AN EVALUATION OF EQUALITY RIGHTS AND THE RIGHTS OF WOMEN TO INHERITANCE IN NIGERIA

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Abstract

This article examines equality rights and the rights of women to inheritance in Nigeria. Equality rights is about equal protection of the rights of individuals, whether male or female. In Nigeria, the whole issues surrounding equality rights, actually arose from the gender bias of traditional human rights conceptions, which never served women's interest, but discriminated against women. The researcher adopted the doctrinal method of research. The objective of this article is to reveal that under most customary laws, women have no inheritance right, except when they institute actions in courts to assert their inheritance rights. This article concludes that sex discrimination is still a legally tolerated norm under Nigerian customary laws and that it is only when women constitute 50% of the institutions that make our country's laws, that they can be assured of laws that will truly reflect their interests. It is recommended that the legislature should pass new laws to outlaw sex discrimination in all areas of law.

KEYWORDS: *Equality, Women, Rights, Inheritance.*

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Introduction

Women have been subjected to discriminatory treatment in terms of their rights to inheritance in Nigeria. Most of such women have never taken the advantage of seeking protection of the courts against such discriminatory acts by applying for a declaration that such acts are illegal and against equality rights of citizens. Black's Law Dictionary[925] defines equality to mean the condition of possessing substantially the same rights, privileges, and immunities, and being liable to substantially the same duties. It is the quality or state of being equal.[926] It is obvious that inequalities exist in Nigerian society. Inequality in Nigeria is linked, among others, to the patriarchal society that Nigeria practices. However, there are instances when women applied to the courts against illegal acts of discrimination.[927] Section 42(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides for the rights of all Nigerians to freedom from discrimination.

The National Policy on Population and Sustainable Development (2003) affirms the protection of women's inheritance rights. But family settings are sometimes breeding grounds for the propagation of gender imbalance. In fact, the rights of women are more profoundly infringed behind the closed door of family relations, to the extent that, right from birth, certain privileges are accorded to the new born purely on the basis of sex. It must be

[925] Henry Campbel Black, Black's Law Dictionary (St. Pauls: West Publishing Co.) 1990, Sixth Edition, p. 536.
[926] Bryan A. Garner, Black's Law Dictionary, Eight Edition, (St. Pauls: Thomson West) 2004, p.576.
[927] Colev. Cole (1898) / NLR 15

stated that property rights of women are not immune from this infringement.

Property right is the right to own, acquire, manage, enjoy and dispose of tangible and intangible property, including land, houses, money, bank account, livestock, crops and persons.[928] The ownership of property determines one's wealth and wealth governs one's ability to care for one's self and one's family. Property thus satisfies the basic needs of women. Inheritance of property leads to economic development of a person, which is a crucial factor in the realisation of all other rights that are conferred by law. The prevention of women from inheriting property in certain circumstances will result in an inability to benefit from the plethora of rights and privileges conferred by law. This is because enforcement of these rights is sometimes a reflection of the economic power of the claimant. Denial of women's property rights is a clear discrimination against them. Discrimination against women is defined by Article 1 of CEDAW[929] as:

> Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital

[928] QXA "Women's Property Rights in Sub-Saharan African". www.hrw.org/compaigns/women/property/html in B. Owasanoye, "Research Project on Impact of Cross – Cultural and Inter-Religious Marriages on Widowhood in Nigeria: Analysis of findings on Property Rights of Widows. "Being paper presented at Public Education Workshop on Impact of Cross-Cultural and Inter-Religious Marriages organised by Human Development Initiatives and the Department of Sociology, University of Lagos on the 28th day of September, 2004.

[929] Convention on the Elimination of Discrimination against Women.

> status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Some international instruments that frown at the discrimination of women include, but are not limited to:

(i) The African Charter on Human and Peoples' Rights;
(ii) The Convention on the Elimination of all forms of Discrimination Against Women;
(iii) Vienna Declaration and Program of Action and
(iv) The Universal Declaration of Human Rights of 1948.

Under the 1999 Constitution of the Federal Republic of Nigeria[930], certain rights have been accorded to the citizenry[931], but women are still facing discrimination, because laws are not applied equally to men and women, especially in relation to inheritance rights of women. Therefore, this article examines equality rights and the rights of women to inheritance in Nigeria.

Conceptual Clarifications of Equality, Inheritance and Women's Rights

The understanding of equality, inheritance and women's rights in this article is necessary if not fundamental. Analysis of these key words is to contextualise the concepts of equality, inheritance and women's rights within the meaning and intent of this article.

[930] As amended
[931] Chapter IV of the 1999 constitution of the Federal Republic of Nigeria, as amended.

Equality

Equality means that no person should be denied equal protection of the existing laws of a country. It prevents the application of unjust and inhumane laws which includes sex-based laws which are mostly unjust. Equality also means that men and women are equal before the law. Equality does not permit sex discriminatory laws. The concept of equality can also be termed the concept of equal protection of the rights of citizens. That is, the rights of the citizens should be given equal protection. In the United States, equal protection of the citizens is derived from the Equal Protection Clause of the Fourteenth Amendment to the Constitution. The key language in the amendment provides that "No State shall… deny to any person within its jurisdiction the equal protection of the laws. The Equal Protection Clause is generally used to combat discriminatory laws and practices and its principal concern has been with discrimination directed against African Americans.

