning. The liberals' prime concern is that a woman should be master of her own fate. This approach is based on the idea that the ability of a woman to control her reproductive capacity is a prerequisite to exercising her human right to shape her own way of life. There is no doubt that this approach enhances the status of women because inherent in the concept of personal liberty is the freedom not merely from bodily restraints but also from impositions on the quality of that physical liberty.

Elaborate argument is hardly necessary to show that unwanted childbirth may deprive a woman of her preferred lifestyle and force upon her a radically different and undesired future. The reserved right to choose whether and when to bear children is meaningless unless it includes the freedom to avail oneself of effective methods of birth control and family planning.

Under the ban on abortion the woman is required, against her will, to endure the discomforts of pregnancy, incur the pain of childbirth and its after-effects, to cease or postpone or abandon educational plans, to give up financial independence or sustain loss of income, in some cases to bear a lifelong stigma of unwed motherhood, to resort to illegal means of abortion at great cost and still endanger her life and future reproduction, or in some cases to go through the trauma of secretly dumping the baby in a gutter or by the roadside, thus creating more problems for the society.

Medical progress has reduced the risk in performing abortion in the early months of pregnancy to a minute dimension. This is coupled with recognition of equal opportunity for women reflecting the established right to shape one's life. One may suggest that within the early months of pregnancy it should not be illegal to ask a physician to terminate a pregnancy for reasonable cause. This approach seems to strike a balance between the individual's freedom and state interest.
Medical Care And Protection of Maternity

In Nigeria, amongst the defined causes of death in adults (that is deaths whose causes are known) diseases of pregnancy and childbirth are very high and account for the major cause of death in women during their reproductive life. In terms of admission to hospitals, they account for the major reason for hospitalisation of our women. Judged against the overall inadequacy of hospital beds and personnel in the country, a high occupancy of the few available beds inadequate health manpower and facilities, the situation can only get worse in the absence of objective plans for improvement.

Inadequately planned parenthood, high rate of diseases associated with pregnancy and childbirth, and illegal abortions in the back streets under unhygienic conditions resulting in death further reduce the contribution which women can make to nation building.

There are no laws ensuring adequate maternal medical care, and the provision of pre-natal and post-natal clinics is grossly inadequate.

There are laws, however, ensuring that a married woman in employment is granted six weeks maternity leave before the birth of the baby and six weeks after the birth. Many employers, particularly the public service, give full pay during such leave of absence. Until the recent amendment to the general orders governing employment in the public service, unmarried mothers were not entitled to such maternity benefits. Now all women have the same rights.

New mothers are also allowed one working hour a day in the first three months after resumption of duty to enable them to go home to look after the baby. This is an unwritten law but one which is generally practised in the public service.

Aside from those already mentioned, there are no other maternity benefits. Although most employers allow their married women staff time to attend pre and post-natal clinics, this is usually part of the general health services granted to all employees.
REFERENCES


2. Statistics show that 5 of 1000 women die as a result of illegal abortion in the old Western State of Nigeria. This is about 240 times the national rate for England and Wales - Oduntal et al (1974).


S. 228 - "Any person who, with intent to procure miscarriage of a woman whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a felony, and is liable to imprisonment for fourteen years."

S 229 - "Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a felony, and is liable to imprisonment for seven years."


S.230 - "Any person who unlawfully supplies to or procures for any person anything whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a felony, and is liable to imprisonment for three years."

Nigerian women, like other African women, were in the past relegated to the background. They were by custom regarded as useful for services only at home and in the farms while the men were given all the opportunities for education and training. Available statistics tend to underestimate the economic contribution of women in those fields, that is, within the limits of their households and on farms.

Women, particularly those in rural areas, are often unpaid family workers who help on the family farms. Others may work on crafts, often on a part-time basis, within the seclusion of their husband's compounds and depend upon children or men to sell their products. These women are usually not counted as being part of the economically active population.

