

IHA - IDEGBE: A PHILOSOPHICAL EXAMINATION OF “SAME SEX TRADITIONAL MARRIAGE” IN ANIOMA CULTURE, AND THE LEGALITY.

BY

Charles Chukwuedo Nathaniel
charles.nathaniel@unidel.edu.ng

Abstract

Marriage among the Anioma people is a complex affair with economic, social, religious as well as legal aspects which often overlap so firmly that they cannot be separated from one another. Iha-idegbe which translates to “same sex marriage” is a type of marriage which permits a woman to marry another woman, not for the purposes of indecent or immoral sexual relationship such as lesbianism but for the sole purpose of procreation and family continuity and progeny, which is the existential purpose of the marriage institution among the Anioma people. Through this marital relationship between two adult women one being the husband and the other the wife, many individuals, families are saved extinction, societal embarrassment and other social vices associated with childlessness, and peace restored to barren mothers and families. Existing studies on same sex marriages have been approached from the moral perspective, paying less attention to the existential problem in marriages (childlessness), which necessitated the traditional and cultural practice of Iha- idegbe. The crux of this paper is therefore an appraisal of Iha-idegbe . Is it actually a marriage? Does the Anioma traditional society approve of it? What becomes the fate of children gotten from such marriage? What is the future of such marital practice among the Anioma people in this period of post modernism? Does the civil law approve of it? This and many other pertinent questions will be analyzed and addressed in this paper.

Key words: Enuani, Debia, Uzoechine,

Introduction

The understanding of Aniona Igbo socio-cultural cum Philosophical thought system is aptly laid down in the ethno-philosophical thoughts of some African philosophical

scholars such as Otakpor, Echekwube, Onwujiogwu etc. In the opinion of 1(Prof Otakpor, 2014), Anioma people are notoriously religious and each town or community has its own cultural and religious system with a set of beliefs and practices. This complex, but interesting nature of Anioma thought system is evident in their marital system and traditional practice of Iha- idegbe (woman to woman), marriage. Marriage is a very complex but fascinating relationship between primarily two persons usually between a man and a woman. This relationship marital bond whether good or bad, fruitful or unfruitful will depends on the fruit of the marital relationship (Children). No wonder on the day of the traditional marriage, both families affirm their belief in the efficacy of (Uzoechine,), interpreted as (May the road to this marital relationship never cease), and call on their gods to make the particular marriage story be like going to the stream to fetch water, meaning (if the marriage bears good fruit, they will come back again in search for another wife).

Among the Anioma people, children are considered to be of great importance to human existence. Childlessness of whatever sort is abhorred. Among married couples childlessness has been a source of great pain and distress in many homes. The psychological, social and emotional pain associated with it cannot be overemphasized. No wonder (Amaechi, 2018) observed that many couples have difficulty in becoming parents by bringing children to birth. This has always been a source of stress and conflicts that often lead to undesirable consequences such as adultery, polygamy, divorce, and children born out of wedlock. Further depicting the picture of childlessness in marriages, (Ele, 2016) identified some effects of childlessness in African culture to include causing psychological trauma, leading to divorce, suicide and abandonment etc. Hence most couples are willing to stop at nothing to have children of their own. Against this background of despair, frustration and the need to meet the existential need of motherhood and societal demand of child bearing, Iha-idegbe becomes an option for women having issues with giving birth and are well to do women in society. Philosophical system is meant to serve a definite socio-cultural function. Thus philosophy is not an abstract thought. On the contrary, it reflects the cumulative effects of socio-cultural reality. It is inseparably connected with social developments which carry within themselves contradictions that are, perhaps, insoluble. According to (Wittgenstein, 1976)

It is the business of philosophy, not to resolve a Contradiction by means of a mathematical or Logico-mathematical discovery, but to make it possible for us to get a clear view of the state of affaire before the contradiction is resolved. And this does not mean that one is sidestepping a difficulty.

Anioma cultural value system places more premium on children than material wealth. Names given to children at birth which emphasize these values are legion. Among the Anioma people, for example, the following names are indicative of this value orientation.