Equality can be said to be the fact of being equal in rights, status, and advantages. For instance, believing in equality between men and women is aimed at eliminating discrimination on grounds of sex or marital status, to promote equality of opportunity between the sexes. It is about the promotion of equal opportunity between men and women generally and the total elimination of discrimination on ground of sex. Equality of inheritance rights is that the division of property should be done equitably so that those entitled to it shall share it equally. It is about equal treatment of persons to the extent that there must be no discrimination in relation to persons. The popular notion of "justice" is based, however, on a sense of equality, either distributive or corrective. On specific manifestations of justice in

the sense of distributive and corrective equality, the following should be noted:

(i) Redress for wrongdoing has to be proportionate to the injury.

(ii) In the exercise of judicial or quasi-judicial powers, the rules of natural justice should be observed. Thus it was stated by the House of Lords that the rules of natural justice apply equally to final and preliminary hearings.[932]

(iii) Distributive justice requires equal distribution of benefits among equals. Thus, in the case of *Nagle v. Feilden*[933], the Court of Appeal insisted that the refusal by the Jockey Club to grant a trainer's licence to a woman was contrary to public policy.

(iv) Distributive justice also requires equality of burdens as of benefits. Thus, in the case of *Roberts v. Hopwood*,[934] the House of Lords invalidated a welfare scheme introduced by a local authority on the ground that expensive social experiments should not be introduced by local authorities at the expense of one's section of the community.

(v) The need to ensure equality of treatment for all persons is a justification for the doctrine of precedent.

[932] Wiseman and Another v. Borneman and Another, [1969] 3 ALL E. R. 275, disapproving Parry-Jones v. Law Society. [1968] 1 ALL E. R. 177
[933] [2952] 2 ALL E. R. 394
[934] [1925] A. C. 578

The removal of special advantages and disadvantages of certain individuals and bodies is another example of the leaning towards distributive equality.[935]

In order to achieve equality, the courts tend to lean on the side of the under-dog. The courts, therefore, should no longer consider themselves the watchdogs on government, but be ready to assist. They have been less ready to countenance covenants in restraint of trade between employer and employee than between vendors and purchasers, who are on a more equal footing. Thus it was stated by Scrutton L. J. that, "it is now well established that the courts will view restraints of trade which are imposed between equal contracting parties for the purpose of avoiding undue competition and carrying on trade without excessive fluctuations and uncertainties with more favour than they will regard contract between master and servant in unequal position of bargaining.[936] In the case of *Hivac, Ltd. v. Park Royal Scientific Instruments, Ltd*.,[937] an important decision was reached wherein inequality was not involved and the employee's obligation to act fairly by his employer was taken into account.

Hart refers to the implications of what he calls the approximate equality between human beings. He recognises that no universal system of natural law or justice can be based upon the principle of impartiality, or that of treating like cases alike.[938] Hart remarks that the idea of impartiality is "unfortunately compatible with

[935] *Taniilin v. Hannaford*, [195-0] 1 K. B. 18.
[936] English Hop Growers, Ltd. v. Dering [1928] 2 K. B. 174, at p. 180
[937] [1946] Ch. 169; [1946] 1 ALL E. R. 350.
[938] Dennis Lloyd, Introduction to Jurisprudence with Selected text, Second Edition (London: Stevens & Sons) 1965, p. 63.

very great iniquity".[939] In the case of *Brown, v. Board of Education of Topekea*,[940] the United States Supreme Court concluded that:

> In the field of public education, the doctrine of "separate but equal" has no place. Separate education facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

Moreover, in the case of *Shelly v. Kraemer*,[941] the court held that the judicial enforcement by state courts of racial covenants restricting the use or disposition of property violates the equal protection clause of the 14th Amendment.

Inheritance

Inheritance can be said to mean property to be inherited or inherited; that is regarded as a heritage. Inheritance can also be said to mean to inherit, that is to receive by legal succession or will from one's parents by genetic transmission. Inheritance has been defined to mean property received from an ancestor under the laws of intestacy or property that a person receives by bequest or devise.[942] Bequest is the act of giving personal property by

[939] Ibidat p. 64
[940] 347 U.S. 483; 98L. ed. 873 (1953).
[941] 344 U.S. 1 (1948).
[942] Bryan A. Garner Black's Law Dictionary, Eighth Edition (St. Paul: Thomson West) 2004, p. 799.

will.[943] That is personal property disposed of in a will. While devise means to give (property) by will.[944] To inherit means to receive (property) from an ancestor under the laws of intestate succession upon the ancestor's death.[945]

Mozley & Whiteley's Law Dictionary[946] defines inheritance as a perpetuity in lands or tenements to a man and his heirs and that the word is mostly confined to the title to lands and tenements by descent. It is the devolution of property on the death of its owner, either according to the provisions of his will or under the rules relating to intestacy or property that a beneficiary receives from the estate of a deceased person.[947] Inheritance also means the money, property, etc. that you receive from somebody when they die. That is, the fact of receiving something when somebody dies. It is when you receive something from somebody when they die. Inheritance is also defined as that which is inherited or to be inherited. That is, property which descends to an heir on the intestate death of another. It also means an estate or property which a person has by descent, as heir to another, or which he may transmit to another, as his or her heir.[948]

Women's Rights

Women's rights can be said to be rights and entitlements claimed for their benefit in societies all over the world. In some countries,

