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Discrimination Against Women In Nigeria: Moving From Rhetoric's To Implementation

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ABSTRACT

Discrimination against women in Nigeria has become synonymous with a recurring decimal which the society almost see nothing abnormal with it in spite of various legislations both at the domestic, regional and international levels based on sex. It adopts a theoretical approach in the discourse. The paper attempts conceptual basis for the terms. Discrimination against women, women's Right. It examined the rights of women as provided for by the 1999 constitution and other legislations and the challenges to their implementations. It concludes by acknowledging that the 1999 constitution and other legislations contains elegant provisions targeted at promoting the rights of women not to be discriminated against. It also compared Nigeria's position with that of her Kenya counterpart. However, the challenges stop their enforcement. It therefore recommended the amendment of the 1999 constitution to remove the dichotomy between justiciable civil and political rights (found in chapter iv) on one hand and the non-justiciable economic, social and cultural economic. Social and cultural rights found in chapter II) in the other hand to reflect what is obtainable in Kenya, where there is holistic provision for the justifiability of all rights. S. 42 of the 1999 constitution be amended to accommodate the provision of article 27 of Kenya constitution women and men having Equal Right and treatment in every sphere of life. The constitution be amended to include that any treaty or Convention ratified by Nigeria shall form part of the law of Nigeria. Furthermore, very impactful and compulsory educational opportunity be given to all Nigerians and especially the women to get them informed of their rights.

Keywords: Discrimination, Women Rights, Rhetorics and Implementation in Nigeria.

1. INTRODUCTION

At both National, Regional and international levels, there are very interesting plethora of legislations that are made to guide against discrimination against women. It is also shown that it is not a different ball game in Nigeria as there are very many legislations including the constitution itself that uphold equality of both sexes and expressly outlawed as the Nigerian constitution and other ancillary laws provide for non-discrimination and equality between the sexes; in reality, the gap between law and practice is quite wide.

The Nigerian constitution has outlawed discrimination in Nigeria¹ which is a form of inequality;

S. 42(1) A citizen of Nigeria of a particular community, ethnic group, and place of origin sex, religion or political opinion shall not, by reason only that he is such a person.

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¹ S. 42 CFRN 1999

(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, to disabilities or restrictions to which to which citizens of Nigeria or other communities, ethnic groups, places of origin, sex, religion or political opinion are not made subject.

In Nigeria, the women are protected against discrimination by a lot of laws, both at the national, regional and international levels. These protection in favour of women internationally and locally are as a result of Nigeria been signatories to some conventions.

Looking at the large body of laws and gender policies put in place in Nigeria regarding women's rights, at least theoretically and on the surface, it can be said that Nigerian women are free and heavily opportune to realize themselves and that only a few stumbling blocks remain in their path. On the contrary, a deep survey will however reveal that appearances are deceptive and that when it comes to women's human rights, protection is different from implementation. We therefore intend to highlight some of the areas, where the laws have spoken very loudly.

2. Right of women to inherit property

The position of women regarding their right to inherit their late father's properties was not a certain one before the year, 2024. The court in other to give the women the right of place and make them equal in terms of inheriting their late father's properties like their male counterpart does had this to say in the case of *Ukeze & Anor v. Ukeje*²;

No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from the estate of her late father's Estate.

Consequently, the Igbo customary law which disentitles a female child from partaking, in the sharing of her deceased father's estate is in breach of section 42 (1) and (2) of the constitution, a fundamental right provision guaranteed to every Nigerian. The said discriminatory customary law is void as it conflicts with section 42(1) and (2) of the constitution.

With the above judgment, it follows that females are now at the same level with their male counterparts concerning the inheritance of their late father's estate.

The Rivers State House of Assembly has equally in other to guide against discrimination against women and to ensure the right of women to share in family property and to also be a co-owner of family property³ which is in pari material with a law also made by the Cross Rivers State on the same subject matter of inheritance.⁴

3. Right of women to marry any man of their choice

The female child before now was not free to choose a man to marry and when to do so. Then, marriage was more or less a decision of the parents, and regulated by the customary practices practiced in a particular area. With the enactment of the Child Right Act⁵, this act provided that for a female child to get married, she must be up to eighteen (18) years. By this eighteen years of age, the female child would be in a position to choose who to marry and when to marry. With this same age, the female child would be able to give her consent to a marriage without which, it will constitute a violation of marriage rights as led down in the case of *Osamwonyi v. Osamwonyi*.⁶

4. Right to Education

This right to education has gained recognition since over eight decades ago. The recognition was as a result of the Universal Declaration on Human Rights (UDHR) in 1948.