The paucity of statistics on women’s activities within the labour force and their economic contribution to both family and state makes it difficult to state confidently the size and characteristics of the Nigerian women's labour force participation. According to the 1963 census, women constitute only 24 per cent of the 18 million labour force. Most women are not recorded as being economically active. The women's labour force participation rate or the percentage of all women over the age of 15 who were in the labour force was only 27.7 per cent, according to this census. By contrast, 88 per cent of all males aged 15 and above were economically active. However, within the country there were recorded substantial variations. For example, 68.5 per cent of women in Ibadan (Western State) were in the labour force; 5.7 per cent in Zaria (Northern State) were economically active, 17.9 per cent in Jos (now Plateau State) were employed or looking for work outside the home, 21.6 per cent were in Onitsha's (Eastern State) labour force.

Separate labour force participation rates can be determined for different age groupings. Age graphs of labour force participation rates show significant patterns affected by custom, social roles, religion, law, education and income levels. The graph rises to 96 per cent in the 25-34 year age category, reaches a 98 per cent peak for those in the 35-44 age group and falls to about 94 per cent by the age of 64 years. Usually women continue to remain in the labour force after marriage and the birth of their children.

However, within the nation itself, women's employment rate patterns vary particularly on a North-South division. In the South, particularly among the Yoruba, women were traditionally responsible for providing some of the
economic needs of their children and themselves. The women were engaged in village crafts or trading, being able to retain their own profits and property, these women were economically active and independent. Indeed adult females in Yoruba society regard employment in trade or other money-making occupations as a necessary component of the role as women. This is illustrated by descriptions of the upbringing of the Yoruba girl. According to one prominent Yoruba writer such an upbringing in traditional society is "calculated to give her a means of earning her livelihood. A girl is not considered fit to marry until she has acquired a skill in some craft or in trading. ... Emphasis is laid on her proficiency in producing cash and the woman without a craft or in trade, who is wholly dependent on the husband, is rare and often regarded with contempt."3/ 

In northern Nigeria in pre-industrial settlements with predominantly Hausa populations, women are often secluded. Complete seclusion means that a woman must remain within the walls of the husband's compound. This practice increases the status position of the husband, as it is associated with the traditional ruling class and is sanctioned by religious values and teaching. The liberty of wives to go anywhere outside the compound is by implication an act of religious ignorance. These women are deprived from taking part in the social life of their communities and are generally prevented from leading active economic lives except in so far as they are aided by other members of the compound. They lack contact with suppliers and customers, and this results in a low business success rate for those who are in competition in the same fields as men and non-secluded women, often southern migrants, whose movements are less restricted. These women become almost completely economically dependent on their spouses.

The deployment of the Nigerian female labour force can be analysed from two perspectives. First, employment patterns can be analysed in terms of industry—that is, the activity of the establishment or enterprise in which the individual works. Secondly, work patterns can be described by the occupation or the nature of the work actually done by the individual.

In Nigeria, as in most developing countries, most workers are self-employed. In 1966-67, 62.4 per cent of employed females were employers or own account workers. Only 1.4 per cent were employees. Significantly 35.8 per cent were unpaid household workers and were not functioning within the money wage economy. However, the Federal Ministry of Labour estimated that women constitute a growing proportion of total wage employment from 2.1 per cent in 1956 to 7.2 per cent in 1966.5/ 

In Nigeria, as in most developing economies, employment can be subdivided into three different sectors: the modern, the traditional subsistence and the intermediate sector. For women, the nature of work, the conditions of...
employment, the remuneration, the degree of worker protection under the law and the problems of combining work and home responsibilities varies significantly in these subsectors.

The Modern Urban Sector

This consists of the larger and more productive manufacturing and commercial enterprises, government ministries and corporations, major services such as education, public utilities and wholesale trade. The modern sector in the rural areas include large plantations—run by a wage labour force, the big cash crop farmers, state and local government officials, teachers, and civil servants. These enterprises, which are protected or encouraged by legislation, employ a small part of the urban female labour force. The workers employed in this sector are relatively highly educated, highly paid, unionised and often protected by social legislation. Due to the highly capital intensive nature of production, the rate of growth of employment in this subsector is limited. Competition for available jobs is very keen and therefore women are disadvantaged because of educational limitations.

Urban Intermediate Sector

This includes small family enterprises, retail trade, shops, garages, and repair shops and handicrafts. This sector manufactures for, sells to and services the bulk of the low income population. Production is primarily labour intensive and the manufactured products are made often from indigenous materials. The intermediate sector industries are highly competitive and the supply of labour is ever growing, therefore, wages are low. Few unions operate in this sector.

