

Women and Customary Inheritance in Nigeria: A Critical Appraisal

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Abstract: *This paper examines the inheritance and succession rights of women in Nigeria in relation to customary law. Using a critical appraisal approach, the study delves into the complexities and nuances of customary law and its impact on women's inheritance and succession rights. It analyses the various customary practices and cultural beliefs that affect women's rights to inheritance and succession. It provides a critical evaluation of the current practices and laws surrounding inheritance and succession rights for women in Nigeria. It reveals that the traditional inheritance system in Nigeria often favours male heirs and excludes women from inheriting properties or assets. This has resulted in persistent gender inequalities and discrimination against women in terms of land and property ownership. Furthermore, issues relating to succession in Nigeria are often based on customary practices and are largely patriarchal, which further exacerbates the issue of unequal inheritance rights for women. This poses a significant challenge to the empowerment and economic stability of women in Nigeria. The paper argues for the need for a shift in traditional and cultural practices that discriminate against women, hindering them from exercising their rights to inheritance and succession. It also suggests a need for legal and policy reforms that can promote gender equality and protect the rights of women in terms of inheritance and succession.*

Keywords: *Inheritance, Succession, Women, Customary Law, Nigeria*

I. Introduction

The paper critically analyses the concept of inheritance and succession rights among women in Nigeria, specifically in relation to customary law. It explores the practices and beliefs surrounding inheritance and succession among women in Nigeria particularly among the Yoruba, Igbo and Hausa societies. It provides a deeper understanding of the complexities surrounding inheritance and succession rights in Nigeria and the implications for women in the society. It reveals that women face significant barriers in terms of succession and inheritance rights due to the prevalence of customary law and societal norms and beliefs. The effects of this denial can be seen in all aspects of women's lives, from their economic status to their social standing. The consequences have hindered the country's progress towards gender equality and sustainable development. It creates a barrier for women's participation in decision-making processes and perpetuates a cycle of discrimination and oppression.

II. Research Methods

This section adopts a critical appraisal method to explain the inheritance and succession rights of women in relation to customary law in Nigeria.

III. Result and Discussion

3.1 Conceptual Clarifications

a. Inheritance

To “inherit” means to come into possession by transmission from past generations (Mordi, 2024). Over time inheritance has come to mean anything received from the estate of a person who has died, whether by the laws of descent (Yakubu, 1991) or as a beneficiary of a will or trust and it operates where private ownership of property exists as a basis of social and economic enhancement (Mordi, 2024). Hence, Inheritance is the entry of a living person into possession of a dead person’s property.

b. Succession

Succession is defined as the passing of possessions to persons upon the demise of the proprietor of the possessions (Animasahun and Oyenyin, 2022). It can also be regarded as the act of right of legacy or officially taking over a predecessor’s office, rank or duties (Taiwo, 2017). It is the acquisition of rights or property by inheritance under the laws of descent and distribution. Oni (2008) was of the opinion that the law of succession involves the transmission of the rights and obligations of the deceased person in respect of his estate to his heirs and successors. He believes that it equally deals with the rules governing the administration of the estate by the personal representatives of the deceased person, including state participation in respect of the real estate situated within its territory and the personal estate of the deceased person, subject to its jurisdiction. Succession, according to Adekunle, (2024) is the process of transmitting the rights and duties of a deceased person pertaining to his estate, office and dignity to persons who succeed him, such as his heirs, children, spouse or relatives, in a manner sanctioned by the law. Once this is done, those properties are deemed to belong to the beneficiary, i.e. the successor to whom they have been given. It is then said that the properties have been inherited by the said beneficiary. Hence, it is hardly possible to use the word “succession” without accompanying it with its twin concept, inheritance. Inheritance succession refers to the manner in which property is distributed when a person dies (inheritance and succession, 2017). Succession and inheritance rights are established procedures of transferring economic, social and political powers in any given human societies (Ajiboye and Yusuf, 2017). Any society without adequate laws governing succession to the property of a deceased person would become disorderly as there would be scramble for the property of the deceased (Enomo, 2008).

c. Customary Law

Customary law is also known as unwritten law (Markus, 2019). Custom can be defined as a rule which in a particular district, has, from long usage obtained the force of law. The word 'customary' means pertaining to a custom, a way of life, a tradition, a generally accepted behaviour or way of doing things. Customary law therefore, is the law which evolves from the established practices, customs and way of life of a people.

