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## **INADEQUATE DISCRIMINATION LAWS: TOOLS THAT FOSTER GENDER HIERARCHY IN NIGERIA.**

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### **ABSTRACT**

*Gender hierarchy is manifest in the primary institutions that exist in Nigerian society. The Constitution of Federation of Nigeria, 1999 made provision against discrimination of citizens in Nigeria but the provision has not obliterated gender hierarchy that exists in Nigeria. Other sources of law in Nigeria excluding the Constitution of Federal Republic of Nigeria have no express provision that prohibits the discrimination of persons on the basis of sex and this encourages gender hierarchy. This study examines the insufficiency of Nigerian discrimination laws as fostering tools for gender hierarchy. Nigerian society is patriarchal and it accords different roles to different genders. The roles assigned are discriminatory, in spite of that, individuals are expected to accustom to the roles assigned to them. This study is concerned with revealing the gender hierarchy that is prevalent in the primary institutions in Nigeria which is being promoted by inadequate discrimination laws. This paper examines the insufficiency of discrimination laws in Nigeria. Gender hierarchy in Nigeria and discriminatory policies in Nigeria reveal the restraints in promotion of human rights in Nigeria. This work will be relevant to the law makers in Nigeria in reviewing the few existing laws on discrimination and identifying the loopholes in them. It will be crucial in making specific laws that will obliterate the existence of gender inequality in Nigeria. It will build on extant knowledge on the effect of insufficient legislations on gender inequality.*

**Keywords:** *Gender, Gender hierarchy, patriarchy, primary institutions*

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## **INTRODUCTION**

Assignment of different roles to different genders in Nigerian society separates one gender from another. Assignment of tougher and more important task by most Nigerian customs to a particular gender creates hierarchy. Vague and inadequate provision of the Constitution of Federal Republic of Nigeria on discrimination promotes hierarchy created by the Nigerian society and customs. Gender emerges as a congealed form of sexualization of inequality between men and women. Inequality with respect to sex manifests as gender.<sup>1</sup>

Gender refer to those roles, behaviours, responsibilities that are construed by the society and accorded to male and female. Male and female in Nigerian society are expected to act differently, behave differently and engage in diverse activities. The allegedly tougher tasks are assigned to male and the plain sailing task are assigned to the women.

Gender hierarchy is the classification of gender with male accorded more value than female. No matter how the status of the female changes, the male dominates over the female.<sup>2</sup>

The customs in place in Nigerian society portray the male as the provider and the protector, the female as the delicate individual who receives and nurtures within the homestead. As a result of this role given to the male, he is accorded more value than the female.

Patriarchy is defined as a system that places male supreme and portrays female subordination. Patriarchy is a structure of a society where power is exercised by men, who are considered supreme and women are considered dependants.<sup>3</sup> It a system that discriminates against women, permits men to take advantage of women and exert control over them. Structures are put in place by the society to encourage the domination of women by men. The use of certain expressions in society fosters hierarchy of gender. Patriarchy is an idealized expression in Nigeria that has fostered gender hierarchy

The primary institutions in Nigeria encompasses family, economics, religion, education and state. Patriarchy is deep-rooted in these institutions in Nigeria. The patriarchy present in these institutions encourages gender hierarchy.

The failure to enact more and better laws on discrimination is believed to encourage the gender hierarchy that is embedded in the Nigerian society. Equality of gender and empowerment of women are considered to be crucial in realization of civil rights. There are no express legislations put in place in Nigeria like in the developed countries, to ensure that male and female are given

equal opportunities in skill development, career advancement in all sector of the economy and also in all the primary institution in general.

### **PATRIARCHAL NATURE OF NIGERIAN SOCIETY**

Nigeria is made up several ethnic groups that rely greatly on customary laws which are mostly patriarchal in nature. Customary laws are written and unwritten rules which are derived from customs of the different tribes. They are binding on the people to the extent that they are not repugnant to natural justice, equity and good conscience.