[943] Ibid, p. 168.
[944] Ibid, p. 484
[945] Ibid, p. 798.
[946] John B. Saunders, Mozley & Whiteley's Law Dictionary, Ninth Edition (London: Butterworths) 1977, p.171.
[947] Elizabeth A. Martin, A Dictionary of Law, fourth Edition Oxford: Oxford University press) 1997, p. 233.
[948] Henry Campbel Black, M. A., Black's Law Dictionary, Sixth Edition (St. Paul: West Publishing Co.) 1990, p. 783.

these rights are institutionalised or supported by law, custom and behaviour. While in some other countries, women's rights may be ignored or suppressed. Women's rights have been said to differ from broader notions of human rights, through claims of an inherent historical and traditional bias against the exercise of rights by women and girls in favour of men and boys.[949] Women's rights can be understood through the lens of a deeply rooted and entrenched patriarchy in the world. The Nigerian woman is subjected to discrimination. The subjection of women under some customary laws in Nigeria was a cardinal principle and the rule of inheritance was traced through males to the exclusion of females. This was the same situation in India. Thus, the description of a good wife in Hindu scriptures is "a woman whose mind, speech and body are kept in subjection, acquires high renown in this world, and, in the next, the same abode with her husband…"[950]

In Athens, women's consent in marriage was not generally thought to be necessary and she was obliged to submit to the wishes of her parents, and received from them her husband and her lord, even though he was a stranger to her, because she had no knowledge before marriage.[951] The subjection of women was also common in Rome, where a woman could not exercise any civil or public office. She could not be a witness, surety, tutor or curator. She could not adopt or be adopted or make will or contract. [952]

[949] Hosken, Fran P. Toward a Definition of Women's Rights in Human Rights Quarterly, Vol. 3. No. 2 (1981) pp. 1-10.
[950] Ibid
[951] Ibid
[952] Lookwood, Bert B (ed) Women's Rights: A Human Rights Quarterly, Reader John Hopkins University Press (2006) p. 3.

Under the English Common Law, all real property held by the wife at the time of marriage became a possession of her husband, who was entitled to the rent from the land and to any profit which might be made from operating the estate during the joint life of the spouses. The English courts later devised a means to forbid a husband transferring real property without the consent of his wife, but retained the right to manage it, receive the money which it produced and had the right to spend it as he saw fit. [953] The husband was in complete control of the wife's personal property. In the late nineteenth century, there was a great change, starting with the Married Women's Property Act in 1870, which was amended in 1882 and 1887, respectively. These Acts gave married women the right to own property and to enter into contract. Before the advent of Islam, women in Saudi Arabia had no property right and were regarded as chattels, subject to being inherited.[954] Widows were inherited and subsequently married off to their stepsons or other male relatives in the family and were stripped of their property and inheritance. [955] However, the advent of Islam liberated women and positioned them on equal footing with men as human beings. Women were given rights equal to those of men as contained in the Quran as follows:

> For Muslim men and women, for believing men and believing women, for devout men and the devout women, for true men and women, for men and women who are patient and constant, for men

[953] Ibid

[954] Khaled Abou Elfadl (2007) The Great Theft: Wrestling Islam from the Extremist, Harper Collins Publishers, p, 271.

[955] Alhabdan, S., (2015), Domestic Violence in Saudi Arabia, Thesis and Dissertations paper 27, Retrieved on 12/12/2016 from www.respository.aw.indiana.edu/etd.

> and women who give in charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, and for men and women who engage much in Allah's praise; for them Allah has prepared forgiveness and great reward. [956]

Perhaps, the greatest changes Islam brought to women was the condemnation of female infanticide and in the area of economic rights of women. Moreover, there was strong condemnation of the Arab practice of female infanticide [957] and women were allowed to own and dispose of their property. Women were also allowed to inherit. They were given rights as human beings with equal rights accorded to them with men; thus, raising their dignity, freeing them from the inhuman and degrading treatment of being inherited. [958]

Equality of Rights

Equality rights is about equal protection of the rights of individuals, whether male or female. The National Policy on Women (2003) is one of the most direct efforts of the government to bring the provisions of section 17(2) in Chapter II of the Constitution[959] into reality. The section states that every citizen shall have equality of rights, obligations and opportunities before the law. In the United States, the relevant doctrine is generally referred to as "equal protection" and it is derived from the Equal Protection Clause of the Fourteenth Amendment to the

[956] Quran 33:35
[957] Quaran 81:9
[958] Quran 4:19 – 20
[959] 199 Constitution of the Federal Republic of Nigeria, as amended.

constitution. The Equal Protection Clause which is generally used to combat discriminatory laws and practices provides that "No State shall… deny to any person within its jurisdiction the equal protection of the laws."[960] The aim of the Equal Protection Clause is to prohibit discrimination and the courts have interpreted the phrase, "no state shall deny any person the equal protection of the law", to mean in effect, "no state shall deny any person the protection of equal laws". In other words, a state legislature may not treat its citizen differently. The state, therefore, must pass laws that apply equally to the citizens and must not single out any one group for favoured treatment over another group. This led some states in the United States to adopt equal rights provisions in their constitutions and amending the equal protection provisions in their constitutions to apply to "persons" instead of "men".

Generally, all human beings have equal rights. Some states have affirmed the equality of persons in constitutional and legislative reform which has made more women to move into the public sphere. However, the measure of equality seems to be the measure of men, without considering the fact that women are not men and are also no less human than men. The whole issues surrounding equality rights of men and women actually arose from the gender-bias of traditional human rights conceptions, which never served women's interests. Thus, Atsenuwa states, on the equality of women, that:

> As more States affirm the equality of women in Constitutional and legislative public sphere, it became obvious to women that the acceptance of

[960] The Rights of Women, op. cit. p. 1.

