

WOMEN'S RIGHT OF INHERITANCE UNDER THE IGBO CULTURE OF PRIMOGENITOR: A RE-APPRAISAL

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ABSTRACT

The right of inheritance for women in Igbo land is marked by a chequered history. In many cultures across the length and breadth of Nigeria, with exceptions perhaps in some Moslem North, the story is the same. Igbo culture adopts a patrilineal system of contracting marriage. It is a system whereby the man perpetuates the family's lineage, and, is considered the legitimate heir to the family's property. To begin a marriage process, he goes in search of a woman of his choice, pays her bride price, and takes her home. By this she forfeits any right of inheritance. This article will lay bare the harsh cultural conditions under which Igbo women are subjected, and, which affect them negatively. It will equally examine the interplay of legal intervention efforts made to free women from this burden imposed upon them by Igbo customary laws limiting their right of inheritance.

Keywords: Igbo Culture, Womanhood, Human Rights, Inheritance, Legal Interventions.

Introduction

We live in a world of evolutionary continuum evident in the dynamism of human culture. This dynamism is not only captured in the quantitative sense but also in its qualitative character. Whatever qualitative change humanity is witnessing from its cultural development must be in tandem with the dignity that the creator accords it. The use of the concept of humanity or man here is taken in its generic sense to include the sexes, man and woman. Culture, which embraces the overall activity of man and woman in their temporal dealings, is an important matrix against which their dignity is measured in terms of what promotes genuine human growth and well being. This calls for an occasional value overhauling exercise of this same culture. Of course, this will ensure that the culture is at the service of man and not the other way round. The values embedded in a culture are woven into the tapestry of its socio-cultural norms and traditions that immensely help to shape the lives of the people.

It is commonplace in the study of the development of human cultures to see where a certain community entertains some cultural practices considered below human dignity in other communities. Humanity must rise to the occasion of taking responsibility of maintaining high standard of cultural values with badges of universality. Ever since the declaration of the tenets of human rights that hoisted the banner over the protection of life, liberty and the pursuit of happiness of all peoples, human rights list is on the increase. Most conservative societies are gaining more and more insight, and are considering re-evaluating their once rigid value systems for a more quality existence. This development is nevertheless gradual. Most cultures are still grappling with human inequality, biases, preconceptions, and anomalies embedded in the very fabric of the human cultures that have regulated relations between peoples.

Casting a cursory glance down the memory lane, philosophers such as Aristotle and Darwin have supported the mistaken assumption that pictured women as inferior to men. Women have been associated with the characters of evil and criminality. The Christian Bible that was written solely by men poorly represented women. In the second creation account, Eve is reported to have come from the side of Adam, and this presents her as a man's subordinate. Some biblical commentators and theologians who literally interpret sacred scripture see women as a property to be possessed and enjoyed by men. It is even contemplated that the Christian marriage arrangement along patrilineal lines in Western culture is infested with this cultural mentality of subjugating women. The same cultural tradition of the West, Dennard (2006, 428) argues, pressured women into changing their names to those of their husbands. However Onwukwe (2018, 20-26, 44-47) has endeavored to redeem the status of women by blaming it on the misguided interpretations of sacred scripture. In fact, the patrilineal marriage according to Dobie (2012, 102) is the problem as it "creates imbalance of power that marginalizes women and their work." According to Dobie (2012, 102), despite efforts made by some influential feminists Wollstonecraft and Virginia in their writings to twist this pendulum of psychological and sociological degradation of women for the redemption of their fate, their plight still thrives and persists.