² (2014) LPELR – 22724 (SC)

³ Rivers State Prohibition of The Curtailment of Women's Right to Share in Family Property Law No. 2 of 2022.

⁴ Cross River State Female Persons Inheritance Law No.10, 2007.

⁵ S. 48 CRA (2003)

⁶ (1972) LPELR (SC)

Educating a female increases the growth rate and encourages the independence of the girl child and reduces any limitation that the society may attach to her.

5. Right of Women to own properties

Although no law in Nigeria precludes the female or any person from owning properties (immovable) anywhere in Nigeria. The constitution of Federal Republic of Nigeria 1999 (as amended) has specifically provided for this right of everyone including the female to own immovable properties anywhere in the country⁷; “Subject to the provision of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria”.

With the immediate above provision of the 1999 constitution of Federal Republic of Nigeria (as amended), it has become a norm that no one can deny anyone including the female from owning immovable property in anywhere in the country. In other to add flesh to the provision of the constitution, the court held in the case of *Patience Ohoyone v. Daniel Oghoyone*,⁸ that the claimant and respondent had equal share in the property as well as joint car business operated by both of them.

6. Discrimination against women in Kenya

The introductory point had been made and established that the suffering of women all over the world has been one of anguish and deprivations ending up in unmitigated discriminations and denials. All nations of the world all, so to speak, are guilty of this wicked infraction and gender insensitive except that while some nations are making serious effort at cutting down if not eliminating the disgusting practice through taking constitutional and affirmative action, others appear not interested and insensitive to the need to promote equality of all sexes and eliminate discrimination against women.

In Nigeria, the practice has been that of uncoordinated protection and implementation regime for women’s right either under the 1999 constitution as amended and other allied laws made in that regard. This dismal record existed despite the fact that the principle of equality of all human beings and the omnibus principle of non-discrimination as a result of sex are all engraved in the International Bill of Rights and its Optimal Protocols, The African Charter and the Maputo Protocol on the Rights of Women all apply to Nigeria. These set of international instruments also apply in Kenya just in the same way they apply to Nigeria.

7. Women and Women’s Right in Kenya Pre-2010 Constitution

It must be stated abinitio that the place of women’s right in Kenya pre – 2010 Kenya Constitution is pretty much akin to that of the experience of women in Nigeria nay Africa as a whole-dehumanized, marginalized, unprotected and openly discriminated against. In theory, women have never been openly excluded from the concept of human rights but in practice, prior to the 2010 Kenya constitution, the Kenya woman was subjected to uncountable economic, political, social and legal buriers. In a brilliant articulation, a Kenya female lawyer and gender activist Kariuka,⁹ had stated that in pre-colonial Kenya, before the British colonized Kenya in 1980, Kenya communities were governed by councils of elders, consisting mainly of elderly men in the community. The role of women and girls was to farm the family land, harvest, care for the children, maintain the homestead and tend for their husbands. Girls were socialized to be home makers and cultivates the farm. Women were economically empowered as they sold their farm produce in the market. However, in some communities, decisions affecting the community were left for the council of elders and the men in the community with the emergence of colonial rule in Kenya from 1890 to 1963. Women were affected by the land redistribution experienced by most Africans. However, women appear to have been more personally affected by this land alienation. This is because as women lost access to control of the land, they became more economically dependent on men. This led to an intensification of domestic patriarchy, therefore, led by colonial social institutions. Land alienation reduced the economic independence enjoyed by women by compromising their economic productivity.

⁷ Section 43 CFRN 1999

⁸ (1976) FRN 78

⁹ Kariuka, C. G., “Women participation in the Kenyan society”, the African executive, issue 296 December 22 – 28, 2010, Pp. 1-2. <http://africaexecuive.com>> accessed 5/8/24.

As colonialism continued in Africa, the perceived importance of female agricultural to the household diminished as their vital role in food production was overshadowed by the more lucrative male. Controlled (as crop cultivation. She continued by asserting that colonialism instilled a feeling of superiority over women in Kenya then to the extent that after independence in 1963, in post-colonial Kenya, a patriarchal order has emerged, where the male dominated the female this order suppresses women, restricts the full development of their potential, prevents them from exercising them to produce and usurps their right to self-determination.

