A CASE FOR THE PASSAGE AND IMPLEMENTATION OF EFFECTIVE MARITAL PROPERTY RIGHTS LAW IN NIGERIA TO CURB DOMESTIC VIOLENCE

Abstract

Contemporary realities have it that the most common type of violence against women worldwide is domestic violence. Indeed, studies have shown that globally, domestic violence accounts for nearly one quarter of all recorded crimes. Women have been subjected to various forms of violence ranging from rape, battering, trafficking and even murder. Although the degree differs from society to society, the occurrence has profound and destructive consequences including psychological, physical, emotional abuse and social disorder. Despite the spirited efforts made by various legislations such as the United Nations Declaration on the Elimination of Violence against Women and Nigeria Constitution to eliminate discrimination and violence against women and promote the idea of freedom, equality and justice, the Nigerian woman is often violated without apology. A possible solution for this malignancy is restructuring of the marital property rights of woman

1. Introduction

The word violence has been defined as the use of physical force, accompanied by furry, vehemence or outrage, unlawful exercise of power with the intent to harm[1]. Domestic violence (also named domestic abuse, battering, or family violence) is a pattern of behavior which involves violence or other abuse by one person against another in a domestic setting, such as in marriage or cohabitation[2]. Accordingly to the Violence against persons prohibition Act, domestic violence means any act perpetrated on any person in a domestic relationship where such act causes harm or may cause imminent harm to the safety, health or well being of any person[3]. It is the willful intimidation, physical assault, battery, sexual assault, and other abusive behavior as part of a systematic pattern of power and control perpetrated by one intimate against another

2. Forms of Domestic Violence

The various act that constitute domestic violence are opened, the lists is not exhaustive :

- Female infanticide
- Sexual abuse of girls
- Marital rape
- Battering
- Incest

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[1]B A Garner, Black's Law Dictionary 8 edition U.S.A Thomson West, 2004 p.116

[2]Domestic Violence, Wikipidia the free encyclopedia http://en. Wikipedia.org/…/domestic.

[3]Violence against persons (prohibition) Act 2015

- Forced labour of defendant
- Emotional abuse
- Harmful traditional practices (female genital mutilation)
- Forced marriage of a girl under the age of 18
- Rape/date rape
- Acid bathe
- Abandonment of wife and children
- Trafficking and forced prostitution
- Forced sterilization
- Sexual harassment and intimidation
- Economic abuse

Domestic violence can happen to anyone, yet the problem is often overlooked, excused or denied. This is especially true when the abuse is psychological, rather than physical. Noticing and acknowledging the sign of an abusive relationship is the first step to ending it. Domestic Violence in the context of this work relates to a form of abuse when one intimate partner has control over the other partner's access to economic resources.

Violence against person's (prohibition) Act defines " Economic Abuse" to mean (a) Forced financial dependence (b) Denial of inheritance or succession rights (c) the Unreasonable deprivation of economic or financial resource to which any person is entitled or which any person requires out of necessity including:

i. Household necessities
ii. Mortgage bond repayment, or
iii. Payment of rent in respect of a shared residence

The unreasonable disposal or destruction of household effects or other property in which any person has an interest[4]. Economic abuse no doubt diminishes the victim's capacity to support themselves, increasing dependence on the perpetrator, including reduced access to education, employment, career advancement, and assets acquirement. Disagreement about money spent can result in retaliation with additional physical, sexual or emotional abuse.

In Nigeria where women depend on husbands' income in order to survive (due to lack of opportunities for female employment and lack of state welfare) economic abuse can have very severe consequence. This abusive relationship have been associated with " patriarchy. patriarchy refers to hierarchical system of social organization in which cultural, political and economic structures are controlled by men[5].This definition captures the basic element of the system of patriarch which implies literally, " Rule by Fathers

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[4]Ibid

[5]E.C Okroafor 'patriarchy, Gender Equality and the Implications for productive Development of the Nigeria Worker' . 2014, Vol. 10, European Scientific Journal, 106

