



WOMEN'S RIGHTS AGAINST VIOLENCE: ISSUES AND TRENDS.

BY

Samuel A. Akanibo*

Tamunoemi A. Abbiyesuku**

ABSTRACT

Human rights remain inalienable to all mankind irrespective of their race, gender, class, geography among other considerations. Biological difference remains the only distinction between men and women. The conceptual analysis of human rights and the nature of these rights, legal frameworks for the protection of women's rights, human rights of women and their derogations and notable issues and trends in women's right are also examined in this paper. Various protectionist measures both by way of statutory safeguards and women advocacy groups are equally the focus of this paper. Suggestions have also been made to explore better ways of protecting the enforcement of women's human rights in order to accord women the opportunity to contribute their quota towards the development of humanity at all levels.

Keywords: Women, Rights, Issues, Trends, Violence

INTRODUCTION

The absence of legal discrimination against anyone individual, group, class, race or difference in biological composition justifies the basic understanding of equality of mankind of all ages. This is in conformity with the various postulations by a myriad of political philosophers¹ and academic writers who theorized that every individual within the society possesses certain rights which are inherent, inalienable and fundamental to his existence and which rights cannot be wantonly taken away and which may be beholden to no human authority.

* Samuel A. Akanibo, Part-time Lecturer, Department of Law, Institute of Legal and Global Studies, Port Harcourt Polytechnic, Rumuola, Port Harcourt, Rivers State. akanibosamuel@gmail.com (070395674033)

** Tamunoemi A. Abbiyesuku** Head of Department of Law, Institute of Legal and Global Studies, Port Harcourt Polytechnic, Rumuola, Port Harcourt, Rivers State. tamdejus@yahoo.com (08037632537). Thomas Paine, Thomas Hobbes, John Locke, Montesquieu, Jean Rousseau, William Kant etc.



A gradual, sustained and eventual derogation from these rights by a combination of factors² perpetrated by the custodians of political authority at various levels of governance over the years has only hastened the multiplication of human race and the domination, oppression and exploitation of man by fellow man thereby widening the gap between the capacity to protect these rights and annihilation of same especially as it affect women who very often are forced into a subordinate position compared with the men.

However, history of mankind is replete of struggles over the centuries for protection and enjoyment of their rights or their' conception of them. These struggles have yielded appreciable dividends in that constitutions³ of most modern states now have embedded in them human rights provisions. Significantly, this approach also had the ideals of feminism which seeks to drive, protect and promote the interests of women playing a key role in ensuring the increasing promotion and preservation of women's right agenda.

CONCEPTUAL APPRAISAL

It is always herculean defining a concept for purposes of acceptability by the majority. This is premised on diverse occupational experiences of the authors or writers concerned.

Violence according to Blacks Law Dictionary is defined as, *the use of physical force accompanied by fury, vehemence, or outrage. It is physical force unlawfully exercised with the intent to harm.*⁴

Violence against women is defined as;

any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.⁵

Literally construed, a right presupposes that which a person has a just and valid claim, whether it be land, a thing, or the privilege of doing something or saying something.⁶ Rights are those

² Including Obnoxious Cultural Practice

³ Magna Carta of England (1215), United States Declaration of Independence (1776), French Declaration of the Rights of Man and Citizens (1789), American Bill of Rights (1791), Constitution of the Federal Republic of Nigeria (1999) etc.

⁴ B. A. Garner, Blacks Law Dictionary, 8th edn. (West Group 2004) 1601

⁵ Article 1 of The Convention on the Elimination of Oil Forms of Discrimination against Women (CEDAW)

⁶ O. N, Ogbu, 'Human Rights and Law Practice in Nigeria: An Introduction', (Enugu: Codjpa Press 1999), In S. A. Akanibo , 'Tackling Hate Speech under International Law: An Appraisal'. (2021) 15(1) JPLCI



conditions of social life without which man cannot be at his best or give his best. It is what is needful to the adequate development and expression of his personality. It follows that only right recognized and protected by the legal system can be considered a right. In the words of Ikhariale, it refers to that which is so directed for the protection and advantage of an individual or group and is said to be his or their rights, the disturbance or infringement for which there is a legal sanction.⁷

DIMENSIONS OF HUMAN RIGHTS

The concept of human rights in its rudimentary form comprises of those rights considered to be basic such as right to life among others.⁸ Human rights constitute the essential conditions of social life without which mankind cannot be at his best or give of his best, what is needful to the adequate development and expression of his personality.⁹ An appreciation of right further ensures a deeper insight to human rights.