The Traditional Sector

This sector in urban areas is made up of street hawkers, part-time workers, handicraft workers and petty traders. Not only do these workers use little capital, but their income varies widely in worth and regularity. Although technically they are employed, in reality, many of them are unemployed or underemployed. The rural traditional sector consists, for the most part, of subsistence farming largely outside the money economy.

Women In The Various Sectors

Looking at available data, it is evident that women are not represented proportionately in all occupational categories. For example, 39 per cent of all employed females are sales workers, principally market women, 22 per cent are farmers; 12 per cent engage in crafts and production process activities. Only 1.5 per cent engage in professional, technical activities, 6 per cent.
act as administrative, executive and managerial personnel, and only 0.5 per cent are clerical personnel. Most women work at occupations in the traditional or intermediate sector of the economy.

However, the survey does indicate that women are employed in almost all fields of occupation. But a striking feature of women's employment is their concentration in a limited number of occupations. Women outnumber men in nursing and secretarial occupations and equal men in middle level teaching professions.

The classification of particular jobs as "men's work" or "women's work" is largely cultural and really does not reflect sex-related differences in ability. For example, in the construction industry, men usually lay the blocks, the reason being that the jobs require strenuous physical activity. Yet the women carry up on their heads pots of heavy, wet cement mixtures.

Moreover, in reviewing Nigerian civil service employment patterns, a writer has stressed that even jobs termed as women's jobs in such Ministries as education and health actually record a low percentage of women. For example, the Western State's Senior Staff in the Ministry of Education in 1972 recorded 360 men as against 79 women.

Civil Service Employment

Appointive positions in both Federal and States civil services are open generally to women who have the requisite academic qualification. It is, however, provided in the Constitution that each State and even the Public Service Commissions as well as the Statutory Corporations may specify whether men or women are required for certain positions, because labour matters are on the concurrent list. Generally however, in the Public Service there are two categories of women employees. There are those classified as officers and others who are workers. Officers are those in the high and middle level manpower grades - usually graduates or highly technical professionals and technicians. The same conditions of service generally apply to both men and women, but to ensure adequate protection for women, having regard to the fact that they also have a social function of ensuring the continuity of the nation in procreation, there are special provisions as contained in the labour Code/Decree and the regulations in the Civil Service Rules, e.g., provision for maternity leave and immunity from dismissal or disciplinary measure during such a period. One welcome change in this respect is the new provision in the Government General Orders that all women whether married or not shall be entitled to maternity benefits. The majority of critics of this provision have objected mainly on grounds of morality, but with the general relaxation of the rigid moral values of the nineteenth century, the law must reflect in so far as is possible the practical realities of modern living.
Recently the Labour Decree 1974 - Decree No. 24 was promulgated to replace the Labour Code Act which has been in operation since 1946. Understandably, this decree aroused comments from all sections of the public, particularly women. But there has not been a consensus of opinion. Some have welcomed it as a decree in favour of femininity whilst others have castigated it as discriminatory and an infringement of the right to freedom of employment, not to mention its being a blow to women's liberation.

It is impossible to quote in full here the provisions of the decree but the main point of contention in it is Section 4 which inter alia provides that no woman shall be employed on night work in a public or private industrial undertaking or in any branch thereof, or in any agricultural undertaking or any branch thereof. There are several categories of women excluded, mainly professionals and top management staff. It would appear that the provision is mainly directed at those who can be called "factory hands," or in the statutory language those engaged in "manual labour".