It captures the norms, traditions and rules of behaviour of the people. It is also propelled by the worldview, beliefs, philosophies and the value systems of the people (Nwocha, 2016). It is law established by practices of persons in a community over a period of time that became generally accepted and adopted as a norm (Shears-Moses, 2019). It emerges from the traditional usage or practice of the people in a given community which by common adoption and acquaintance on their part and by long

usage has acquired element of compulsion and force of law with reference to the community (Taiwo, 2017).

3.2 Types of Succession under Customary Law.

There are two types of succession under the customary law:

- i. Testate Succession
- ii. Intestate Succession
- a. Testate succession

Testate succession takes place when an individual dies, leaving a valid will to share his belongings among the spouse, children, relatives and any other person of his choice. It involves the transfer of property to another by will (Enemo, 2008). There are two types of will under the customary law. They are nuncupative will and written customary will. The nuncupative will involves oral instructions of an individual in anticipation of death before credible witnesses (Enemo, 2008). In this case, the testator voluntarily, verbally declares how his estate would be distributed after his demise. In some cases, the testator also gives instructions on where he desires to be buried, how the burial is to take place (simple or elaborate forms) and the roles individual members of the family are to perform during the burial. It is generally believed that the pronouncements of the deceased are not easily departed from but are rather carried out in respect for him or in fear of his anger and spiritual vengeance from the grave (Taiwo, 2017). Written will must conform to the formal conditions of making a will as contained in the general laws relating to wills. The will may be declared null and void by the court if it does not conform to the relevant law.

Testate succession gives opportunity to anybody that the testator desires to inherit the estate after his or her death. In this situation the daughters and the widows of the deceased may benefit from the property if the testator wishes. However, in some cases, the family members of the testator refuse to follow the instruction of the deceased on the distribution of property, especially if the will is nuncupative or a verbal declaration. They do this in order to satisfy their own selfish interest.

- b. Intestate succession

This occurs when a person dies without making a will. Inheritance is usually determined by the customary rules of where the deceased originate from, if that the individual did not write a Will before death (Williams-Joel, 2019). In other words, the property of the deceased will devolve according to the customary laws and rules of succession if the individual fails to express his or her desires on the distribution of the property during his or her lifetime. In determining intestate succession under the customary law, the status of the properties is important.

3.3 Nature of Property.

The status of the deceased's estate is of two types:

- i. Family Immobile property
- ii. Personal movable property

Family property is an asset that devolves on the descendants of the deceased and is regarded as property to be used for the benefit of the whole family since it belongs to all the members of the family as one entity (Nwokoro, 2019).

3.4 Succession and inheritance among the Yoruba

A single member of the family cannot decide on family property in Yoruba culture. However, the eldest son of the deceased who assumes the shoes of his father

as the family head (Dawodu) manages it in trust for his younger siblings. Children are the exclusive beneficiaries to the estate of a deceased person under the customary law. Taiwo notes that:

The administration of the family estate is usually under the control of the head of the family. The Dawodu is a trustee and custodian for all the beneficiaries of the deceased's estate including wives, children and siblings. No member of the family has individual right to the estate but all members have collective and equal rights. The members have no right to dispose or alienate the family property without prior consent of the family head and other principal members of the family. (Taiwo, 2017)

Land is an example of family property. With the consent of the Dawodu, each member of the family may be given a portion of family land for use for short or long period. The heirs of the allotted also acquire their portion in the family land by the virtue of the fact that they are born into that family. Personal properties are known as movable properties, movables and chattels (Kagan, 2017). They consist of properties that can be moved from one location to another. Examples include shares and stocks, tools, apparels, machinery and cash at hand or in the bank. The personal property is restricted to the heirs of the owner. It is not preserved for the larger family. It is distributed among the deceased children after the death of their father. A woman can inherit from her parents but not directly from her husband (Aluko, 2015). This occurs because there is no concept of property by couples in the traditional Yoruba culture. It is assumed that all substantial property belongs to the husband and woman herself is considered as a form of property. Hence, widows have no inheritance rights under the traditional norms. Where the deceased intestate married only one wife and had all his children by her, the distribution of the estate among them is equal proportion, hence little or no dispute occurs, but if the deceased intestate had children by different wives or women, the distribution of estate may raise questions as to what mode of distribution should be adopted (Oni, 2014).