Human rights are thus human claims which found support in ethics. They are claims made by individuals on the society and the government. They are claims made by men not only for themselves but also sometimes on behalf of other men supported by some theory which concentrates on the humanity of man as a human being and as a member of mankind.¹⁰ In his treaties on human right in the political and legal culture in Nigeria,¹¹ Justice Oputa enthused that it is because each human being has intrinsic worth that we talk of fundamental rights or the inalienable rights of man.

Antonio Cassese described rather than defined human right as an “*ideological and normative galaxy in rapid expansion, with a specific goal: to increase safeguards for the dignity of the person*”. Human rights represent an ambitious attempt to bring rationality into the political institutions and the societies of all states.¹² Professor U. D. Umozurike gave an insight into the concept of human rights when he stated: *Human rights are those claims, which are invariably supported by law made on society, especially on its official managers by individuals or groups*

⁷ M. Ikhariale, ‘The Jurisprudence of Human Rights’, (5) *Journal of Human Right Law*, 1.

⁸ Ibid.

⁹ T. O. Dada, *General Principles of Law*, 3rd edn 2013, 507

¹⁰ T. O. Dada, *General Principles of Law*, 3rd edn 2013, 509

¹¹ C. A. Oputa, ‘Human Rights in the Political and Legal Culture in Nigeria’, (Nigerian Law Publication Ltd. 1989)

¹² U. Oji Umozurike, ‘The African Charter on Human and People’s Rights, Martinus Nijhoff Publishers 1977) 12



on the basis of their humanity.¹³ The general purport of all these definitions is that human rights are rights inherent in man. They arise from the very unique nature of man as a social animal. Human rights are those rights which all human beings enjoy by virtue of their humanity, whether black, white, yellow, brown or red, the deprivation of which would constitute a grave affront to one's natural sense of justice.¹⁴

DIMENSIONS OF HUMAN RIGHTS

Human rights are of diverse forms. Some scholars have also categorized human rights into different generations.¹⁵ However, irrespective of the type of generation to which a specie of human rights belong, no specie of human is better than or superior to the other. Generally speaking, these rights, include the following;

Right to Life and Security of Person

The right to life is the most fundamental of all rights, as it is the very core of humanity. It means a claim to so live that the existence of one does not jeopardize the existence of others. It also means the right to defend oneself against attack.¹⁶

Right to Liberty and Movement

The right to liberty is exercisable when mankind can do only what he has complete freedom to exercise his faculties and to determine the general conditions of life. Mere life without movement would be meaningless and without exercise of human faculties it would not rise above the levels of animals.¹⁷

Right to Work

The right to work is implicit in the right to life, because in a rationally organized society man must live on the reward of his labour. The right to work can mean no more than the right to be occupied in some share of those goods and services which society need.¹⁸

¹³ O. W. Igwe, Preliminary Studies in Human Right Law (Lagos: Rings and Favolit Ltd, 2012), 5

¹⁴ (n13)

¹⁵ K. Vasak, *A Thirty-Year Struggle. The Efforts to Give Force of Law to the Universal Declaration of Human Rights*. He Referred to Civil and Political Rights as First, Generation Rights.

¹⁶ A. C. Kapur, Principles of Political Science (Nirja Publishers 2012) 384

¹⁷ Ibid.

¹⁸ H. Laski, A Grammar of Politics, 106



Right to Equality

This right presupposes the absence of legal discrimination against any one individual, group, class or race. Democracy can only exist and flourish in a society of equals. The African Charter on Human and Peoples' Rights provides a list of rights that must not be restricted. They must be respected in all circumstances. It provides for the right of non-discrimination whether based on "race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status."¹⁹ Some rights may be derogated from, abridged, limited or suspended under certain circumstances. In both international and municipal laws, it is acknowledged that certain rights are not absolute but may be qualified in given conditions. Thus, the Universal Declaration of Human Rights provides in Article 29(2) as follows:

In the exercise of his right and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the requirements of morality, public order and the general welfare in a democratic society.²⁰

Other human rights include the following:

- a. Right to assembly and association
- b. Right to religion and conscience
- c. Right to family

THE HUMAN RIGHTS OF WOMEN

Women's rights are an integral part of human rights. The centrality of women's rights to human rights, and indeed, the inter-linked nature of all human rights, was affirmed by the 1993 Vienna World Conference. The Vienna Declaration and Programme of Action stated that, "*The human rights of women and the girl child are inalienable, integral, and indivisible part of universal human rights*". The protection and enhancement of women's rights ensures the full and equal participation of women in political, civil, economic, social and cultural life, at the national,

¹⁹ Article 2

²⁰ Section 45(1) CFRN 1999 as Amended



regional, and international levels, and the eradication of all forms of discrimination on the grounds of sex are priority objectives of the international community. Specific women human rights include;

Right to live free from violence; slavery and discrimination, right to be educated; right to own property, right to vote and to earn a fair and equal wage.²¹ As the now famous saying goes; “women’s rights are human rights”.