Under the 1963 independent constitution of Kenya, the position of women and protection of their specific rights were not top priority. The independent constitution of Kenya provided for only the first generation rights known as civil and political rights.¹⁰

These rights were general in nature and did not specifically include women's cluster of rights. This constitution was extremely limited when it came to protection of women's rights as human rights with this state of affairs, lack of opportunities for political participation, improper education, early marriage, domestic violence and abuse were the order of the day until 2010.¹¹ As will be seen shortly, the Kenyan constitution 2010 marked a turning point as it is said to have "brought significant and constitutionally assured change in the status of Kenya women. It led to a rise in female consciousness as women began to speak up and say 'no' to continued disrespect. Women today refuse to accept injustice and strive for gender equality.¹²

Status of women and women's Right under the and post 2010 constitution.

Generally, chapter 4 of Kenya Constitution 2010 contains the "Bill of Rights" which is a comprehensive model enactment containing a range of civil, economic, social and cultural rights unlike the earlier 1963 constitution of Kenya rights. The Kenya constitution 2010 made elaborate and comprehensive provisions for assortment of human rights to be enjoyed equally by all Kenyans irrespective of gender. Specifically, article 27 of the Kenya constitution 2010 provides for equality and freedom from discrimination similar to the general import of section 42 of the 1999 constitution of Nigeria as amended. Significantly and in a more detailed manner, the said article 27 of Kenya constitution 2010 provides as follows:-

1. Every person is equal before the law and has equal protection and equal benefit of the law.
2. Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
3. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
4. The state shall not discriminate directly or indirectly against any person on the ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
5. A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).
6. To give full effect to the realization of the rights guaranteed under the article, the state shall take legislative and other measures, including affirmative action programs and policies, designed to redress any disadvantage suffered by individuals or groups because of past discrimination.
7. Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need.
8. In addition to the measures completed in clause (6), the state shall take legislative and other measures to implement the principle that not more than two-thirds of the member's electives or appointive bodies shall be the same gender.

Notwithstanding that it can be gleaned from the provisions of article 27(3) above that "women and men have the right to equal treatment, including the right to equal opportunities in political, economic,

¹⁰ 70 – 86 of the 1963 independence constitution of Kenya

¹¹ Foundation for sustainable development, "Gender equity issues in Kenya", <http://www.tsdinternation.org/country/kenya/weissues>> accessed 7/8/24

¹² Ibid

cultural, and social spheres”, the following are notable additional safeguards under the 2010 Kenya constitution namely:-

- a) Women’s right are an integral part of Kenya’s democratic state and their constitutionally entrenched rights are framework work social, economic and cultural policies. The purpose of this constitutional gains on the side of the women is to preserve their dignity and to promote social justice. Their application,¹³ implementation,¹⁴ and enforcement¹⁵ are provided for under the Kenya constitution 2010. Thus, women’s right is justiciable and enforceable.
- b) Generally, under article 14(1), women are able to pass on citizenship to their children regardless of whether or not they are married to Kenya.
- c) Under article 45(3), parties to a marriage are entitle to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.
- d) Under the article 53(1), parental responsibility shall be shared between parent regardless of their marital status.
- e) Article 60(1)(f) eliminates gender discrimination in relation to land and property and gives everyone including women the right to inheritance and unbiased access to land.
- f) Article 68(c)(iii) provides that parliament shall enact legislation for the protection of matrimonial property with special interest in the matrimonial home during, and upon the termination of the marriage.
- g) Article 81(b) provides that in the electoral system, not more than two-thirds of members of the elective public bodies shall be of the same gender. This means that one third requirement for either gender in elective or appointive bodies give women of Kenya at least 1/3 minimum in elective public bodies. The supreme in Kenya recently held that this particular right for women is progressive in nature. This is in addition to the express provision of article 27(8) that the state shall take legislative and other measures to implement the principle that not more than two-third of the members of elective or appointive bodies shall be of the same gender.
- h) Article 91(f) provides that gender equality is maintained in political parties providing a basic requirement for political parties as amongst other to respect and promote gender equality. Under article 27(3), the constitution ensures that women and men will have the right to equal treatment and opportunities in political, economic, cultural and social spheres without discrimination. The new constitution accords the right to health including reproductive health to all.
- i) With respect to post 2010 developments of women’s rights in Kenya, aside the 2010 Kenya constitutional developments, various legislations that complement support for the rights of women have been adopted as law including:
 - (a) The Alcoholic Drinks Control Act 2010¹⁶ which provides for the control of the of production, sale and use of alcoholic drinks in other to inform and educate the public on the harmful health, economic and social consequences of the consumption of alcoholic drinks. In parts of the country, men who engage in daily uncontrolled alcohol consumption absconded on their family, marital and parental duties. Women suffered the extremes of these effects because of the unproductive nature of their men.
 - (b) The prohibition of Female General Mutilation Act 2011,¹⁷ which prohibits the practice of female genital mutilation, to safeguard against violation of a person’s mental or physical integrity through the practice of female genital mutilation.