Fathers" a form of social organization in which males dominate females. To the writer, patriarchy is a male dominated society, in which cultural beliefs and values give higher prestige and value to men than women; this statement points to the fact that patriarchy is fundamentally discriminatory to women. Indeed, it is a social system in which male is the primary authority figures central to social organization and the central roles of political leadership, moral authorities, and control of property. It implies the institutions of male rule privilege, and entails female subordination. Many patriarchal societies are also patrilineal, meaning that property and titles are inherited by the male lineage

Patriarchy has been in existence for a very long time in most human societies and it's longevity should not be seen as an accident nor a mistake by some contemporary social thinkers and feminists in these days of increasing clamour for gender equilibrium. This paper, opines that, its prevalence in most societies up to present day is because implicit obedience and deference towards men is socially encourage within society. The Yourba women refer to their husbands as ' Olowo Ori Mi ' meaning he who owns me. In effect marriage gives up a woman's right to herself[6]. In practice where bride price is paid, it is common for the husband to believe that by paying the bride price, he now owns his wife.

Therefore, a husband has the liberty to violate and batter his wife if he feels she has not adequately fulfilled her obligations. Most Nigerian women who experience physical sexual or economic abuse do not seek help from anyone. Women subject to domestic violence are unwilling to lodge formal complaints due to lack of trust in the police force and stigmatization. Most married women have to go through the ordeal of domestic violence silently. The worst of them being economic abuse.

Domestic violence in Nigeria though against the law, victims do not receive full legal support as they prefer to stay in abusive relationship than leave and face the ridicule of living outside wedlock and all the property denial. Though, domestic violence is a violation of fundamental human rights which Nigerian constitution is against, there are still provisions that make it legal to engage in it. The provisions of the penal code applicable in the Northern part of Nigeria specifically encourage violence against women underneath its provisions, the beating of a wife for the purpose of correction is legal by virtue of section 55 (1) (d)[7]of course, the injunction of the penal code contradicts the

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[6]'marriage' are there sufficient laws protecting women from domestic ……www.thelawyerschronicle.com accessed on 19 March 2017

[7]Penal Code Law, Cap. P3 – 1 LFN 2004

Constitution of the Federal Republic of Nigeria which upholds the rights of the dignity of women and men

The fact is that there is no sufficient laws protecting women from domestic violence in Nigeria. Nigeria ratified the convention for the Elimination of Discrimination Against women in 1985 but international treaties can only go into effect when parliament has put in a corresponding domestic law thereby limiting the international treaties[7b]. Happily the Violence Against Persons Prohibition Act[8] was enacted as a federal law to address all cases of violence, still only few states has passed it into law. Domestic violence laws in the states that have them are still quite poorly implemented. Lagos State is the most organized and the only state where the state level of domestic violence law is being applied in practice but there are still problems with enforcement.

The Nigerian criminal code Act[9] indicates in: 353 :- Any person who unlawfully and indecently assaults any male person is guilty of felony and is liable to imprisonment for three years. The offender cannot be arrested without warrant.

Section 360same criminal code states:- Any person who unlawfully and indecently assaults a woman or girl is guilty of misdemeanor and is liable to imprisonment for two years. This law is discriminating and gives impetus to domestic violence. Furthermore section 221 of the Criminal Code Act that deals with defilement of girls less than sixteen years of age provides thus: any person who has or attempts to have unlawful carnal knowledge of a girl being above thirteen years and under sixteen years of age is guilty of a misdemeanor and is liable to imprisonment for two years with or without whipping. It is a defense to a charge in this section to prove that the accused person believes on reasonable grounds that the girl was above sixteen years. A prosecution for any offence in this section must begin within two months after the offence is committed. Any person cannot be convicted of any of the offence in this section upon the uncorroborated testimony of the witness.

It could be deduced from this section that, it will be difficult to secure a conviction against an offender. In the first place, if prosecution does not commence within two months after the offence was committed, it lapses.