However, women are not relenting. They follow the rational way of deconstructing those crazy ideas behind such cultural practices that have pushed women to the sidelines. She maintains that profiling of women are evil, criminal, characterless and are products of societal bias and undeveloped mind. The Igbo have rigid cultural practices that marginalize women in respect of their right of inheritance and succession. We shall approach our topic on the women's right of inheritance under the Igbo culture of primogenitor from the following perspectives: First and foremost, we will begin with the conceptual clarification. Sequel to this will be the conceptual framework. Next, we shall inquire about what customary law is. Then the examination of the nature of Igbo inheritance right over property and succession will follow. We shall then examine Igbo women's right of inheritance in Nigeria. This will assess the much progress made so far in granting Igbo women the right to own property of their intestate in the light of Nigerian Constitution. Finally, we shall wrap up our discussion with a brief excursus into the import of Human Rights as a defense agency for women's right of inheritance. We shall then conclude our reflection.

1. Conceptual Clarification

Igbo culture is laden with rich cultural concepts embedded in their proverbs and life stories. These channels are seen as a gateway to understanding the way the people see and interpret the world around them. The development of their histories, social norms, customs and traditions could be gleamed therefrom. These concepts will help to enlighten us on the Igbo world, their beliefs, and practices.

a) The concept of Ana-ebu-ala-ebu (is land movable)? Or anaghi-ebu-ala-ebu (land is not movable or transferable): What these concepts are saying is that when a woman marries, she leaves her parents' family and goes to establish a new home with a man elsewhere. On her departure, she does not carry any family land. The argument here is that, land ownership belongs properly to men who are as immovable as the land itself, since they stay put in the family to perpetuate the lineage. Formerly, when a married woman dies, her remains were usually brought back to her parents' house for burial. It required only the generosity of her

surviving brothers or uncles to designate a little portion of land for her burial. Granted that a woman does not own land, the customary law provides that she must be given some portion of land for farming purposes.

b) Matrilineal system: The word, 'matrilineal' derives from 'mater' and 'lineal' meaning mother and line respectively. It means simply from the mother's line. It is a system of marriage that traces its kinship or inheritance rights to the mother in the matrimonial relations between a man and a woman. In this system it is the male partner that is at the beck and call of the woman as a woman is to the man in a patrilineal relationship. The Igbo do not identify with this system.

c) Patrilineal system: The component words are 'pater' and 'lineal' meaning father and line. Here the kinship or the inheritance right is traced to the man. The man is practically everything. The woman claims nothing for herself as of right. The culture makes a woman subordinate to man. Here the man inherits everything including the woman. The Igbo culture rests on this fundament.

d) Monogamy: It is a marriage alliance between a man and a woman. This matrimonial relationship is obtainable in most Christian cultures. The Igbo culture was favorably disposed towards this sort of marriage arrangement. In this marriage relationship the woman changes her family name to that of the man. This implicates the forfeiture of her identity, symbolized by the change of name, and by extension the negation of her right of inheritance. Traditionally by the Igbo, a widow in a monogamous relationship does not lay claim to any property over her late husband's estate. However, her sons have right of inheritance. She could only hold those properties in trust for her children.

e) Polygamy: This is a marriage relationship involving at least three persons. The number could be more. In other words a man may decide to marry two or more spouses. It is the opposite of monogamy. Polygamy is recognized in Nigeria. The Igbo is no exception. Whether by monogamy or polygamy the system of primogeniture is the practice. In this system only the male members of a family have the exclusive right of inheritance. But where no males are present, the property of the intestate may be distributed to the number of wives who hold them in trust for their children.

f) Inheritance: In Igbo cultural setup, family property is passed on from one generation to the next, usually from the older parents as donors to their children as heirs only after the death of the older generation. The problem here is the bride price. The bride price concretely quantifies the value of a woman such that after her would-be groom pays the bride price, she is brought home as a commodity or property for the man's use as he pleases. By the Igbo, the manner of inheriting a property is peculiarly different. A story, which circulates among the Igbo, would help to illustrate how inheritance works in familial relationships. A certain married Igbo woman sued for divorce, which was ratified by the customary law. The customary law then permits the sharing of the properties between the spouses. Thus, the spouses take turns to take what is due to each. In the end it is the man's turn. The scenario turns out to be somewhat dramatic. The man extends his right hand towards the divorcing wife, grabbed her by the right hand, and pulled her to himself, and said, "you are mine, and you belong to me." The

lesson of the story is that the Igbo see a woman as a property. The upshot is that any thought of proprietary right for a woman or widow in Igbo land is ruled out.