The Nigerian law which is derived from English law co-exists with customary laws that exist in different places in Nigeria. If any custom adopted by a tribe is barbaric, such custom will rejected as being repugnant to natural justice, equity and good conscience as stated in *Eshugbaye Eleko v Government of Nigeria*.<sup>4</sup> However, if a custom is barbaric and it is not challenged in a competent court of law it remain valid and applicable to the community.

In Nigerian society, there are well defined gender roles that individuals are expected to conform to. Women are constrained to domestic roles whereas the men are restrained from taking up the domestic roles. As stated by Azodo (2007), a woman's place is within her home, she is expected to bear and nurture her children while men prowls from one place to another to secure means to provide for the woman and the children. Now, that is to say that the man is the provider and the breadwinner of the household while the woman rears and nurtures.<sup>5</sup> A woman who has been confined to the role of nurturing and rearing cannot be viewed as equal to a man who has been assigned with the role of provision. Having regards to the fact that provision is considered a tougher task than rearing and nurturing in Nigerian society.

In the ancient times, in Nigerian society, a female child was always taught from when she was little that her primary duty was to serve a man. She was taught how to how to cook, keep the house clean and do some farm work but she was never allowed to go to school. What is the essence of sending a female child to school when she would eventually end up in the kitchen?

In Nigerian society the female child always feels undervalued. It is common to hear these statements in Nigerian society, 'Do not behave like a man, a man is like a cat with nine lives'; 'Sit with your legs closed, you will be a woman and a mother someday'.

In some Igbo communities in Nigeria, when a man has a female child alone, he is considered childless because he has no one to inherit his legacy especially his 'Obu' (compound). 'A woman does not own property', they say.

Every property that the family head acquires devolves to the male children because they will carry on their father's last name but the female child will get married and change her family name to her husband's name. This practice and belief is still obtainable. In some villages, in Anambra State, Nigeria, when a woman wants to sell a land which her deceased husband passed onto her, she has to bring a man related to her husband to act as the seller because a woman cannot sell land. The Customary Law in those villages limits the property right of women.

According to Makama (2013), womankind is perceived as inferior and second-rate, thus, the widespread of the notion that women's position is in the kitchen. This has brought about inaccurate representation of women in the family and in the society as a whole. Nigerian society set up structures that allows men to exert control over women.<sup>6</sup>

In 2016, the Nigerian socio-cultural hemisphere was shook with a controversial statement of the president of the Federal Republic of Nigeria. The president in a Public discourse stated that his wife belonged to the kitchen and the other room in his house.<sup>7</sup> It leaves one with the question as to whether a female child would ever be valued like a male child in Nigerian society. This is majorly because of the fact that no matter how educated people get in Nigerian society they still perceive female as weaker gender, whose duty is to serve the stronger gender (men).

The private and public lives of women is closely coalesced in Nigeria. Hackneyed ideas on gender and cultural practices, the illiteracy rate among women inhibit the progression of women in their public life. The elimination of gender hierarchy will not only improve the private and the public lives of women but also the lives of the Nigerian citizenry.<sup>8</sup>

Women in Nigeria consist of majority of unemployed people and the poor people. Even in those sectors like agriculture where women are found, they denied major opportunities that enable them to be seen such as the power to make decisions.

Omolewa (2002), averred that the inequality between men and women has its root in the system of education introduced during the colonial period. He is of the opinion that little or no regards were placed on the education of female

children.<sup>9</sup> This practice of placing little or no value on the education of women continued after the colonial rule and was extended to every other sector. If unequal treatment emanating from gender hierarchy in Nigeria was also rooted in the colonial education as stated by Omolewa, more has to be done to annihilate gender hierarchy in Nigeria.

### **INADEQUATE LEGISLATION ON WOMEN RIGHT**

There are no sufficient legislations on women rights in Nigeria. Most international treaties on women rights ratified by Nigeria are yet to be adopted as domestic laws in Nigeria.

In *Sani Abacha v Gani Fawahinmi*<sup>10</sup>, the court stated that, international treaties on human rights which were supposed to supplement the Constitution cannot be enforced unless these treaties have been enacted into law by the National Assembly.