> this assumption of liberation as underpinning human rights resulted in human rights becoming a manifestation of gendered social construction of reality much to women's disadvantage… The measure of equality was the measure of men. But women are not men… But no less human for that reason. The gender-bias of traditional human rights conceptions could not serve women's interests. This is not the same things as saying that women are seeking special treatment. The discourse on women's rights as human rights can thus be described as a gendered critique of traditional human rights. [961]

Atsenuwa's statement sums up the position of women and their rights in Nigeria. But under the Nigerian Constitution, the supposed gender neutrality prevents the application of human rights to areas that affect the right of women to inherit property. The fact remains that there should be no discrimination on the ground of sex. The interest of women in inheriting property should be protected. This is because the inheritance of property gives to the person who inherited the right of ownership of the property and the conferment of wealth. Thus it was stated by Wilson that "The ownership of property determines one's wealth; wealth governs one's ability to care for one's self and to care for

[961] Ayodele Astenuwa, Human Rights Protection of Vulnerable and Marginalised Groups in A. O. Obilade & C. Nwankwo (Eds.) Text for Human Rights Teaching in Schools, Lagos: Constitutional Rights projects (CRP), 1999 p. 16.

one's family. Property thus satisfies the basic needs of food, clothing and shelter."[962]

In Nigeria, women are given less recognition under the traditional community and this situation has affected women generally, despite the international recognition of women as people with fundamental human rights. Various international conventions and declarations reflect the rights of women to freedom from discrimination. The truth is that globally, the recognition of women as people with fundamental human rights has been an issue on the front burner of the international legal regime for decades.[963] Notable among these international conventions and declarations are the Convention on the Elimination of Discrimination Against Women (CEDAW) 1979,[964] the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights[965], the International Covenant on Civil and Political Rights,[966] the International Covenant on Economic, Social and Cultural Rights 1966,[967] the Convention on the Nationality of Married Women,[968] and the Nairobi Forward-Looking Strategies for Advancement of Women (1985).[969] The

[962] E. L. Wilson, "Women's Right in Law and Practice: Property Rights" in Women in Law (A. O. Obilade Ed.), Southern University Law Centre & Facility of Law, University of Lagos, 1993.
[963] 1976 – 1985 was a period declared as the International Decade for Women's Rights, with a plan of action, goal of equality, development and peace.
[964] Described as the Women's Bill of Rights, with a preamble and 30 articles.
[965] Adopted and Proclaimed by G. A. Res. 217A (III) of December, 1948.
[966] G. A. Res. 2200A (XXI), 21 U. N. GAOR Supp. (No. 16) at 52, U. N. Doc. A/6316 (1996), 999 U. N. T. S. 171.
[967] G. A. Res. 2200 A (XXI), 21 U. N. GAOR Supp. (No. 16) at 49, U. N. Doc. A/631(1966), 993 U. N. T. S. 3. ry 3rd 1976.
[968] It was opened for signature and ratification by G. A. Res. 1010 (XI) of 29th January 1957 and entered into force 11th August 1958 in accordance with Article 6.
[969] http://www.un.org./womenwatch/confer/nfls/

Beijing Platform of Action[970] also provided an agenda for achieving gender equality and empowerment of women. The United Nations Development Programme has, among its objectives of gender equality, the giving of economic and social value to women's capacities and work to enhance their participation in social, political and economic development. The status of women defines the degree of women's access to material resources (including power, knowledge and prestige) within the family, in the community and society.

Equality exists where there are no sex discriminatory laws contained in the constitution of a country. Where there are sex-based laws in a legal system, then there is no equality of rights in such society. This is because sex-based laws are mostly unjust and inhumane laws and lead to inequality of the application of laws to individuals in the society and community. In the United States case of *Frontiero v. Richardson*,[971] the court invalidated the requirement that women in the military prove their husbands' dependency in order to get medical and housing benefits, while men received them automatically for their wives. In this case, the court's sweeping language was that "women's legal status was once like that of slaves;" "romantic paternalism" has "put women not on a pedestal, but in a cage". However, this sweeping language was never accepted by the full court. In the case of *Peper v. Princeton University Board of Trustees*,[972] the New Jersey Supreme Court affirmed that the change from "men" to "persons" in the 1947 constitution granted women "rights of

[970] It was adopted at the fourth World Conference on Women in 1995.
[971] 411 U. S. 677 (1973)
[972] 77 N. J. 55, 78 (1978)

employment and property protection" equal to those enjoyed by the men. In the case of *Roctker v. Goldberg,*[973] the court upheld Federal law that provided that men but not women must register for the draft. In the case of *Michael M. v. Superior Court of Sonoma County,*[974] the court upheld California Statutory rape law which makes boys and men but not girls or women criminally liable for consensual sex with an opposite-sex partner who is under the age of 18. Moreover, in the case of *Geduldig v. Aiello,* the court upheld California law that provided workers disability benefits to all disabled men, but not to women workers disabled by childbirth.