That is to say, women are entitled to all of these rights. Yet almost everywhere around the world, women are still denied them, often simply because of their gender.²²

LEGAL FRAMEWORK FOR THE PROTECTION OF WOMEN’S RIGHTS IN NIGERIA

The Constitution of the Federal Republic of Nigeria 1999 as amended

As the apex law of the land, the Constitution provides for the protection of women’s rights. Section 17 recognises the right to equal pay for equal work without discrimination by reason of sex or any other reason whatsoever. Also, the protection of the human person, human dignity as well as equality of every citizen’s rights obligations and opportunities before the law are guaranteed.²³ However, the enforceability of the above constitutional provision remains doubtful due to the non-justiciability clause in section 6(6)(c) of the same Constitution.

The Criminal Code Act

The Criminal Code Act²⁴ contains some provisions meant to protect the sexual and reproductive rights of female gender.²⁵ Sexual offences prohibited under the Act for the protection of the female gender include; but not limited to provisions on rape,²⁶ indecent assault,²⁷ defilement,²⁸ abduction,²⁹ seduction and prostitution.³⁰

²¹Global Funds for Women, “Women Human Right” <https://www.globalfundforwomen.org/womens-human-rights/> accessed 29 November 202.

²² Ibid.

²³ Section 17(2) (a)(b)

²⁴ Cap C38 LFN 2004

²⁵ E. M. Akpambang, ‘A Critical Approach of the Legal and Policy Frameworks for the Protection of Women’s Rights in Nigeria’, 10(1) AIJCR, <https://www.researchgate.net> accessed 25 November 2021

²⁶ Section 357-359

²⁷ Section 360

²⁸ Section 218 and 219

²⁹ Section 261

³⁰ Section 222 A and 222 B thereof



The Penal Code Act

The Penal Code contains provisions aimed at protecting the sexual reproductive rights of women and girls.³¹ However, the Penal Code makes provision which justifies a husband for beating his wife if it is for the sake of correcting or chastising the wife.³²

Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 (as amended)

This law attempts to protect the right of women against all forms of sexual exploitation including seduction, pornography, defilement, indecent assault, rape, kidnapping, abduction and trafficking for purposes of prostitution, slavery or forced recruitment into armed conflict.³³ It further asserts that a trafficked person shall not be subjected to discriminatory treatment on grounds of race, colour, gender, sex, age, language, religion among other consideration.³⁴

Violence Against Persons (Prohibition) Act 2015

This statute attempts to provide a solid footing for operational and synchronized legal framework against violence targeted at women as it concerns domestic/intimate partner violence such as spousal battery,³⁵ rape,³⁶ incest,³⁷ forceful ejection from home,³⁸ physical abuse, emotional or psychological abuse³⁹ and attack with harmful substances, such as acid bath,⁴⁰ female genital mutilation, harmful widowhood and traditional practices,⁴¹ coerced financial dependence or economic abuse and abandonment of spouse and children.⁴²

SCOPE OF VIOLENCE AGAINST WOMEN'S RIGHTS

Women's rights seek to challenge and break down the exclusion that women have suffered in all parts of the world. Feminism can be understood as a broad-based and diverse movement

³¹ Section 282 PC

³² Section 55(1) (d)

³³ Section 11 - 26

³⁴ (n17)

³⁵ Section 19

³⁶ Section 1

³⁷ Section 25

³⁸ Section 9

³⁹ Section 21 and 22

⁴⁰ Section 15 and 20

⁴¹ Section 16

⁴² Section 18



that seeks to protect and promote the interest of women. A recent United Nations report provides that adult women account for 51% of all human trafficking victims detected globally. Women and girls together account for 71%, with girls representing nearly three out of every four child trafficking victims. Nearly three out of every four trafficked women and girls are trafficked for the purpose of sexual exploitation.⁴³ The report also shows that poverty has to be understood in a wider context, as including not just lack of financial and social resources, but an exclusion from health care, legal services and civic life.⁴⁴