Secondly, it is difficult to always have an independent eye witness in offence of this nature. Where the evidence of the victim is uncorroborated, the charge fails. Finally, it is always easy for the victim to look older than her age. Even where there is a conviction_____ _____

[8]Section 12 Constitution of the Federal Republic of Nigeria 1999
[9]Criminal Code Act Can C35-1LFN 2004

and sentence under this section, it cannot serve as a deterrent because the offender will readily pay a fine which is meager sum in Lieu of imprisonment

Female genital mutilation (FGM), if it is done without the consent of either the girl or women in question, violates article 1 of the Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment (United Nations General Assembly Resolution 39/64, 1984), which prohibits discrimination based of sex or anything that obstructs the full enjoyment of the rights of women. The convention defines "torture to include any act by which severe pain or suffering whether physical or mental is intentionally inflicted on a person." Though reproductive and sexual health/ rights are not specifically mentioned in Torture Convention, the convention in its entirety is aimed at protecting the right to be free from inhuman and degrading treatment, and the right to liberty and securing of persons.

Article 2 enjoins state party to ensure that all customs and traditional practices that discriminates against women are abolished. Similarly, the right to life and physical integrity is fundamental as far as the universal declaration of Human Rights is concerned, hence, the circumcision of the female infringes on this right and also constitute a treat to physical integrity of girls and women as they are forced and subjected to genital mutilation without a formal consent with devastation effect. Although recently there were commendable efforts in states like Enugu, Cross Rivers and Edo state of Nigeria for promulgating laws in prohibiting female genital mutilation, oppressive widowhood practice and child marriages. For instance, there is the Edo State Female Genital Mutilation (FGM) prohibition law 2006, Cross Rivers Girl-Child marriage and female circumcision (prohibiting) law 2000, and the Enugu state of Nigeria, prohibition of infringement of a widows and widows fundamental rights law 2001. Malpractice Against Widows and Widowers (prohibition) Law, 2005 Anambra, the practices are still persistent. Of course, the injunction of the penal code contradicts the constitution of the Federal Republic of Nigeria, which upholds the rights of the dignity of women and men.
Commenting on the provision of this law Amabali notes that, the law fails to provide a criteria for measuring hurt that are grievous. Aguda also adds that the law has viewed the woman as incapable of expressing her will

Furthermore, the inclusion of women (wives) suggests that women are to some degree less than human and could be brazenly dehumanized. It may not be correct to say that the preponderance of wife battering is due to this law but it is not completely out of place to note that it has provided the legal backing of those who perpetrate this form of domestic violence in Nigeria.

In addition, there are certain laws especially, in matrimonial causes that interfere with the ability of women to escape violent relationship. For instance, one of the grounds for dissolution of marriage under the Matrimonial Causes Act Sections 15(2)(c) and 16(1)(e)[10] is that marriage has broken down irretrievably, that is that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to leave with the respondents . To secure conviction on grounds of cruelty, the petitioner has to satisfy the court that since the marriage and within a period of one year immediately preceding the date of the petition, the respondent has been convicted of:

i. Having attempted to murder or unlawfully killed the petitioner
ii. Having committed an offence involving the intentional inflicting of grievous harm or grievous hurt on the petitioner.

It follows from the above that until the petitioner is able to secure a conviction against the respondents from attempting to kill her or infliction of grievous harm on her, she cannot get out of the relationship lawfully or successfully. It is desirable for this section of the law to be amended in order to allow a battered woman get out of the violent relationship before she loses her life in the process

The law does not provide women the economic resources for investment. It has been noticed that greater number of women in Nigeria engage in economic generating activity.

The Department of International Development (DFID) whose goal is to promote sustainable development and eliminate world poverty, on its gender related issues in Nigeria shows that out of estimated 95.83 million of Nigerian's, 78 million women are based in rural areas and making a living from land. Although the Nigeria land use Act of 1978 vested authority in the state governors who holds it in trust on behalf of all, access and ownership of land, in reality is a largely affected by customary practices and many customs suggest that access to land for women can only be through marriage and in very few occasions, inheritance[11] . Access to land through marriage is usually a user right and not outright ownership as a result of the patrilineal practice of land being passed down from a man to his son to the exclusion of in some ethnic groups in Nigeria, their female siblings at the demise . As a result, land ownership is very low among women and becomes a limitation to their ability to expand land related livelihood strategies. Land in Nigeria is the anchore of all that is valuable and the married women is denied its access without much input by the law.

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[10]Matrimonial Causes Act, Cap. M7-1LFN2004

[11]Scale and dept of development challenge in Nigeria http;//www.parliament.uk/…imternational accessed. 5th April, 2016.