Afamefune (My lineage shall not go extinct)

Adimabua: I have replicated myself on mother earth.

Ifeyinwa: There is no comparison in the world to children

Nwabueze: Children are the king in one's life.

Bazimife: I represent my father on Earth

Nwabukwu: Children are for inheritance.

Nwabuife: Children are precious

Onochie: A child that fills a vacuum

Nwabugo: Children are the source of glory and happiness for an individual

Nwabuso: Joy can only be derived from having children

Nwaedozi: Children help to assuage the felling of disgust and anguish as a result of living in this world.

Nwamaka: Children are the greatest gifts to mankind.

It is a person who has children that is believed to have lived a successful and fulfilled life. No matter how wealthy a person may be. If that person is childless, that person's life is regarded as a frustrated one. A childless life is a frustrated life. To be childless as a woman is to have missed the primordial goal of human existence. In the words of (Akalonu, 1987), A childless woman is regarded as a sort of monstrosity, indeed, it is unknown that when such woman dies, in order to express the contempt in which she is held, her abdomen is slit across prior to her burial. She has failed to fulfill her function in life, and this mutilation of the corpse is the token of her failure, her name blotted out forever.

Women bear more clearly the burden of infertility and suffers serious emotional, social, cultural consequences than men. Not having children results in a sense of failure for women. It places women at a risk of social, cultural and family displacement. Having children is said to fulfill marital and sexual life. Children gives happiness to the family and tighten bond between spouses and the network of relationships in the extended family. System. In the socio-cultural system where there are no social security benefits for employment, old age and health. To have children is far more than a biological need. It is more than a psychological requirement. It is a kind of social guarantee. A woman who is childless will stop at nothing to have a child of her own. Traditionally, options abound to solve the problem of childlessness. Firstly, they (her biological) family may advise her to seek sexual assistance outside (matrimonial home) without her husband's consent. This is usually kept top secret within her family. Secondly, the services of a powerful (Dibia), witch doctor may be consulted and sacrifices made to appease the gods on her behalf. Alternatively, traditional herbal treatment could also be sought. When all this fails to yield results, a financially buoyant Anioma woman could decide to literary marry another younger woman legally to (bear children for her (Iha-idegbe). This rare, expensive, funny but interesting marital relationship between two women is known as (Iha-idegbe) in Anioma culture. Traditionally the children begotten from such woman to woman relationship are accepted by the society as legitimate and have equal rights as others. In the opinion of 5(Ebigwei 2022) Iha- idegbe, is not an abstract thought, on the contrary, it reflects the cumulative effects of socio-cultural reality. It is inseparably connected with developments which in themselves carry contradictions that are perhaps insoluble He reported that the practice of Iha - degbe by the Igbo people bank of the Niger is a special method of surrogate motherhood whereby childless women are able to have heirs as well as succor that emanates from having ones children.

Moreover, (Falana, 2013), while commenting on same sex marriage observed that “the most satisfactory solution to childlessness is self-perpetuation, here and now. Through ones children, grandchildren and great grandchildren. Continued life and existence is only assured trough one's children. He further posited that the idea behind the practice of surrogacy among Africans is centered on continuity, the preservation of family name and

pride as well as preservation of societal values.

The Notion of Iha-Idegbe (Surrogate Motherhood) And Practice.

The term surrogacy refers to an arrangement in which a woman agrees to bear a child for another woman or a couple who for some reasons could not bear children by themselves. This intending mother or couple takes full legal custody of the child so produced. In this arrangement a woman acts as a surrogate for another and carries the pregnancy to term. The child produced from this arrangement becomes legally that of the intending couples or mother (Okwuosa, 2020). Surrogate motherhood is carried out in diverse ways. The first method involves the sperm of the husband of the intending mother is implanted in the surrogate by artificial insemination or through sexual intercourse. In this method the surrogate is also the genetic or biological mother of the child. This is method of surrogacy is sometimes referred to as traditional surrogacy. But some reasons ranging from family ego, the fear of secret killing, revenge and societal acceptance, the Anioma culture will rather prefer the identity of the sperm donor to be anonymous. Even if by chance the identity of the donor is known usually as a result of resemblance, the biological father can never lay claim on the child because the Anioma culture forbids a man to lay claim of a child of another woman whose bride price was paid by yet another man. In Anioma culture, the legitimacy and societal acceptance of a child is based on who paid the mother's bride price notwithstanding the sex of the suitor. Even if the child's birth was before the formalization of the marriage.