On the whole, women work longer hours than men, with at least half the total time spent in unremunerated labour. This invisibility leads to lower social entitlements to women as compared to men. This inequality in turn perpetuates the gender gap in accessing needed resources. Reproductive health problems also impact negatively on women. Poor women are forced to have more children than they want. Infection rates of AIDS/HIV and other STDs are also higher for women than men because inequality often deprives women of the ability to refuse risky practices, which leads to coerced sex and sexual behavior. In Kenya women's right with regard to property (land) ownership is highly discriminatory. Women's land ownership is miniscule despite their enormous contribution to agricultural production. Women account for only 5 percent of registered land holders nationally. Rural women work an average of nearly three hours longer per day than rural men.⁴⁵

Women's property rights closely relate to *wife inheritance and cleaning rituals* in that many women cannot stay in their homes or on their land unless they are inherited or cleansed. Women have to be inherited to keep any property after their husband's demise. They have access to property because of their husband and lose that right when the husband dies. The "cleansing and inheritance" are not voluntary but coerced so that they could keep their property and stay in their communities.⁴⁶ At constitutional level, discrimination on the basis of sex is prohibited in Kenya, but there are exceptions which allow discrimination in personal and customary law.⁴⁷

In a notorious *Magaya Case*⁴⁸ in Zimbabwe, the Supreme Court held that *Ms Magaya could not inherit land because customary law does not permit women to inherit and the constitution*

⁴³ UNODC (2021) Global Report on Trafficking in Persons (2021, p. 9, 7, 28

⁴⁴ Ibid.

⁴⁵ www.Oxfordscjhoalrship.com accessed 29 November 2021

⁴⁶ (n45)

⁴⁷ Article 82(4) Kenyan Constitution

⁴⁸ (Sc 210/98)



still allowed discrimination in such matters. The Nigerian Scenario is largely not different compared to other jurisdictions. In most communities, a divorced or separated woman is despised regardless of the circumstances. The woman is stigmatized and becomes socially vulnerable, especially in the Eastern part of Nigeria. In Northern Nigeria, separated or divorced women can only marry after three months and usually do.⁴⁹ There are also problems with property rights whereby 90 percent of registered land and properties remain in men's names.⁵⁰ Property rights are equally complicated by the tripartite legal system,⁵¹ and by general ignorance of the existence of rights and social exclusion.

Under customary law, however, wives remain as slaves to their husbands and in-laws. Widows in southern and eastern parts of Nigeria have no protection, and their rights are seriously abused. Under the Sharia legal system, widows are accorded more rights. If their husbands die, they are allowed an in-house compulsory mourning period of four months and 10 days to determine whether they are pregnant. After the compulsory mourning period, if found not pregnant, women are free to remarry. Widows under the Sharia law inherit their husband's properties together with their children.⁵² Violence against women seen in a broader context covers psychological as well as physical harm, and includes threats of violence as well. It covers both public and private life and so would apply to domestic violence as well as violence taking place in the public sphere. Violence against women further expanded covers what could be seen as a private or at least family oriented context which includes; physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.⁵³ The impact or combined effects of the stated violence against women's rights unequivocally decimate the status of women thereby ensure sustained subordination of women's position especially in developing countries of the world.

ISSUES AND TRENDS IN THE PROTECTION OF WOMEN'S RIGHTS

⁴⁹ S. Wright, 'Human Rights and Women's Rights: An Analysis of the UN Convention on the Elimination of all Forms of Discrimination against Women'. In Mahoney, K and P. Mahoney (eds) Human Rights in the twenty First Century.

⁵⁰ Ibid.

⁵¹ Islamic Sharia Law, Customary Law and Common Law

⁵² (n51)

⁵³ Articles I & II of The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).



The coming into existence of United Nations Created great expectations and gave hope to millions of oppressed people everywhere. These expectations were transformed into large number of petitions from individuals and non-governmental organizations alleging violations of human rights and thus seeking the intervention of the UN.⁵⁴ The Commission of the Status of Women (CSW) was established by a resolution of the Economic and Social Council by Council resolution in 1946. The CSW was first, a sub-commission of the Commission of Human rights, but its role was enhanced as the UN began to appreciate that the Bill of Rights was not effective in promoting women's rights. From 1949-1959, the CSW created a number of documents that covered women's rights in various areas, it was increasingly felt that there, was a need for a coherent and consistent approach to the issue.. The Declaration on the Elimination of Discrimination against Women was adopted in 1967. However, the subordinate status of women's rights was apparent in the form of the document. The Declaration was a statement of principle, and did not have the force of a treat.⁵⁵ In the early 1970s, however, as the awareness of the scale of discrimination against women became increasingly obvious, the CSW argued a treaty was necessary. The Convention on the Elimination of All Forms of Discrimination against Women was adopted in 1979. CEDAW in its contents, made some profound provisions for the protection of women's rights.