There are two major methods of distribution of "personal properties" which are not tagged "family property" among the Yoruba. The first is "idi igi" method where property is shared per stripes (according to the number of wives that the deceased person has) (Bello, 2019). The property is first divided equally into the number of wives, the share attributable to each wife being then sub-divided equally among her own children. For instance, if a man has three wives, his property would be shared into three parts, where each of the wives with her children is regarded as a branch of the family and each of the three branches gets equal share of the deceased property. The rationale for the Idi-Igi mode of distribution was considered as being that each wife who had a child was given no cause for jealousy against the others.

Therefore the number of wives and not the children is the determinant factor (Nwokoro, 2019). However, wives have no right to inherit the husband's estate rather she constitutes part of the legacy to inherit (Oni, 2014).

Oni (2014) further argues that: the rule of succession known as Idi-Igi which regulates the distribution; of customary estate of the deceased intestate is a well-recognized and established native law and custom and it was also held that Idi-Igi is not repugnant to natural justice, equity and good conscience (Oni, 2014:1)

In this method of sharing if a branch has only one child, he or she will get more than enough while the branch with more children is impoverished (Popoola and Agbabiaka-Mustapha, 2017). The "Idi-Igi" mode of property distribution may bring about disharmony within the family as it would be unfair to the children of a particular

wife with more siblings. In view of this, the researcher is of the opinion that the method does not give room to equity and fair distribution among the children.

The other method is “Ori-Ojori” whereby property is distributed per person. In this case, each child enjoys an equal share, the property is divided equally among the children of the deceased (Bello, 2019). It has been argued that this mode of distribution is likely to produce fairness and thereby prevent dispute and dissention in the family. In many cases, the family head recommends the distribution of the estate. It is important to know that under native law and custom, the devolution of property follows the blood (Oni, 2014). Consequently, a wife or widow, not being of the blood, has no claim to any share, neither are the contributions of the wife to the property recognized (Emery, 2019). Lack of recognition of contribution is significant, as widows may lose rights to jointly owned properties or property in which they have invested. An exception to this practice does exist: when a widow chooses to remain in her husband’s house and in his name, she can do so even if she has no children (Onuoha, 2008).

In Igbo customary law, widows typically do not inherit their deceased husband’s property. They may only retain the house and a portion of land. This grants them possessory, not proprietary rights. This originates from the belief that inheritance follows blood and widows are not blood relatives of their husbands (Oshodi, 2023).

One would observe that the intestate succession generally discriminates and oppresses widows. In spite of modernity and civilization in the contemporary society, many widows are still denied the access to properties of their deceased husband.

Several people hold the traditional belief that women are insignificant and they are regarded as part of the properties that should be distributed among family members.

In situations whereby the children of the deceased are very young and the man dies intestate, it may be difficult for the children to claim rites to their father’s properties.

In some cases, the chattels are confiscated by the family members of the deceased.

The children are sometimes maltreated and are also prevented from receiving their entitlement from the inheritance. The widows experience difficulties in taking care of the children. They are subjected to untold hardship and financial embarrassment.