2. Conceptual Framework

It seems that almost all human societies in their cultural practices are united against women. This ill disposition towards women ranges from oppression to marginalization and to outright deprivation, thus placing them at the beck and call of their male counterpart. This whole scenario of discrimination is mostly displayed practically in all patriarchal and/or patrilineal cultures. The term of patriarchy is the evil agent, which operates through the potent force of domination of men over women, whose nature is characterized as weak to be exploited. The emancipation of women through the ideological movement of feminism has struggled to rescue women from the clutches of men, in their quest to create an enabling world for women to live in and actualize their potentials. Patriarchism or its twin patrilinealism may be regarded as the worst form of institutionalized ideology with the highest degree of abuse of power ever entrenched in human culture. Central to this system is the headship of men. It is a truism that women have long been enslaved culturally, socially, economically and politically. But women are not giving a damn. The Igbo women's struggle for emancipation in Nigeria can be traced to Aba women's riot of 1929, which so far has yielded the most desired result in the unprecedented declaration of women's right of inheritance in the Ukeje Supreme Court judgment that abolished the Igbo custom of primogeniture, which according to A. S (2012, 2) established that women have equal share in the intestate's estate of their father.

3. What is Customary Law?

Customary law is looked upon as that law which captures the norms, traditions and rules of behavior of a given people. It is informed by their worldview, beliefs, philosophies, and value systems of the people. Olubor (2024) defined customary law as the organic or living law of the indigenous people of Nigeria regulating their lives and transactions. It is organic in that it is not static. It is regulatory in that it controls the lives and transaction of the community subject to it. It is said that custom is a mirror of the culture of the people. I would say that customary law goes further and imports justice to the lives of all those subject to it.

The passage is clear that the customary law relates to the customs and traditions of the people, which control their lives. By being dynamic, culture can bring about some positive changes to the community through proper customary law reforms to meet the ever-changing social conditions and circumstances of the people. The validity of customary laws rests on their capacity to promote good public policy, and to the extent they are agreeable to natural justice and good conscience. The reality is that customary law is yet to meet these expectations. When a woman is given some consideration of receiving some portion of the intestate's estate, she exercises not the proprietary right but possessory. We shall now have a bird's eye view of the Igbo inheritance right over customary land and succession.

4. Igbo Inheritance Right over Property and Succession

We begin with a quote on the inheritance of the customary land law by Azinge (2013, 219): Customary land which comprises communal land and family land cannot be inherited unless – (a) partitioned among the constituent families in the community in the case of communal land; or (b) partitioned among the constituent male members of the family in the case of a family.

There are varieties of properties to be shared or inherited ranging from that which is tangible or intangible or something of value to something deemed movable or immovable. Here we are concerned about how a property of land is shared among family members where a widow supposedly has a special place. The presence of women notwithstanding, customary law arrogates to male members of a family the exclusive right of inheriting a family land. Azinge (2013, 219) further states:

The inheritance of land by male children is prevalent in the communities of the South-South, South-East, (italics, my emphasis) and South-West. However, an offshoot of this practice is that in communities in the South-East, South-South geopolitical zones, women cannot inherit land... Lands are strictly owned by the male members of the society.

The Igbo belong to the Southeast geo-political zone in Nigeria. In this geo-political zone the begetting of male children is highly prized; a married woman 'has not yet arrived' without a male issue. The reason is simple: It is the male presence in any family that perpetuates the family lineage and guarantees that whatever belongs to the family by way of property is not lost to others. Thus, sharing of land is distributed among male members of the family. However, a woman who buys land deserves the right of proprietorship over the said land. According to Nwogu (2001, 401), in Igbo primogeniture rule, the customary law reserves certain privileges to the first-born son.