Perhaps it is best to say here that there is nothing new in this provision, there has always been a similar provision in the Labour Code Act of 1946. What seems to be new is the fact that under s. 56, the Commissioner is now empowered to make regulations restricting or prohibiting the employment of women in any particular type or types of industrial or other undertakings, without doubt these are very wide powers to be conferred on an individual without the use of the usual process of legislation. Be that as it may, the provision of sec. 56 itself seems to have aroused so much comment perhaps because some employers have seen it as a means of getting rid of the women on their staff, when they would not have been able to do so easily before the Decree. But this is merely a misinterpretation of law and should not detract from the general good faith behind the provision. Most societies still recognise the social duty of the woman towards the home and believe that there are many hazards to a woman going to work outside the home at night which are not necessarily there during the hours of daylight. But the apparent good faith behind the general public policy of protecting the female cannot detract from the fact that this provision is an infringement on the right of freedom of employment - the right to work where and when one pleases. What is perhaps needed more is a more definite statutory sanction to the largely illusory rule of equal pay for equal work particularly in those employments covered by section 54 of the new Labour Decree. Efforts to achieve equal pay for women workers must be made apart from legislation, through collective bargaining between labour unions and employers and through public education. To the extent that women's concentration in lower pay brackets stems from their limited training their pay will be improved as more women obtain professional and technical skills.
Marital Status As Affecting Employment

Until recently, only single women in employment enjoyed all the privileges attached to their posts. Married women were often on contract and, in some cases, on a temporary basis. Today this has changed drastically. Women enjoy, particularly in the public sector, privileges attached to the positions they hold regardless of their marital status, and most employers pay wages and salaries according to qualifications and duties performed. Women holding similar posts as men receive equal remuneration. There are, however, pocket instances where some of the fringe benefits or privileges of the post held are not made available to women, particularly married women, e.g. in some public institutions of higher learning, housing or housing allowances are not as of right given to a married woman whether or not her husband enjoys the same privilege elsewhere, and also for the purpose of leave bonus, a married woman is classified as single. Generally, however, when married women possess suitable qualifications they are offered appointments on the same basis as men with equal or the same qualifications. But the impression is given that the opportunities for advancement or promotion for married women are not as high as for men. It is generally believed that when positions of responsibility become vacant most employers favour a male unless it would be patently, that is, patent even to the most partial observer, unjust to supersede the married women.

There are several obstacles preventing women from fulfilling their responsibilities adequately both as workers and as wives. The first and primary one is their duty as home makers. There is a growing lack of helping hands at home. This lack of household help and capable nannies to look after the pre-school children inevitably forces many married women either from abandoning paid employment or else using the subterfuge of sick-leave certificates, even when neither they nor their children are ill. The way out of this dilemma may be in the provision of day-nurseries or play-centres where mothers can safely leave their children - at nominal cost - for the periods during which they will be at work, and also, in the availability of more part-time employment for married women.

Apart from this, the fear of separation from their husbands by being transferred outside their husband's stations prevents some married women from seeking paid employment. In the public service, government policy is to try to keep the house together, and if and where possible wife and husband in the same Ministry/Department are usually posted to the same place, but the exigency of the service is given precedence in implementation of Government policy. In the private sector, a married woman stands the risk of losing her employment at any moment if she finds it inconvenient to answer the call for a transfer.
Besides, many women have to travel long distances to their different offices with inadequate transport facilities; it is not unusual for a mother to leave home for work before her children are awake and then return after they have gone to bed.

In spite of all these difficulties, many more women have joined the labour force. The nation's best interests demand good labour standards for women, many of whom are mothers and homemakers, as we have already indicated. In many instances, employers have voluntarily established such standards for their employees. In other cases, good standards have been adopted through collective bargaining between employers and workers. One would wish that the largely male-dominated labour unions would do more for their female members. But when standards depend wholly on voluntary action, they often vary in adequacy, and many workers are completely unprotected.

In matters such as training, seniority and promotion, women, particularly married women, are often in particularly vulnerable situations which require special attention. Women may be hired for beginning jobs on an equal basis with men but may not get equal consideration for promotion. Frequently they do not have the same training opportunity and are not given a chance at their jobs. The opportunity to secure an equal rate of pay or equal seniority in their jobs is sometimes lacking. These matters are not ordinarily governed by law and fair adjustments require methods other than legislation.

Judiciary

Women are eligible to serve on juries and can also be appointed to the Bench. But it is sad to note that in spite of the large number of women in the legal profession and several of them with very many years of creditable experience, the appointment of women is still largely confined to the lower bench. There are present only four women High Court Judges for a country which can boast of more than 200 in the legal profession, at least 30 of whom have put in more than the required 10 years at the bar. Supporters of the status quo - all male - who quote the example in Britain perhaps forget that even men judges are not appointed at the youthful ages at which most of the judges here in Nigeria are appointed.