¹³ Mugambi M., “Constitutional Gains by Kenyan Woman”,
<http://www.academia.edu/34080/contitutionalgainsforkenyanwoman>> accessed 7/8/24

¹⁴ Article 20

¹⁵ Article 21

¹⁶ No. 11 2010, <http://kenyalaw.org>> accessed 7/8/24

¹⁷ No. 32 of 2011

- (c) The Breast Milk Substitutes (Regulation and Control) Act 2012 which provides for appropriate marketing and distribution of breast milk substitutes, so as to provide for safe and adequate nutrition for infants through promotion of breast feeding and proper use of breast milk substitute.
- (d) There is also the Cancer Prevention and Control Act 2012¹⁸, whose object and purpose inter alia is to extend to every person with cancer full protection of his or her human rights and civil liberties but guaranteeing rights to privacy, outlawing discrimination and ensuring the provision of basic health and social services.¹⁹

8. Comparative Advantages of Kenya Position on women's Rights over the Nigerian Practice

Historically and politically, Nigeria and Kenya share a common fate being that they were ruled by the same colonial master (Britain). However, Nigeria gained political independence in 1960 while Kenya gained political independence in 1963. The both countries are members of the United Nation's Organization and as well as the African Union (AU) and this goes to show that all the Human Rights Treaties, Conventions, Declarations, and Protocols of these bodies bind the both Nigeria and her counterpart Kenya. The 1999 Nigerian Constitution in operation which replaced the 1979 Constitution while the current constitution in operation in Kenya is the 2010 which replaced the 1963 independence Constitution of Kenya.

9. CONCLUSION

This paper has considered discrimination against women in Nigeria by examining the provisions of domestic and international legislations. The first move in eliminating discrimination against women in Nigeria has been put out by ensuring these laws which guide against discrimination are put in place. The next step in the implementation of these laws which is the main issue in Nigeria.

Equality of women with their male counterpart is a very important aspect of the legal framework, showing the nation's commitment to ensuring an egalitarian system. The empowerment of the female does not only agree with international standards but also add to enlarged goal of encouraging a fair society that stands as a guidance of fairness, equity, and respect for human dignity.

As the country progress, it becomes increasingly important to consolidate these guide against discrimination against women remodeling them to the changing dynamics of society, and reinforcing the foundation of a legal system that truly embodies the principles of equality for all gender.

10. RECOMMENDATIONS

1. Our constitution should be amended to remove the dichotomy between justiciable civil and political rights (found in chapter iv) on one hand and the non-justiciable economic, social and cultural rights/found in chapter II) on the other hand to reflect what is obtainable in Kenya, where there is holistic provision for the justifiability of all the rights be the civil, political, economic, social and cultural rights.
2. Section 42 of Nigerian Constitution should be amended to accommodate the provision in article 27 of Kenya Constitution 2010;
 - (i) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
3. Section 25(1)(b) of the 1999 Constitution of Nigeria should be amended to reflect article 14(i) of Kenya Constitution 2010, which allowed women to transfer citizenship to their children regardless of whether or not they are married to Kenyans.
4. A legislation which will eliminate gender discrimination in relation to land and property and give both male and female the right to inheritance and unbiased access to land.
5. The constitution should be amended to include that any Treaty or Convention ratified by Nigeria shall form part of the law of Nigeria. This will replace section 12(1) of 1999 Constitution as amended.

¹⁸ No. 15 of 2012

¹⁹ Kariuki, C. G., "Women participation in Kenyan Society", the African executive, issue 296 December 22 <http://africanexecutive.com>> accessed 5/8/24