Many widows are still denied of the access to their husband’s estate in the contemporary society. Such situations have discouraged some women (especially career/ business women) from having joint investment with their husbands.

a. Inheritance of Titles

Succession to titles is another aspect of inheritance that is common among the Yoruba people. The kingship (Oba) position and many other titles are hereditary in these states. Children of the deceased title holders are entitled to chieftaincy titles. Kingship and chieftaincy titles are usually inherited through male lineage, and rotate over time between different royal families and “chieftaincy houses” within the lineage (Yoruba Traditional and Cultural Renaissance, 2019). The female heirs are regarded as temporary sojourners and are generally denied rights of inheritance to kingship and most chieftaincy titles and positions of leadership. However, in some cases, regents are chosen as temporary kings before the substantive king is installed. A regent is a princess who is chosen to occupy the throne until the actual king is enthroned. Regency is designed to honour the first Oba/king/High chief who died on the throne. She enjoys all the honour and privileges attached to the office of the oba and she has to dress as a man for the period she is serving as a regent (Yoruba Traditional and Cultural Renaissance, 2019).

According to the Yoruba tradition, once a princess ascends the throne, she is no longer regarded as a woman and she is expected to appear always as a man. She is only permitted to wear the rounded beaded crowns, unlike the male king who have various crowns designed and decorated with beads which may fall over their faces (Yoruba Traditional and Cultural Renaissance, 2019)

The faces of the regents must not be covered and the bead on the neck, falling on their chest must not be more than three and graduated in three layers. However, the beads of the obas could be more than three. (Canada Immigration and Refugee Board of Canada, 2019). Regents are not permitted to undertake any installation of chieftaincy titles, removal of erring chiefs and registration of chieftaincy declarations.

Married women and single ladies are usually considered as regents. Males are not usually considered for the position in these societies because it is assumed that a male may not want to leave the throne. He may desire to transform himself to the position of a king. On the other hand, a married woman will desire to join her family while a single lady will want to marry after serving as a regent.

It is obvious from the above that females are marginalized on the issue of leadership positions in the Yoruba traditional culture. Kingship positions run through the male lineage. Hence, women are not usually enthroned as kings in the culture. They are only permitted to serve as regents in some societies. In this case, they only are chosen as temporary king until the substantive king is installed. Also, a regent is limited in her activities because she is not the real king. For instance, she is not permitted to undertake any installation of chieftaincy titles, removal of erring chiefs and registration of chieftaincy declarations. In terms of dressing, she is expected to put on a male outfit and not female dresses because the position of a king in Yoruba culture is meant for a male. Her beads and some other accessories are also different from that of a king. The fact that women are limited in their positions as regents and that they cannot be enthroned as kings reveals that women are regarded as inferior to men in the traditional culture.

3.5 Customary succession and inheritance among the Igbo

The rule of succession among the Igbo is generally patrilineal but there are a few communities where bilineal succession was in vogue. These are the Afikpo and Bende areas of Abia and Ebonyi States, as well as Abriba and Ohafia communities. However, the cardinal principle of succession law among the Igbo is the concept of primogeniture, i.e. succession through the eldest male in the family known as okpala, dio-okpala or diokpa (Nwogugu, 2014). Under the customary law, daughters and wives do not inherit (Nwakoby and Mariah, 2022). It is the male child of the Igbo that is reckoned with in the distribution of property for the purpose of inheritance. The belief is that the female will get married and go to her husband's house and, as such, the property of the father cannot be entrusted to her. In some cases, the daughter of a deceased agrees to remain unmarried and live in her father's house with a view to raising male children in her father's name. This custom, which appears peculiar to the Igbo, is known as nrachi or idigbe. It is a custom that is invoked when the deceased has left behind a substantial estate but there is no surviving male child to inherit the property and continue the lineage. Thus, it is designed to save the lineage from extinction and the daughter is, therefore, allowed to inherit the property of the estate while staying in the family house and continuing to uphold the family lineage and tradition (Adekunle, 2024).