In other cases, where the intending couple is able to produce eggs but unable for some health challenges to carry a pregnancy to term, her egg is fertilized with either the sperm of her husband or some other sperm via a process known as in-vitro fertilization and implanted into the womb of the surrogate who then carries the baby for the woman.

(Storey, 2019), opined that "All over the world, conception, childbirth and marriage patterns are arranged by demographic variables, such as belief systems, wealth, religion, class and tradition. Among the Anioma people of south-southern surrogate motherhood, marriages are arranged to satisfy the belief systems, traditions, social norms as well as individual needs of the peoples. One of these traditional social marriage types is Iha-idegbe a system through which women and young ladies conceive by proxy to men who have died even before the marriage proposals. No wonder in Anioma world view, time is never too late for a man to marry, hence a dead man or even a miscarried male child can give birth through posthumous marriage, especially for the traditionalist. The interest of this essay is however specific. What actually is the motivating factor behind the Ndi Anioma surrogate paradigm?"

Varieties of Traditional Marriages By The Anioma People

Marriage is a human institution with a cultural tinge; hence the slight difference between the following two approaches. According to (Krygier 1986), (marriage is and always had been recognized as a union of man and woman. It is the institution on which the family is built, and in which the capacity for natural heterosexual intercourse is an essential element. The characteristics that differentiate it from all other relationships can only be met by two persons of the opposite sex.

He asserted that "marriage may be defined as the union of a man and woman, being normally the gist of a wider association between two families or sets of families. Two

issues are salient in these approaches: (a) marriage is a union of man and woman, (b) it subsists primarily under heterogeneous relationships.

Both perspectives are deficient because other forms of marriage are not accounted for. Obi's definitions while reflecting the English tradition, discounts the reality of homosexuals and lesbians (a) cohabiting, and (b) marrying one another. Obi's account is even more surprising because marriage in Nigeria is far more than he admits.

Customary marriage which would adequately cover the basic essentials of marriage is recognized, accepted and practiced by the various Nigerian communities. Broken down, there are various kinds marriages among the Anioma people. These include:

1. **Polygamy:** where a man marries more than one woman;
2. **Monogamy:** where a man marries only one woman;
3. **Posthumous marriage:** where a woman traditionally marries a deceased man and bears for him posthumously through a living, anonymous man.
4. **Ghost marriage:** This happens where a man is compelled to marry the corpse of a deceased woman he was cohabiting with before she died. This marriage is usually happens when the man did not legally marry his wife before her death.
5. **Woman-to-woman marriage or (traditional)surrogacy (Ih-idegbe):** where a childless woman marries another woman
6. In (a) and (b), (c) and (d) the relationship is heterogeneous because it involves the male and female sexes. It is heterosexual. The relationship in (e) is homogenous because it involves only one sex: the female.
7. Marriage between a man and woman is the oldest and original form, but it is not the only form of marriage among the Anioma people of South- south Nigeria .The marriage between two persons of the same sex also exists (Jeffery, 1951)¹⁰

Let us consider the following marriage variations according to Anioma thought system:

- a. A woman marries a man and they both live as husband and wife. They may or may not have their own children depending on their fate and other circumstances beyond their control. This is the conventional marriage.