Depriving a woman of her right to inherit property is discrimination of the most conspicuous kind. This is shown by the way some family members and some community leaders openly brag that women have no inheritance rights. In some communities, they are prevented from inheriting their parents' properties and also prevented from inheriting their husband's property if married. Such situation is outright discrimination because a woman is a being created by GOD just like men who are given wide privilege of inheritance. Women have equal rights as men. These rights are contained in the constitution of various countries. The rights contained in the constitution[975] of Nigeria are applicable to men and women equally. Therefore, a woman whose right has been infringed has the right to seek for redress in the courts of law. However, while many women have begun to fight against inequality or discrimination, many others do not

[973] 453 U. S. 57(1981)
[974] 450 U. S. 464 (1981)
[975] 1999 constitution of the Federal Republic of Nigeria as Amended.

fully understand the mechanisms used to discriminate or the legal weapons available to attack them. To some extent, the courts have enabled women to mount a major and systematic attack on discriminatory inheritance practices in Nigeria. [976]

It must be stated, however, that much of the discrimination women have faced, while rooted in custom and stereotypes, was also supported and reinforced by the legal system itself. In the United States, the first women's right convention was called by Elizabeth Cady Stanton and Lucretia Mott at Seneca Falls, New York, in 1848. One of their major concerns was a legal system that profoundly discriminated against women. They detailed these unjust laws in the Declaration of Sentiments adopted by the convention. At that time, the law, they observed, deprived all women of the right to vote, the "first right of a citizen". Laws also prohibited women from engaging in many occupations and professions, including the practice of law.[977] The law was, in fact, harsh to the married woman as in Nigeria. It deprived a married woman of all rights, rendered her 'civilly dead'. The law also gave the husband ownership of his wife's property, including the wages she earned, and full guardianship of their children, including the right to beat her. Technically, the husband owned the wife's personal property outright, which included the right to use or lease it and to keep any rent or profits from it for himself.[978] It must also be mentioned that most of such unjust and inhumane laws are no longer applicable to women whose

[976] In the case of *Mojekwu v. Mojekwu (1997) 7*NWLR at p. 283, the court held the Oli-ekpe custom of Nnewi repugnant to natural justice equity and good conscience.
[977] Bradwell v. Illinois, 83 U.S. 130 (1873).
[978] Susan Deller Ross, Isabelle Katz Pinzler, Deborah A. Ellis an Kary L. Moss, The Right of Women (Illinois: Southern Illino8is University Press) 1993, pp. XIII & XV.

marriage was contracted under the provision of the Marriage Act.[979]

In times past, such discriminatory laws and practices were so prevalent that there appeared to be little chance that courts would invalidate them. Even in the United States, some of such discriminatory laws and practices were said to have still been in existence in the 1970s. Thus, it was stated that:

> Into the 1970s there continued to be laws that mandated a woman could not work extra hours to earn overtime pay when a man could, that a husband should have sole control over property owned jointly with his wife, that a working wife could be denied fringe benefits when a working husband got those benefits automatically, that a young woman was entitled to parental support only until she turned eighteen while a young man could receive such payments until the age of twenty-one, or that a woman had to take her husband's name upon marriage.

It was further stated that:

> Government officials could and did decide that female high-school students had to take homemaking and could not play on the tennis or football team, that a girl who ran away from home was a juvenile delinquent but the boy who did so was a normal, high-spirited kid, and that a poor woman who wanted to enter a government

[979] Laws of the Federation 2004, Cap. M6.

> training program had to wait until all poor men had the chance to do so.[980]

Flowing from the above, it is clear that there has not been equality of the application of laws in most parts of the world. This is because laws have always been applied in favour of men. Moreover, the above situation made United States women activists in the 1970s to seek the Equal Rights Amendment (ERA) to the United States Constitution. The ERA was designed to do away with all sexually discriminatory laws and practices and proclaimed that "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex".[981] The ERA gained political momentum with the rebirth of the feminist movement and was approved by the United States Congress in 1972, but was officially declared dead, after failing by a narrow margin to gain ratification by the necessary thirty-eight states. [982] However, as a result of the pressure of the women's movement in society, the United States Supreme Court ruled that many of the sex discriminatory laws that were not in favour of women are unconstitutional. For example, in the case of *Kirchberg v. Feenstra,*[983] the United States Supreme Court invalidated Louisiana statute which made husband "head and master" with sole control of community property owned jointly with his wife. The United States Supreme Court also invalidated Missouri law that gave all working husbands, but only some working wives, death benefits for their surviving spouse in the

[980] Ibid, pp. XIII - XIV
[981] Susan Deller Ross, Isabelle Katz Pinzler, Deborah A. Ellis an Kary L. Moss, The Right of Women (Illinois: Southern Illino8is University Press) 1993, pp. XIV.
[982] Ibid.
[983] 450 U. S. 455(1981).

case of *Wengler v. Druggists Mutual Insurance Co.* [984] Moreover, in the case of *Stanton v. Stanton,* [985] the United States Supreme Court invalidated Utah law under which parental support was paid for young women only up to the age of 18 but for young men up to the age of 21. The invalidation by the United State Supreme Court of those sex discriminatory laws brought equality of such rights to the United States legal system.