Women And Tax Laws

In order to understand the basic characteristics of the income tax in Nigeria, it is necessary to give a brief historical note. Historically, the income tax was the financial basis of the British system of indirect rule - the principle of utilizing native authorities for the purpose of executing many aspects of public administration. But as a direct tax levied and collected at the local level of government, the income tax evolved under
different conditions in the Northern and Southern parts of Nigeria. In the North, where the tax ante marked the arrival of the British, the levy was communally assessed, with different rates of tax applying to different districts. In the South, however, which did not have a tradition of communal assessment, the tax was levied in two parts: a poll tax on each adult male with a low income, and progressive rates on higher incomes.

Although the Direct Taxation Ordinance has been repealed and Nigeria as a whole has adopted a system of progressive income taxation, this system was spliced on top of an existing poll tax base. Thus, the presumption that only an adult male has or could possibly have taxable income has had disadvantageous repercussions on women.

When it was decided under the modernised system to grant certain tax reliefs intended for all taxpayers, "all" became synonymous with "males". Thus, whereas all taxable adults in paid employment earning more than N600 per annum are entitled to free pay allowance of N600, a man was also entitled to his wife's and children's allowance. A woman who is married can only claim her children's allowance with the husband's written consent, whether or not the marriage is actually subsisting, an unmarried mother is not entitled to the relief. It is therefore, not unusual to find that a wife earning less than her husband actually pays more tax than the husband.

There is no doubt that the unfair system of taxing women, mainly by depriving them of various tax reliefs may, eventually, discourage many women from seeking and holding paid employment, since that is the only place where their incomes can be specifically assessed.

Progressive policy decisions about women's employment must be increased and must not be made in an information vacuum.

Social Security Benefits:

There are no social security or social welfare allowances in Nigeria. The only recognition of old age is in the provision of pensions for retired employees. The amount of pension payable depends on the type of employment and the position held by the employee at the time of retirement. There are, however, a few old people's homes, run and maintained by the Government through the various ministries of Social Development. The families of the old people admitted into the homes are made to contribute financially to their maintenance.
CHAPTER VIII

CONCLUSIONS AND RECOMMENDATIONS

In theory, and in legal terms, women may have been given equal rights and opportunities to participate fully in many fields. In practice, these are honoured more in words than in observance. Female employment and education is limited to many areas traditionally considered as appropriate to their sex. And they do not wield any significant power in the economic or political spheres compared with that exercised by men.

In many cases, the traditional division of labour has become even more divided, where men are preferred for field, factory and mine labour and where rudimentary education for work of a clerical nature is reserved for women.

Old prejudices wear down slowly. Indigenous culture of the tribal society still functions as a brake on female emancipation. Any steps toward the breaking of the barrier must be accompanied by more deliberate and conscious attempts towards change of attitudes.

There is a correlation between health, family planning and female education. Minimal levels of literacy and general awareness are required for the implementation of the technical aspects of family planning. Educated women tend to marry later and are generally more consciously aware of the need for family planning. Inadequately planned parenthood, high rate of diseases associated with pregnancy and childbirth, illegal abortions in the back streets under unhygienic conditions resulting in death, contribute to further reduce the contribution which women can make to nation building.

Even minimal education would enable many more women to improve living standards by providing better health and sanitation standards and better educational environments for their children. Educational opportunity can help break the link which ties the successors to poverty to the relatively stunted and deprived stereotype of the generations before them.

In examining women in the world of employment, it is found that they have not gained full equality in the choice of work, in pay for work, in promotion, and fringe benefits. There is the implicit discrimination originating in the cultural patterns defining appropriate work for women. Women need to work for both economic equity and social fulfilment in the society.
The overall picture of women and employment is affected by the different positions of married and unmarried women. The latter may be freer to seek employment: But the married woman is often barred traditionally from working outside the home or greatly restricted in work opportunities by the lack of maternity leave and day care centres for children. Where the married woman does work she is not thereby relieved of her work in the home, so does double duty. Besides, the high rate of taxation of her already meagre wages may discourage her further.