Article 1 contains a definition of discrimination against women to cover distinction, exclusion or restriction made on the bases of sex, impairing or nullifying the recognition or exercise by women, irrespective of their mental status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.⁵⁶ Article 2 moves from general definition to cover the ways in which discrimination is to be combated. It specifically enjoins state party to; incorporate anti-discrimination principles in the constitution and in legislation; deploy sanctions if necessary to achieve the goal of equality and require public authorities to act in a non-discriminatory way and repeal penal legislation that is discriminatory.⁵⁷

Article 5 places further obligation on state parties to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and

⁵⁴CEDAW (n 53).

⁵⁵ (n53)

⁵⁶ Ibid.

⁵⁷ Ibid.



customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles of men and women.⁵⁸

Article 12 guarantees equal access to health care for women as well as requiring state parties to ensure to women appropriate services in connection with pregnancy, confinement and the post-natural period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation. It follows that women's right are so distinctive to the extent that they are recognized as such to ensure special health care needs of women. Indeed, this is one important area where women differ from men.⁵⁹ Article 14 places a duty on state parties to take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their children.⁶⁰

Additional protectionist measure to safeguard women's rights is the position by Feminists Right Advocates. They have been able to link women's right to the eradication of poverty; a factor that increasingly drives forward the rights agenda. The 1994 Commission on Human Rights created by resolution 1941-45, the post of Special Rapporteur on violence against women, had created procedures whereby information could be obtained from government on cases concerning alleged violence against women. Communications could be made under the first Optional Protocol to the ICCPR concerning laws that discriminate against women and by reference to Article 26 of the ICCPR. This procedure was used in *Brocks v. Netherlands*⁶¹ where a Dutch Unemployment Benefits Act was successfully challenged on ground of discrimination.

Discrimination or violence against women may also fall under Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination⁶² or Article 22 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁶³ In Nigeria, the Constitution⁶⁴ provides generally against discrimination on account of origin, sex, religion among others, there is specific protection for the chastity of women. This relates to the

⁵⁸ (n56)

⁵⁹ (n58)

⁶⁰ Ibid.

⁶¹ 172/1984

⁶² A UN Resolution 39/46. Adopted by UN General Assembly (Resolution 2016) on Dec. 21st 1965

⁶³ UN Resolution 39/46. Adopted in 26th June 1987

⁶⁴ Section 42 (1)(9a) CFRN 1999



offence of rape punishable under the penal code⁶⁵ and the criminal code.⁶⁶ The Labour Act⁶⁷ also provides that a woman is entitled to be paid not less than 50% of her wages during any period of absence on maternity leave. The National Agency for the Prohibition of Traffic in Persons and other Related Matters (NAPTIP)⁶⁸ was established to tame the scourge of trafficking in persons in Nigeria and its attendant effects.

CONCLUSION

Undoubtedly, one of the delineate attributes of women's rights is their approximate subordination to a supposedly more universal idea of human rights. Unfortunately, this state of affairs has continued and gained momentum rapidly especially in the developing countries inspite of plethora of international and municipal legal frameworks for the recognition and protection of women's rights. Perhaps the relative silence by international bill of rights and most municipal laws regarding enforcement mechanisms of women's rights violations account for the sustained abuses of women's rights through violence.

In Nigeria and indeed many African countries, women suffer a lot of discrimination as a result of their gender. In most instances, the prevailing cultural practices account for the abuse of women's rights. The mentality of considering women as being subservient to men and consequently insignificant roles either at home or in societal governance also contribute to the abuse of women's rights.

RECOMMENDATIONS

The universality of human rights and indeed women's rights is beyond controversy. It is therefore suggested that in order to deemphasize measures whether in the nature of legal framework or customary practices deemed inimical and discriminatory to women's rights, and emphasize vigorously measures aimed at ensuring women's rights, the following recommendations are therefore suggested;

1. Effective enforcement of legal frameworks for the protection of women's rights.

⁶⁵ Section 283

⁶⁶ (n23)

⁶⁷ (n15)

⁶⁸ Established in 2003



2. Obnoxious and patriarchal cultural attitudes which remain ingrained and resistant to change should be effectively abolished.
3. Conducive environment and platform should be enabled to ensure women's unrestricted participation in governance at all levels especially in developing countries.
4. A platform for individual complaints devoid of discrimination should be created to encourage the report of violence against women.
5. State signatories to treaties on the protection of women's rights should obligatorily submit periodic report on their level of compliance to the Commission on Human Rights