Finally, the Quran established equality between men and women in many places[986] and explained that men and women are created the same as follows: "O mankind! Reverence your guardian – Lord, who created you from a single person, created of like nature, his mate, and from them twain scattered (like seeds) countless men and women". [987] The principle of equality between men and women was further established by the prophet when he said: All people are equal as the teeth of a comb. There is no claim of merit of an Arab over a non-Arab, or a white over a black person, or a male over a female. Only God-fearing person merits preference with God".[988]

The Right of Women to Inheritance in Nigeria

In Nigeria, three different systems of law operate simultaneously in respect of the right of women to inheritance. This legal pluralism is more pronounced in the area of laws regulating family relations and inheritance. Thus, the applicable laws in Nigeria are the English common law and legislations, local

[984] 446 U. S. 142 (1980)
[985] 421 U. S. 7(1975); 429 U. S. 501(1977).
[986] Quran 3:194, 9:71, 48:5, 5:37, 40:30
[987] Quran 4:1
[988] Quran 4:3

statutes, customary and Islamic laws which co-exist. However, women's right to inherit the property of their deceased husband in Nigeria, in the first instance, applies based on the form of marriage contracted by the women and then, with respect to the inheritance rights of women to their parent's property, the customary law to which their parents were subjected will be the applicable law. A woman's inheritance rights to property therefore depends on whether the woman was married under the provisions of the Marriage Act,[989] in which case her right of inheritance will be governed by the provisions of the Matrimonial Causes Act; [990] whether the woman was married under customary law, in which case, her inheritance right will be subject to the customary law that is applicable in the locality from which her husband originated; and whether she was married under Islamic law, in which case her inheritance rights will be subject to Islamic law of succession, [991] and finally, whether the property to be inherited is her parents' property, in which case, the applicable customary law will be the customary law to which her parents were subject.

In another instance, different systems of law will also apply to determine whether a woman can inherit the property of a deceased person. In order to determine the system of law that will be applicable in respect of the property of a deceased that can be inherited by a woman, it will be necessary to find out whether the deceased died testate or intestate, that is whether the deceased wrote a will in his or her lifetime. Where the deceased died

[989] Laws of the Federation 2004, Cap M6.
[990] LFN 2004, Cap. M7
[991] Olugbemi Fatula and Beauty Alloh, An Overview of Succession and Inheritance in Nigeria (Fountain Quarterly Law Journal, Ministry of Justice, Ado Ekiti) p. 116.

intestate, the questions that will come to mind are: Was the deceased a Moslem? Was the deceased subject to customary law? or was the deceased subject to English law, that is statute. The deceased, for example, will be subject to customary law, if he celebrated his or her marriage under customary law as mentioned earlier. The rights of a woman to inheritance shall now be examined below.

Inheritance Rights of Women Married Under the Act

A woman who is married under the provisions of the Act[992] can inherit from her husband even where no will is made by the deceased husband. This is because a woman who is married under the Act[993] is entitled to all the advantages enjoyed by women married under English law. This is irrespective of the culture or tradition of a woman's husband, so far as they were married under the Act. It is taken by the law that the man who married under the Act must have decided that his affairs should be governed by the statute. A woman married under the Act who is therefore subjected to any discriminatory treatment has a right to seek protection of the court against such acts and to apply for a declaration that such acts are illegal.

The effect of a marriage celebrated under the Act is therefore to oust any customary rule of succession and thereby cause the property of the deceased to devolve on his surviving spouse and children, to the exclusion of persons who would have been entitled to inherit under customary law. A woman who married under the Act will be able to inherit her deceased husband's

[992] Marriage Act, LFN 2004, Cap. M6
[993] Ibid.

property because the rule is that English law, as opposed to customary law, will regulate the distribution of her deceased husband's property. In the case of *Cole v. Cole,*[994] the deceased died intestate after contracting a monogamous marriage with the surviving spouse in Sierra Leone. The deceased was survived by the wife who was the defendant in this case and a child who was a lunatic. He was also survived by a brother who sought from the court a declaration that he was the heir of the deceased brother's estate and a trustee of his deceased brother's child under customary law. That his deceased brother's estate must be governed by customary law. It was the claim of the defendant that English law should govern her deceased husband's estate and not customary law, since the monogamous marriage contracted negated the application of customary law of inheritance. It was then held by the court that English law should apply to the property of a deceased who contracted a monogamous marriage and died intestate. However, the property that shall be subject to English law where a deceased dies intestate, and married under the Act, must be such that the deceased could have been able to dispose by will and does not include the undivided share in family property. This is because undivided share of family property the deceased was entitled to can only be governed by customary law of the deceased's spouse. A woman married to a deceased who has such interest in undivided family property cannot inherit such property, whether married under the Act or not. Moreover, the property right of inheritance of a woman married under the Act is limited to the property of her deceased husband that has been specifically partitioned and was vested in

[994] (1898) INCR 15

him during his lifetime. In such a case, the woman will have right of inheritance because of the application of English law, which is applicable to marriages celebrated under the Act.[995] In the case of intestacy, the inheritance rights of a woman married under the Act[996] shall be governed by the Administration of Estate Laws[997] or other local statutes applicable in Nigeria. Where a Nigerian marries under customary or Islamic law, customary or Islamic law applies to the distribution of his or her estate on intestacy. Marriage therefore plays a key role in the determination of property rights in the family context.

Inheritance Rights of Women Married Under Customary Law

In Nigeria, customary law varies from one locality to another. As a result, there is no single customary law that is applicable to the different ethnic localities and to the inheritance rights of women married under customary law. Thus, each locality has its own distinct customary laws that are applicable to the different communities, under which women have no right of inheritance over their deceased husbands' property, except where their deceased husbands made valid wills where property was bequeathed to them. A woman married under customary law can, therefore, inherit under her deceased husband's will.