The cardinal principle of customary law of succession in Igboland is primogeniture i.e., succession by the first born of the male line. Under the principle of primogeniture, succession is through the eldest male in the family who is known as 'Okpala' 'Diokpala' or 'Diokpa.' In the case of the nuclear family, succession is through the eldest male child of the deceased. With regard to the extended family, succession is through the eldest son of the ancestor and so on in that line irrespective of the fact that the 'Okpala' may in fact be junior in age to other members of the extended family. On the death of the founder of a family, his eldest son succeeds him as the head of the family. A female cannot be the family head no matter her seniority in the family.

Thus, in the event of the death of his father, the eldest son enjoys certain privileges amongst other sons in succession to the intestate's real estate. One such privilege as testified by Nwogu (2001, 402-408) is the right over the "late father's dwelling house and the immediate surrounding compound." Similarly, the eldest son takes part in the sharing of other lands with the other male family members. However, a widow can hold brief the land belonging to her late husband in trust for her children. Such a land may revert to the extended living family male members when the generation of the widow is no more. This happens if the widow has no male child. The intention of a man may be respected in the instance, whereby before he dies, he gifts land to his female child for purposes of procreating and perpetuating the family lineage. Certain customs may permit such practices. But the female child is expected to undergo some ritual processes in order to enjoy the proprietorship of the land. Further Nwogu (2001, 97-98) stipulates that whatever property a woman can own is consequent upon the determination of a male dominated culture. In a polygamous marriage, property is shared either among the wives or sons of the deceased. But the sharing is always fraught with problems because of the competitive interests amongst the parties. It gets more complicated when the man dies without leaving a will, or if he writes a will, shows some favoritism to the

first two or three wives to the disadvantage of other wives and their children. Generally, ownership of property is a deserving right to all including women. However, Azinge (2013, 97-98) indicates that what property a woman can own depends on the relative determination by different communities across Igboland. Ukagba, Des-Obi, and Nwankwor substantiate as follows: ... after the demise of a man, his wife is kicked out as a chicken and everything she ever worked with her husband is taken, whether she had children or not is not the issue. The situation is heart-breaking, pathetic, dehumanizing and worrisome because the trend has permeated the various facets of the societal life.

It is a laid down rule in most cultures of Igboland that a woman is part of what a man should inherit. This much we have said in our explication of the term of inheritance. The custom stipulates that a widow should, or rather must, marry her dead husband's brother. However, cultural development has shown that this sort of marriage practice is on the decline due to Christian influence. Because a widow is part of what constitutes an inheritance value, she loses ipso facto the right of inheritance. Because a woman does not take part in land sharing, and does not inherit any land, she must be ignorant of land boundaries, and, hence, should not engage in land disputes or be among those to settle the same. Although the female child does not inherit her father's estate, she is adequately taken care of so long as she is under the custodian of the inheritor, and, who must shoulder this responsibility in regard to the daughter before she marries or attains financial independence. But this sounds like a makeshift responsibility. On a serious note, it requires the vigilance of an appropriate authority to safeguard women's right of inheritance.