Ratification of treaties on women right cannot aid in prevention and curtailment of the violation of women rights. Treaties on women right have to be absorbed into the Nigerian legal system by making these international treaties, national laws. When ratified treaties cannot be used in defence of violated persons in courts, they become futile. These laws would have been utilized by women in advocating for their rights and bridging the gap placed by the society between men and women.

There are few laws put in place to sufficiently obliterate discrimination against women that are engendered by customs. The Violence Against Persons (Prohibition) Act 2015 passed in May 2015 to protect people from violence has helped in protecting women from physical, sexual, psychological and domestic violence. However, some international instruments on rights of women, though they have been ratified, are yet to be domesticated. The Convention on Elimination of all Forms of Discrimination Against Women (CEDAW), which is an International Human Right Law is unenforceable in Nigerian Courts as it is yet to be domesticated. The Constitution of the Federal Republic of Nigeria 1999, s12, provides that international treaties ought to be enacted into law before it shall have the force of law. Domestication of these international treaties and passing of other bills on discrimination to law will play a relevant role in tearing down gender hierarchy.

The 1999 Constitution constitutes a principal clog to the international objectives on human right. The Constitution being made supreme over other domestic laws

and international instruments. It is the intention of the international community for international instruments to be encompassed in the member state's Constitution and made equal with the domestic legislation.<sup>11</sup> If these instruments are incorporated in the Nigerian Constitution which is considered supreme over other laws, then better protection would be given to women.

In addition to inadequate laws on the rights of women, women are reluctant to go to court to have discriminatory customs that deny them of their rights, declared repugnant.

It was not until three decades ago, that judgments were given in some cases like *Nzekwu v Nzekwu (1989) NWLR (pt. 104) 373*<sup>12</sup>, *Mojekwu v Mojekwu (1997) 7 NWLR 283*<sup>13</sup> declaring such custom denying women of rights to property as discriminatory and repugnant. Other cases are *Ukeje v Ukeje (2014) LRCN 1*<sup>14</sup>, *Anekwe v Nweke (2014) LRCN 34*<sup>15</sup>. However, these cases alone are not adequate to eliminate the gender hierarchy subsumed in every system in Nigeria.

The Supreme Court in *Mojekwu v Mojekwu* had questioned the judgment of Court of Appeal on the aspect of declaring the custom denying women of property rights repugnant to natural justice, equity and good conscience because the validity of the custom was not questioned by the plaintiff/respondent. Even though it upheld that part of the judgment that female children were entitled to the deceased's property.

Now, this suggests that if the validity of a custom which is discriminatory in accordance with Section 42 of the Constitution of the Federal Republic of Nigeria is not questioned, the court is not expected to decide on it. Even when such customs disregards a particular gender and fuels gender hierarchy.

The Constitution of the Federal Republic of Nigeria 1999, s42 provides thus, a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person be subjected to restrictions or disabilities or be accorded undue advantage or privileges not accorded to other citizens.

Now, these customs that are obviously biased against women and foster gender hierarchy continue to be valid and exist until someone is courageous enough to go to court and challenge it.

The 1999 Constitution of the Federal Republic of Nigeria and prohibits discrimination on the basis of sex, ethnic group and others but most customary laws promotes discrimination on the basis of sex. In the Northern part of

Nigeria where sharia law is in place, customs that promote gender hierarchy are operative and rarely unchallenged in the Northern states. The Constitution has to be amended to incorporate the laws on women rights contained in international instruments and women has to be made aware of their rights.

### **BRIDGING THE GENDER GAP BY REVIEW OF THE EXISTING LEGISLATION AND ENACTMENT OF NEW LEGISLATIONS**

Before the colonialization of Nigeria, women were charged majorly with the task of child bearing. Men were charged with hard jobs that requires mostly physical efforts to provide for their families. Women were groomed to be dependant on men. Even after colonialization, this was still seen in most households. To eliminate this hierarchy that was long created, certain things have to be put in place to encourage women to move from being dependent on men to being independent. There should be enactment of laws to limit discrimination against women and awareness should be raised to keep women abreast.

Some Igbo culture assert that Igbo women cannot possess a landed properties while their husbands are alive. The only property, an Igbo wife is entitled to possess is her water pot, bottle gourd, cooking pot and other kitchen utensils.<sup>16</sup> If the Igbo women are not allowed to inherit landed property from their parents or their husbands, this restrains their ability to procure loans from financial institutions for businesses. The men who are able to inherit landed properties are able secure loans and engage in different businesses.