3.6 Customary succession

The Hausa people in the Northern part of Nigeria are subject to the succession under Islamic law. For succession to take place, from the Islamic point of view, some factors must be considered. Such includes:

- i. The departed
 - ii. The property of the departed and
 - iii. The inheritors and other beneficiaries of the departed.
- A person must cease from existence, in other words, an individual must have been confirmed dead, before the estate can be distributed to the heirs.

a. Classes of Heirs under Islamic Law
The heirs are grouped into two as follows:

- 1. Primary heir
- 2. Secondary heir

The primary heirs are regarded as possessors of obligatory shares. This category includes:

- 1. Spouses – husband and wives (maximum of four wives)
- 2. Parents – father and mother
- 3. Children – sons and daughters
- 4. Grandchildren – son’s sons or son’s daughters only (this is applicable when a son is dead but has offspring)

The secondary heirs are:

- 1. Grandparents – Paternal and Maternal Grandparents
- 2. Brothers and/ sisters (in the absence of sons and father only)
- 3. Uncles and / Aunts (in the absence of grandparents only)
- 4. Nephews and/ Nieces (in the absence of brothers and sisters only)

Substitute heirs are:

- 1. Agnate grandsons
- 2. Agnate grand-daughters and
- 3. Agnate grandparents (Zubair, Khattak, Rehman and Khan, 2014).

It is argued by Muslim scholars that a person has a right to inherit from the deceased person if he or she is related to him or her by way of marriage (Nikah), true-kinship or guardianship (Zubair, Khattak, Rehman and Khan, 2014).

Mzee notes concerning the issue of inheritance that:

a male receives a share equal to that of two females. But if they (the children) are only women and are more than or equal to two, their share is two thirds of that which he (the deceased) had left and if there is only one woman, her share is half of the estate. . (Mzee, 2016:56).

Also, in the Islamic law,

a widow has a right to one-eighth of her husband’s estate if he has heirs and one-quarter, if he has no heirs and if there is more than one wife, they share the wife’s entitlement. A sole surviving daughter, gets only half of her father’s estate, while a sole surviving son, gets it all (“Women and Rights of Inheritance” 2019:1)

Intestate Succession under Islamic Law is generally practised among the Hausa people. However, some Yoruba people that are Muslims also practice the law. Succession under the Islamic law appears to be gender biased because a female’s portion of bequest is half as much as that of a male. The reason for the unequal distribution, according to the Islamic belief is because the religion expects the males to care and provide for the female members of the family from their own portion. However, such reason does not provide adequate support for the discrimination and inequality in the distribution of inheritance under the Islamic law. Both male and female, as children of the deceased are supposed to enjoy equal access to the property of their father. Overall, the Islamic law of inheritance has probably raised the sentiment that it fosters the collective social spirit, because it favours the distribution of

property among many heirs and thus holds in check the concentration of wealth ('Abd al 'Ati, 1982). One would observe that a larger portion of the deceased's inheritance is shared among the extended family members while a little is given to the widow. The researcher is of the opinion that the property should be exclusively distributed between the widow and the children of the deceased. Consideration should only be given to members of the extended family if the man has no wife and children.

IV. Conclusion

The paper delved into the intersection of succession, inheritance rights and customary law among women in Nigeria. It argued that customary law evolved from the established practices, customs and way of life of a people. It is propelled by the worldview, beliefs, philosophies and the value systems of the people. The denial of succession and inheritance rights for women in Nigeria has been a longstanding issue that continues to have a profound impact on the lives of females in the country. This practice is deeply rooted in cultural and societal norms, often perpetuated by patriarchal beliefs and traditions. Women are often barred from inheriting land, property and other family possessions after the demise of their husbands. The consequences of this denial can be seen in all aspects of women's lives, from their economic status to their social standing. It hinders their ability to provide for their families and contribute to the economic growth of their communities. This severely limits their ability to gain financial independence and achieve social mobility. It also has negative effects on the females' education as many girls are forced into early marriages as a means of securing their future, while others are denied the opportunity to pursue higher education because it is seen as a waste of resources. This in no small measure has reinforced gender inequality and perpetuated cycles of poverty and limited opportunities for women.

In conclusion, the denial of succession and inheritance rights for women in Nigeria has hindered the country's progress and sustainable development. It has created a barrier for women's participation in decision-making processes and limited women's economic and social opportunities. Over time, this has perpetuated a cycle of discrimination and oppression towards the feminine gender. In view of the above, it is crucial that the government reform laws and policies that address the issue of women's succession and inheritance rights in order to promote gender equality in Nigerian society.

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