5. Igbo Women's Right of Inheritance in Nigeria

Efforts at improving the lot of suffering women under a male dominated culture in Igboland have long since begun. The judicial reforms of customary laws in Nigeria in respect of the concerns of women have hitherto not received much of federal support. Gratifyingly, some States were in the forefront in addressing this perennial problem that touches on women's right of inheritance. For instance, the Eastern Province drafted a Bill on the Administration of Estates in 1965, but such initiative was brought to an abrupt end by reason of the coup of January of 1966, and the civil war that followed afterward. Many years later, several customary law reforms commissions were set up by the States of Jigawa, Akwa Ibom, Edo, Abia and Lagos. Ekiti State took a bold step to sign a law reform Bill in 2014. According to Diala (2014, 633-654), despite these efforts, there was no legislation in place to bring the primogeniture rule to an end. As observed earlier, the reforms efforts at the federal level were gradual. For instance, at the Supreme Court case between *Nezianya and Anor* and *Okagbue and Ors* in 1963, the Court concluded that a widow has the right to inherit her husband's house, but that she was not permitted to either dispose or sell the property. Invariably, this judgment still gave deference to the Igbo primogeniture rule (*Oli-ekpe*). In 1997, the Supreme Court recorded another feather of progress in its efforts at reforming customary law of inheritance rights. In the case with the titled, *LPELR-13777 (CA)*, the Honourable Judge of the Court of Appeal *Niki Tobi* described the customary law of inheritance as discriminatory, repugnant to equity, and unconstitutional. He merely condemned without legislating. Only recently, the Nigerian judiciary made history by pronouncing and affirming women's right of inheritance in Nigeria. In the judgment of the Supreme Court in the case of *Ukeje and Anor v Ukeje* (2024) *LPELR-22724 (SC)*, the stand of the Honourable Judge Lord Olabode Rhodes-Vivour JSC was clear and unequivocal. Ayansi (2022) gives us bill of the law:

No matter the circumstances of the birth of the female child, such a child is entitled to an inheritance from 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 rights provision guaranteed to every Nigerian. The said discriminatory customary law is void as it conflicts with Section 42 (1) and (2) of the Constitution.

The bill grants the female gender the right to share in the intestate's estate as a co-heir with her male counterpart. It exposes the customary law as discriminatory and in conflict with the Nigerian Constitution. This judgment is considered a landmark decision. It establishes that both sexes have now equal right to property sharing of family estate. Thus, the age-long tradition and custom, which forbids a female child from inheriting her late father's estate is voided. Of course, this must have fulfilled the aspirations of women who feel gravely cheated in the scheme of things in respect of property sharing of their father's estate as legitimate daughters. What needs to be done next is to let this law find full expression in all the various States of the Federation. It may be compared to a high-tension wire that must be stepped down for relevance at the grassroots. However, mixed reactions trailed the judgment as some Igbo personalities expressed their sentiments of likes and dislikes about the judgment. Surprisingly, Okoli, Oda and Nwaiwu (2020) report that a good many welcomed the decision, arguing that children are children irrespective of their sexes, male or female. Interestingly, some States across Nigeria took concrete steps to bring the law into effect. According to Ugwu (2022), Abia State government led by the then Governor Okezie Ikpeazu was among the States to sign the law into effect. The law is titled: 'The Female Persons Right of Inheritance of Property Law 2022.' Accordingly, the same law met the favor of the then Rivers State Governor Nyesom Wike, a lawyer, who argued that the girl child has the right to inherit property of her father, thus, basing his argument on the fact that it is God who decides the sex of any child and not its parents. Hopefully, other States will follow suit in the restoration of equity and justice. However, to achieve this will be a herculean task given the endemic nature of the discriminatory customary laws in the land.

6. Human (Rights) as Defence Agency for Women's Right of Inheritance

The word 'human' comes from the Latin *humanus* meaning, belonging to man or mankind, or pertaining or relating to the race of man as a human voice, human shape, human nature, human knowledge, human life. 'Rights' by their very nature belong properly to all peoples provided they share in the same human nature. Such rights must be in accord with man's rational and moral capacities. According to Okonkwo (2007, 8-32), some human rights protagonists argue that such rights developed in the events of human experiences and historical circumstances as in war times. By some others such rights are inalienable, and proper to humans, as endowed by their creator who is the guarantor of life, liberty and happiness. The Scottish Philosopher, John Locke was uncompromising in issues of human rights protection. According to him, every Government is established to ensure that natural rights or human rights, which belong to individuals, namely, rights to life, liberty, and property, are protected and promoted. As contained in the writings of Fagan on "Human Rights", Locke maintained that every government is created to fulfill this responsibility, as no Government can afford to waive these rights because of their inherently absolute nature. These (rights) according to Harrison and Boyd (2018, 1-19) are enunciated in the classic

statement of the liberal contract theory of government during the American declaration of her independence in 1776.