A recent world bank report[12] shows that only 1% obtain capital from the formal financial sector , corroborating the assertion of bias against women . The overall effect is that women are unable to acquire the necessary financial credits for sustenance or expansion .

This inability to secure loans in not unconnected with their inability to own land , which is considered as means of measuring credit worthiness.

Under IsIamic law men are the protectors and maintainers of women . Quran 4:34 Allah says' Men are the protectors and maintainers of women because of what Allah has preferred one with over the other and because of that they spend to support them from their wealth[13]. The Arabic word '*Qawwamun*' meaning protectors and maintainers which means a person who manages the affairs of other ; the men are held liable for handling the affairs of women and are responsibles for the women under their care[14] . The writer opine that these *protectorship* and *maintainership* are suggestive of women deformed,malformed or mishap nature in modern world were women are in productive sectors. The Beiijing Declaration and platform for Action in its article 15 states "We are convinced that equal right opportunities and access to resource, equal sharing of responsibilities for the family men and women , and a harmonious parternship between them are critical to their well_ being and that their families as well as to the consolidation of democracy[15]. The obvious pointer that Nigeria needs marital property law to harmonize relationship.

The Nigeria Tax regime perpetuates a system of unfair deductions against women with regards to dependants . The provision to section 33 (3) of the Personal Income Tax Act (PITA) Provides that personal reliefs for children and dependants cannot be claimed by a married women unless she can show that she has been separated from husband by an order of court. The act is hinged on the previous working of the Nigeria polity when women were solely dependants and where not in any way responsible financially for providing for other members of the family .

In the ever dynamic Nigeria society and indeed , in almost all parts of the world , it is the case that women contribute financially to their families and some cases are the sole bread winners.

The existence of these laws and practices makes a mockery of government effort to

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[12]There are instance were female children are allowed to inherit for example , under Sharia law where female child can inherit land and other culture where the females child has agreed to remain in her father"s house to bear sons for him (Nrachi) but for the case of Ukeje V Ukeje (2014) ALL FWLR part 730 Sc 1323

[13] E Azinge and LU Onyinech (eds) Law of Domestic Violence in Nigeria ,(Nigeria institute of advance legal studies , 2012)p 360

[14]M A Ambail :The practice of muslim family law in Nigeria (Princeton & Associated publishing co. Ltd 2014) p230

[15]Beijin Declaration and platform for action 1995-Adopted at the fourth world Conference on women

Forestall domestic violence. it is against this background that the writer is of the view that there are still provisions that make legal to engage in domestic violence against women and pose that passage and implementation of effective marital property rights law will curb domestic violence especially economic abuse which is the hyperlink.

A sound marriage is a partnership of equals: Marital property rights law recongnize that both spouses contribute to supporting a marriage even if only one earns a salary , or if both draws an income but one earns more that the other . The law says, with limited exceptions , whatever the couple acquire during their marriage should belong to them equally. This translate into certain advantages for example, the law makes it easier for a non income –earning spouse to get credit . When deciding one spouses credit worthiness, the creditor must consider the value of all marital property, including other spouses income.

3. **Marital property**

Marital property includes all income and possessions a couple acquired during marriage. All property[16] acquired after marriage is considered property of marriage or marital property . Marital property normally includes such hungs as houses, cars; furniture, appliance, stocks, bonds, jewelry, bank accounts, retirement plans . it is generally does not includes the value of professional degree /licenses expect in certain circumstance[17].

Non –marital property is any property obtained prior to the marriage , this property remains the property of the owner prior to marriage as long as it is not gifted or titled to the other spouse .Also, any property received by a spouse by gift or inheritance during the marriage from a third party remain the non –marital property of that spouse unless gifted or titled to the other . in the event that the marriage is dissolved and one spouse wants to claims particular items as his or her alone . a couple may acquire joints owernship in property brought to their marriage by either spouse through appropriate agreement or transfer of title .

4. **Management , Disposal and Distribution of Marriage property .**

The management of marital property depends on how the spouse share ownership . the spouse will have to choose a marital property system or matrimonial regimes; marital property system are system of property owernship between spouse providing for the

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[16]Marital property Definition /investopedia www.investopedia .com../m ….accessed on 20 march 2017.