In Nigeria, a developing country, this situation is unfortunate. But some of the problems of women in employment can be attributed to women themselves. Some of this may be due to long historical conditioning but much is due to a rather more conscious reluctance not only to break out of the traditional bonds but also to accept those women who do so. It may simply be envy or resentment of those who have done what they would wish to do themselves. The responsibility of women for their own position collectively is more clearly determined not by their passive abnegation of that responsibility but by the active exercise of its restrictions.

It is somewhat paradoxical that much concern for the future of women is still arrayed around the value of work and career in determining their roles and status in society. The future of women in the world of work obviously lies with the attainment of equality in access to traditional work as presently pursued. This is essential to reinforce her own image of self-competence and social worth.

Even more important, however, may be her refusal to allow that attainment to seduce her into acceptance of human status as determined solely by the occupational role in itself. A woman, just as a man, is primarily identifiable as a human being, as a self determined social person, in her own right, without necessary reference to her status as worker, wife or career person.

An important initiative in the enhancement of the status of women lies in meeting the challenges of reevaluation of human identity and purpose. In doing so they will necessarily be engaged in a process which is in itself emancipating. Their commitment to action will help destroy the stereotype of passivity. Their assumption of leadership will free them from merely being followers.

Despite the relatively long and struggle-free history of female suffrage in Nigeria, the roster of representation of women in Government, at policy and decision-making levels is pitifully short. Power of the ultimate sort, in politics and in various realms of organisational behaviour is patently one of the last male bastions. The practical realisation and implementation of those legal rights which almost every national constitution guarantees lag far behind their rhetorical exhortation.
As a prime binding social relationship between adults, marriage is still to a large extent mandatory. For most women, marriage and family are still dominant life pursuits. Marriage is the conventional institution within which childbearing takes place. Women are groomed for marriage; for childbirth and child nature from their earliest years. Monogamous marriage, which is widely regarded as foreign, is surrounded with many legal constraints which on the whole are still more favourable to the man than the woman. A woman's name is subsumed under her husband's, her property becomes his, her liberty of movement, employment, and recreation are subject to his consent, and he gains conjugal rights over her person. Polygamous or customary law marriage emphasises even more the subservient role of the woman. The position of widows under customary law is a particular aspect which needs to be improved. The position whereby a widow is either left in the unhappy position of returning destitute to her own family or alternatively remaining with the husband's family to be re-married to one of the kinsmen is not particularly agreeable in the modern world. As a suggestion, a widow should in a deserving case be able to receive at least a share of the intestate's estate equal to a child's share.

Whether it is right to discriminate against daughters, as is done in some of our societies under customary laws of succession, is a difficult question. Equally difficult is the question of refund of dowry upon the dissolution of customary law marriage, whether or not the woman was at fault or instituted the divorce proceedings.

However ideal the relationship, in its present form, marriage - whichever type - is fraught with strain, tension and resentment. Increasing latitude in divorce, changes in property laws and in human rights combine to make marriage less constraining upon the female. Attitudinal changes in both sexes towards emphasis on individuality, self-fulfilment and more interpersonal equality promise improvements in the inter-personal aspects of marriage.

The increased participation of women in the economic life of the nation and the swift expansion of educational facilities have definitely improved the position of women in our society. This in turn has led to the relaxation of some legal and moral restrictions on the freedom of women and has contributed probably more than legislation to the breakdown of many traditional limitations.

But tradition still occupies a central role in the status of Nigerian women and is one of the instruments that perpetuate the inequality of the sexes. Any attempt to bring about a measure of equality must be directed to the traditional beliefs. Rather than making an out-right attack on tradition, such specific activities that promote women's rights should be encouraged and promoted, and emphasis should be given not only to women's education but also to mass re-orientation in thinking and widely-held beliefs which give recognition to discrimination against women.
Coupled with activities should be a system of dissemination of information relating to established women's rights. It has been found that many women do not know their rights and are thereby hindered from ever realising them. To this end, women's organisations, adult education centres, and all mass communication media should be utilised.

In the area of legislation, law reform commissions, in cooperation with National and States Commissions on Women's Affairs and Women's Bureaux, should analyse existing laws with a view to amending any which discriminate against women and establish adequate legal protection for equality of treatment of the sexes.