But what is 'right' in law? The Latin derivation of right as *rectus* construes 'right' as just, claim and not privileges. To have a right is to have a valid and just claim. This valid and just claim could be over land, a thing, or the privileges of doing something or saying something. It is called a legal right when it protects the liberty of acting or abstaining from acting or in a specified person the liberty to do or abstain from doing a particular thing. Okonkwo (2007) insists that this right must of necessity enjoy the support and protection of the state against abuse and violation. Human Rights have come to be enshrined in most Constitutions of many nations throughout the world after the United Nations Human Rights Declaration in 1948. Nigeria is one such nation whose Human Rights inclusion in her Constitution predates the creation of the entity called Nigeria by Lord Lugard and the then Journalist Flora Shaw in 1990. Ogbu (1999, 205) writes that this law is enshrined precisely in the 1999 Constitution of Nigeria in section 42 (1) that no Nigerian citizens, be it an individual or group of individuals or ethnic groups or communities irrespective of the place of origin, sex, religion or political affiliations, should be subjected to any form of discrimination or deprivation or disability.

The indivisible and interdependent nature of Human Rights means that any violation of some portion of Human Rights will affect other sections as well. For instance, any progress made in civil and political rights would serve the interest of the economic, social and cultural rights. In the same way, the violation of the latter would affect other rights. Although the right to liberty is inalienable, the law court at the instance of any criminal offense may restrict the individual from enjoying this right. Apart from the interdependence of human rights that could be invoked to restrict one's exercise of certain other rights, the State has been empowered also to constitutionally take discretionary measures to derogate certain rights of individuals. But this can happen where public interests are threatened or the rights of others are gravely affected. Nevertheless, the power of the State to intervene requires some moderation. Thus, according to Ogbu (1999, 263), in order to enforce the demands of human rights a clear "demarcation of the boundary between the public sphere of authority and the area of individual autonomy must be made. Once the law has defined the contours of power to be exercised by the governor over the governed, it is the job of the courts to ensure that the state does not overlap the boundaries. The significance of an independent and impartial judiciary in the protection of human rights can be appreciated when it is realized that not only that the judiciary has the exclusive jurisdiction to protect the people from executive and legislative encroachment on their rights, but it is the judiciary and the judiciary alone that can render binding decisions which can deprive people of their lives, liberty or property, or other fundamental rights."

The responsibility of moderating the State power lies with the judiciary. This is important to safeguard the rights of the masses who are mostly affected. The property rights of women have long been threatened almost to extinction. The force of the law should apply now.

Conclusion

The legal progress to redress the injustices and degradations suffered by women as a result of denial of their right of inheritance is quite commendable. Law as a reasonable expression must be in harmony with man's rational and moral nature. Most customary laws have as yet not

shown enough reasons to be seen as products of good reasoning. Customary laws should be understood in the same way we understand scientific laws or predictions. Scientific laws or predictions are usually subject to constant revision; so it must be for the customary laws. Because such laws are not absolute, there should be no rigidity about them, especially when man is equipped with better insight. We recommend that natural and human rights principles should perform the role of watchdogs over customary laws. Or as Oshodi (2023) pointed out, there should be a humane response to the economic and psychological burden our customary laws placed upon the shoulders of women in Igboland. Such burden impedes their happiness, general wellbeing, and the fulfillment of their aspirations as persons of worth and dignity. The official declaration of the discriminatory customary law as void must be commended, as women can now participate in sharing the lot of their parents' estate. Male domination or discrimination against women has no grounds in law. All men and women are equal and should have equal access to the good things of this world. However, equality of genders here does not deny the biological differences between the sexes. The creator intends the happiness of all his creatures, equal participatory sharing in the good things of life, and development of their potentials under equal but favorable conditions.

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