[17]Postema V POSTEMA (NW.2d9 12 muh 1991)the trial court found a law degree to be a marital asset ,as the law degree was clearly the end product of a concerted family effort giving rise for compensation in favor of the plaintiff (wife)

Creation or absence of a marital estate, and if created, what properties are included in that estate, how and by whom it is manage, and how it will be divided and inherited at the end of the marriage. Matrimonial regimes are applied either by the operation of law or by way of prenuptial agreement. The common matrimonial regimes regimes are separated of property system and community of property.

5. Separate Property System

In separation of property, all property, pre-marital or marital is owned separately.

Separation of property, goes with equitable distribution in instances of inequality between spouses, an underprivileged spouse is awarded some of the dominant spouse's property by the court. In the case of divorce or death of a spouse, the net assets are lumped together as property in joint tenancy and divided. Under this system a spouse can bring an independent action for maintenance; under the Nigerian matrimonial causes Act a spouse cannot bring an action for maintenance, unless she first brings an action for divorce, even when she does not want an outright divorce[18]

6. Community Property System

In community property only marital property is owned in joint tenancy, save for gifts and inheritance. This is known as a ganacial community[19] of property or conjugal partnership of gains. Some countries use community of personal and marital property, in these countries both marital property and pre-marital personality are merged, also known as universal community of property or absolute community of property, all pre-marital and marital property is owned in joint tenancy.

The United State of America has marital adjustment that best explains matrimonial regimes, I see a fundamental morality in America Law and Justice and an underling golden rule. " Doing unto others" rings as true today as it has throughout the centuries. In United State most states have the equitable distribution law for marital property, only nine state[20] have community property law. Community property is split right down the middle 50/50 split with each spouse receiving an equal share. Community property generally consists of everything earned or acquired by a couple during marriage. Pre-marital properties, gifts and inheritance are separate property.

In common law countries, the default and only matrimonial regime is separation of property, though some US states, known as community property states are an exception[21].

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[18]Section 114 MCA Cap M7-1LFN 2004

[19]This is held under the Spanish system of Law that controls the title and

Disposition of the property acquired during marriage by the husband or wife

[20]States like CalifoniaArizoa, New Mexico, Taxes, Lowisiana, Nevado, Washington,

Idaho and Wisconsin

[21]Under the United States Constitution the regulation of marriage as a general rule is a matter of state law not Federal

7. Conclusion

It is a startling fact that one of the most dangerous places for a woman is her home ,nearly 40 percent of all murders of women worldwide are carried out by an intimate partner . Domestic violence occurs when the abuser believes that abuse is acceptable ,justified or unlikely to be reported . it may feel that such violence is acceptable or condoned.

The right of women in Nigeria are clearly spelt out in the nation 's constitution[22]. the right of women enshrined in the Nigeria constitution are consistent with the ideals of humanism. But unfortunately, the rights and ideals have remained paper tigers, mere theoretical postulation without any practical bearing on the lives and conditions of the Nigerian women[23]. In practice, the Nigerian Society is replete with anti-humanist ideals. Women are systematically regleted to inferior position despite all the provisions of the law and ratification of protocols, charter and convention. The passage of marital property rights law will develop and promote the use of a model marriage contract to protect the rights of woman. Gloobal Rights have undertaken an inititave to promote women's use of the marriage to secure their rights in the Maghreb.

The Moroccan family code (Article, 47, 48), Algerian family code (Article 19) and 1956 Tunsian personal status code (Article 11) allow spouse to negotiate and incorporate additional clauses into the marriage contract. Women can use pre-marital contract to protect their rights in marriage and at its dissolution by stipulating clauses on property ownership and division, children[24], monogamy clauses, her right to work, accounting of unpaid contributions to the household, and matters requiring her consent.

Nigeria has passed the violence against persons prohibition Act 2015, one of the biggest challenges today is getting domestic violence law Implemented such as making sure that women have access to property for economic empowerment.

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[22]Constitution of the federal Republic of Nigeria 1999, Chapter IV on fundamental Rights

[23]Section 24 Family Law (Scotland) Act 1985

[24]Section 6 (part III) Matrimonial Property Act 2013