In the past, women married under most customary laws had no rights of inheritance over their deceased husbands' property. Under most customary law systems, wives were regarded as

[995] Marriage Act, Cap. M6, LFN 2004.
[996] Ibid.
[997] The Administration of Estate Law Cap. 1 Laws of Western Region 1959 applies to states in the former Western Region except where the state has enacted a local equivalent as in Lagos, State which now has the Administration of Estate Law, Cap l, Laws of Lagos State 2003.

property, who ought to be inherited by a member of their deceased husbands' families.[998] Thus it was stated as follows: "In the case of a Yoruba customary law, the wife herself is often regarded as property and she is generally not expected to entertain any expectations vis-à-vis her late husband's property especially in southern Nigeria."[999] Moreover, in the case of *Ogunkoya v. Ogunkoya*,[1000] the Court of Appeal held that wives are regarded as chattels who are inheritable by other members of the family of the deceased under certain conditions.

Moreover, a woman married under customary law was not allowed to inherit her deceased husband's property where the latter dies intestate. This fact is supported by the case of *Akinnubi v. Akinnubi*,[1001] where a man died intestate, that is, without writing a will in his lifetime. His brothers were granted letters of administration and the wife of the deceased applied to the court against the action of the Probate Registrar. It was held by the Supreme Court that a widow could not inherit her deceased husband's property nor could the woman be appointed administratrix of her husband's estate. Furthermore, under Ibo custom, wives were not also allowed to inherit their husband's property. This was because of the customary notion that women are property and are therefore object of inheritance. They were in

[998] This is the position of the Yoruba customary law.
[999] Olugbemi Fatula & Beauty Alloh, "An Overview of Succession and Inheritance, Op. cit. at p. 119; see S. O. Akintola, A. 'A Focus on Female Discrimination and Seclusion in Nigeria," 2004, Ife Juris Review, vol. 1, part 2, at pp. 315 - 317
[1000] Suit No. CA/L/46/88, p. 56 (unreported).
[1001] (1997) 2 NWLR, 144

fact, regarded as strangers. Thus, in the case of *Nazianya v. Okagbue*,[1002] it was stated by the Supreme Court that:

> Under the native law and custom of Onitsha, a widow's possession of her deceased husband's property is not that of a stranger and however long it is, it is not adverse to her husband's family and does not make her owner; she cannot deal with the property without the consent of the family. She cannot by the effluxion of time claim the property as her own, if the family does not give their consent. She has, however, the right to occupy the building or part of it, but this is subject to good behaviour.

Flowing from the above, a widow was not allowed to inherit her deceased husband's property. Her interest in her deceased husband's property was only possessory as was held in the case of *Nzekwu v. Nzekwu* [1003] that, the interest of the widow in her deceases husband's house is possessory and not proprietory, so that she cannot dispose of it. It is important to note however, that the above can no longer be said to be the current law based on the decision of the Supreme Court in the case of *Anekwe v. Nweke,*[1004] where the defendants/appellants, in response to a suit filed by a widow who had six female children, averred that "under Awka native law and custom, a married woman without a male issue cannot contest title to land of her late husband with the male member(s) of her late husband's family." Thankfully, the

[1002] (1963) All NLR 358 S. C.
[1003] (1989) 2 NWLR 373
[1004] (2014) 9 N.W.L.R. (Pt. 1412) 393

Supreme Court was emphatic in its denunciation of that custom. Thus, in the words of Ogunbiyi, JSC, quoted *in extenso*:

> I hasten to add at this point that the custom and practices of Awka people upon which the appellants have relied for their counter claim is hereby outrightly condemned in very strong terms. In other words, a custom of this nature in the 21st century societal setting will only tend to depict the absence of the realities of human civilization. It is punitive, uncivilised and only intended to protect the selfish perpetration of male dominance which is aimed at suppressing the right of the womenfolk in the given society. Any culture that disinherits a daughter from her father's estate or wife from her husband's property...should be punitively and decisively dealt with. The punishment should serve as a deterrent measure and ought to be meted out against the perpetrators of the culture and custom. For a widow of a man to be thrown out of her matrimonial home, where she had lived all her life with her late husband and children, by her late husband's brothers on the ground that she had no male child, is indeed very barbaric, worrying, and flesh skinning... The repulsive nature of the challenged custom is heightened further in the case at hand where the widow of the deceased is sought to be deprived of the very building where her late husband was buried. The condemnation of the appellants' act is in the

> circumstance without any hesitation or apology.[1005]

But the fact remains that, a woman married under customary law may not inherit her deceased husband's property, if she fails to go to court to contest her right to the inheritance of the intestate estate of her deceased husband, where she is being deprived under native law and custom.

Inheritance Rights of Women Married Under Islamic Law

Under Islamic law, a woman that is a wife as well as a daughter can inherit. But a woman can only inherit half of what a male counterpart inherits under Islamic law. Under Islamic law, a wife whose husband died without making a will is entitled to one-quarter of his estate after all debt, funeral expenses and other charges have been settled. Where there are children or grandchildren, the wife's share is reduced to one-eighth and if the wives that survived the deceased are more than one, they will all share the one-quarter or one-eighth if there are children or grandchildren, as the case may be. It has been stated that, a woman who has changed her religion may be disinherited. [1006]

Inheritance Rights of Women to their Parents Property

Women have been deprived from their inheritance under most customary laws operating in Nigeria. For instance, under the rule of primogeniture [1007] which is practised among the Binis of Edo State of Nigeria, the deceased's property vests in the eldest son

[1005] Ibid at pp. 421-422
[1006] Olugbemi Fatula and Beauty Alloh, Op. cit., p. 122, see n.62
[1007] Primogeniture occurs when all the properties which rightly belong to the deceased intestate becomes as a matter of customary law vested in the eldest son.