The unsubstantial property right of a woman restrains her from lending a piece of land to her husband to use because if he uses it for a long period of time it becomes his land. Women have little or no access to the loan market because of their limited resources and prejudiced against in the loan market. There are myriads of studies that points to the fact that limited access of female manufacturers to expertise, manure, landed properties reduces their output and increases the output of the male manufacturers.<sup>17</sup> The British Council Nigeria (2012), stated that even though a lot of women engage in subsistence agriculture, men in Nigerian society are more inclined to own land. In the Northern region, women barely own four (4) percent of the land.<sup>18</sup> There are higher number of women in agriculture yet the men involved in agriculture own more land. Lack of access to land prevents women from having access to credit

facilities. The increase of women's access to land empowers them economically.<sup>19</sup>

Limiting women's access to productive resources, services and opportunities makes them achieve less than men and further makes the gender gap obvious. If the limited access of women to property is recognized and special provisions are made for women to access loans in the financial institutions, the productivity of women in business will increase drastically and other women who are not engaged in business but desire to carry on a business will be encouraged to do so.

In Nigerian government, women are underrepresented. In the legislative houses, only a few number of women can be found. Women are inconspicuous in decision making forums. In other African countries like South Africa, Kenya, Angola, Senegal, Rwanda, women are better represented in the parliament. More seats are given to women in parliament in these African countries than in Nigeria.<sup>20</sup> The recognition of this fact and enactment of legislation of a certain percentage of women representation in the cabinet, legislative houses and other sectors will serve as encouragement to women.

Allowing women access to health, education, business, and political positions is not sufficient to bridge this gap that exist between men and women. More schemes ought to be put in place to obliterate gender inequality and discrimination against women.

The degradation of women to inferiority has no bounds as impoverished women in rural areas suffers as much degradation as wealthy and refined women in non-rural areas. Women are suppressed irrespective of their social and professional positions.<sup>21</sup> Adequate legislation by the Nigerian law makers to inhibit the unequal treatment of men and women in all sector of the economy is necessary. Sufficient legislations to promote equal access of men and women to social, economic and political resources is requisite. The existing legislations on discrimination on the basis of gender should be critically analysed and assessed. General laws on human rights are not sufficient in Nigeria, laws that are specifically made to ensure that women are not discriminated against are necessary. Legislations to dissuade violence against women and girls with well-defined exemptions are also important. Awareness and adequate legislation on discrimination against women will not only create opportunities for women, it will curb gender based violence and bridge the gap that has been created and widened between male and female in Nigeria.



## RECOMMENDATION

This paper recommends that the international treaties on human and women rights should be domesticated so that there will sufficient laws on women right for the defence of women in the court.

Also, the legislature should consider enactment of laws solely on the rights of women just like other developed countries like United States and Australia. The enactment of such laws will aid in ensuring the equality of men and women and eradication of gender equality in Nigeria. The Constitutional provisions prohibiting discrimination on the basis of gender is not sufficient.

Additionally, the validity of repugnant customs should be challenged, not only the entitlement of women to certain privileges. The court in cases like *Mojekwu v Iwuchukwu*, have tried to restrain itself from adjudicating generally on the discriminatory practices on women. Now, this would not have been an issue if the legislature had enacted sufficient laws to eliminate the discriminatory practices against women.

Finally, women should be made aware of the fact that they deserve to be treated equally as men and they deserve privileges that are accorded to men in the Nigerian societies.

## CONCLUSION

The legislature have a crucial role to play in order to bridge the wide gap that exists between men and women. The discrimination against women and refusal to recognize the competence of women which fuels gender hierarchy can be watered down by the enactment of laws specifically targeted at eliminating gender hierarchy. Customary laws consist of relevant customs applicable in different communities, however, when these customs appear repugnant, they must be done away with. The judiciary are required to participate actively in the enforcement and execution of the laws made by the legislature on gender equality and discrimination on the basis of sex.

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