who had performed all the burial rites and not on the eldest daughter. This is also the position even where the eldest son has women who are far older than him. Another instance is seen in the Northern states of Nigeria where the ultimogeniture[1008] rule is in operation. Under this practice, the youngest son succeeds to the property of the deceased exclusively, whether there are women born by the deceased who are far older than him. The customary practice of primogeniture and ultimogeniture are not fair practices. They are repugnant to natural justice, equity and good conscience and are discriminatory practices against women's inheritance rights in Nigeria. It is also important to mention that the customary rules of primogeniture and ultimogeniture are inconsistent with section 42 of the constitution.[1009] It is, therefore, submitted that the said rules should not be enforced by the courts in view of the fact that they are inconsistent with the provisions of the constitution[1010] of Nigeria.

However, women have inheritance right under some customary laws. For instance, under the Yoruba custom, a woman can inherit from her parents. This is also the situation among the Urhobos and the Itsekiris of Delta State of Nigeria.

Inheritance rights in Ibo land were based on the principle of primogeniture. That is, it is the eldest son known as "Okpala" or "Diokpa" that inherits the deceased father's property even in cases where there were women that were born before the first son. A daughter can however inherit her deceased father's

[1008] ultimogeniture is the practice that enable the youngest son of the deceased to succeed to the property of the deceased exclusively.
[1009] 1999 constitution of the federal Republic of Nigeria as Amended.
[1010] Ibid, section 42, as Amended.

property under Ibo customary law where she agrees to remain unmarried in order to raise sons for her father to save the lineage from extinction. This practice is known as the "nrachi" or Idegbe institution. In such a situation, the daughter, as an "nrachi" or "idegbe", is entitled to inherit both movable and immovable property of her deceased father's estate. Where she bears sons and daughters, it is only her sons that will inherit after her in accordance with the rule of primogeniture. However, the courts have invalidated such customary practices. Women can now inherit their parents' property under customary law through testate and intestate succession. But this right of inheritance is mostly available to women who institute action in court in case of any form of disinheritance caused by any customary law. For instance, the Court of Appeal in the case of *Mojekwu v. Mojekwu*[1011] had to decide whether a custom of the Ibo people known as Oli-ekpe, was a fair custom. Under that custom, a woman, that is, a daughter or a wife, cannot inherit a man's estate; but allows a distant male relation to inherit a deceased's estate in place of a brother to the deceased. In that case, the Oli-ekpe wanted to inherit the estate of the deceased to the exclusion of the daughter of the deceased. It was held by Justice Nikki Tobi (as he then was) that the Oli-ekpe custom is repugnant to natural justice, equity and good conscience. The court of Appeal decision, therefore, grants women inheritance rights to their father's estate in Ibo land. The decision in *Mojekwu's* case has promoted the rights of women to inheritance in Nigeria. The promotion of the rights of women to inheritance in Nigeria is

[1011] (1997) 7 NWLR at p.283

further buttressed by the case of *Mojekwu v. Ejikeme*[1012] which affirmed the decision of the Court of Appeal that a female child can inherit from a deceased father's estate in Ibo land. The court stated as follows:

> By section 42(1) of the Constitution of the Federal Republic of Nigeria, 1999, 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 either expressly by, or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria or other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject. In the instant case, the fact that the appellants were born out of wedlock was immaterial; that cannot be used against them in inheriting the estate of the deceased. As blood relations, the property of the deceased should devolve on the appellants. Also, the Nnewi custom relied upon by the respondents, which permitted them to inherit the estate of the deceased merely because he had no male child surviving him, is repugnant to natural justice, equity and good conscience. Such a custom clearly discriminated against Virginia, the daughter of the deceased and is therefore

[1012] (2000)5 NWLR (pt. 657) p. 402

> unconstitutional in the light of the provisions of section 42 of the Constitution of the Federal Republic of Nigeria, 1999.

The above decision is a major advancement of the rights of women to inheritance in Nigeria.

Conclusion and Recommendations

This paper has examined equality rights and the rights of women to inheritance in Nigeria. It is hereby submitted that Nigerian courts should establish more precedents in re-engineering laws that relate to women's inheritance rights in Nigeria. On the part of Nigerian women, they must be determined to seek legal redress to address cases of disinheritance and discrimination against them. It is submitted that customary laws that deny women the right to inherit their deceased husband's property or daughters the right to inherit their parents property should be discarded by all the communities in Nigeria, as such customary practices are incompatible with the constitution[1013] and are repugnant to natural justice, equity and good conscience.

This article concludes that sex discrimination is still a legally tolerated norm under Nigerian customary laws and that it is only when more women are elected as legislators that women can be assured of laws that will truly reflect their interests. The achievement of such a goal may finally give to women the equal status in society that was hoped for in 1848 by Elizabeth Cady Stanton and Lucretia Mott.

The article therefore recommends the following:

[1013] 1999 Constitution of the Federal Republic of Nigeria, as amended.

(i) The legislature should pass new laws to outlaw sex discrimination in all areas of law.

(ii) Old laws should be amended to eliminate sex discriminatory provisions in our laws.

(iii) Government agencies should seriously enforce laws against discrimination on women.

(iv) Women activists in Nigeria should seek Equal Rights Amendment (ERA) to the 1999 Constitution (as amended).

(v) Women should strive to increase their representation on all of the nation's courts and legislative bodies.