- b. A woman married or unmarried decides to marry another woman to bear children either for her or her father. This usually happens in families where children are scarce. In other words, the woman knows abinitio that she was getting married to another woman who becomes her husband. Ironically, her woman husband provides for the family (her woman wife) and performs all the responsibilities expected of a male husband except conjugal relationship.
- c. Iha-Idegbe or surrogate motherhood: A married childless woman purportedly marries another woman for her husband, to bear children for her. The children are for her because she married the woman in her name.
- d. A childless single woman marries another woman on her own. Any child from such marriage belongs to her and will bear her father's name. Such child becomes her son. The son will bear the woman's surname
- e. The relations of a man who died childless marries a young lady to bear children for the deceased man posthumously.
- f. The family of a deceased woman that was cohabiting with a man before death compels the man to marry her corpse before burial. This marriage is usually done to legitimize the children fatherhood and to serve as a deterrent.
- g. A childless widowed /or divorced woman marries another woman on her own behalf.
- h. Categories (a) (b) and (c) are not candidates for Iha-idegbe because the mere provision of dowry creates neither legal nor cultural bond between the man or woman who provides the dowry and the woman on whose behalf it is paid. No such bond is created on the offspring of the marriage.
- i. Categories (d), (e) and (f) represent the true nature of this form of marriage. The basic element is present: such a marriage is always contracted in the name of or on behalf of a man. It is basically an affair, a transaction and union between two

persons and their families. In some communities the name of a male is used as a front for the marriage, though everyone in such a community knows that a woman is either marrying a deceased man or another woman. Nonetheless, the standard practice is a man marrying a woman or a woman marrying another woman on her own behalf.

Iha-Idegbe and The Civil Law

The legal position on traditional surrogacy (Iha-idegbe) in Nigeria is sophistic and simplistic. It is as if, in the opinion of the courts, there is no problem. When problem is tacitly acknowledged, it is dismissed with legal sophistry, perhaps, on the grounds that the more sophisticated the legal arguments the better for the interests that are in conflict. Secondly, legal opinion on this form of marriage from the customary courts to the Supreme Court appears contradictory

The contradiction is overly prominent because:

A. The Nigerian Matrimonial Causes Act 1970 is abysmally silent on Iha-idegbe (Nwosu 2018)

B. The Customary Court Edict in some states of the federation, for example, the former Bendel State of Nigeria, presently Delta State seems to have declared it repugnant

In the communities where it is practiced, it is still recognized and accepted as a way of life.

According to the Anioma tradition where Iha-idegbe is permitted, the legal battles for ownership of the child the following examples show the attitude of Nigerian Courts towards all forms of Iha-idegbe (traditional surrogate motherhood) In *Helina v. Iyere*, the court had to decide whether a child born of a woman married to another woman is the child of the woman husband. The plaintiff being childless following Anioma culture married the (defendant). The defendant fell in love with a man and had a son for him. The woman husband was responsible for all the medical expenses of the mother and child. Problem subsequently arose when the biological father of the child was transferred out of the town. In her judgments the court held that

“I agree entirely with the counsel to the appellant. It is an odious custom to permit a woman to marry another woman. It is equally atrocious and against public policy to deprive unwilling natural biological parents, for any reasons, of their child and vest the same on childless parents or childless man or woman as if the child were a chattel. This ugly custom is distinguishable from the system of child adoption which is primarily for the welfare of the child”

Furthermore in the case of *Meribe^{vs} Egwu* the court had to decide whether a child born to a childless woman while the latter was also married to a man is the child of the woman husband or the child of the male “husband” In delivering his judgment, Madarikan J.S.C. asserted that

"In every system of jurisprudence known to us on of the essential requirements for a valid marriage is that it must be a union of a man and a man, thereby creating the status of a husband and a wife. Indeed the law governing any descent society would abhor and express indignation to any form of indecent marital union such as woman to woman marriage. (iha-idegbe).

Conclusion

The court decisions from the lowest to the Supreme Court are manifestly sexist, discriminatory and insensitive to the plight of the traditional Anioma men and women that are going through childless marriages. Surrogate motherhood or Iha –Idegbe in whatever form should not be confused with same sex marriage involving lesbians and homosexuals who are now in vogue in Europe and North America and other parts of the globe. These are new sexual orientations for Europeans and their siblings world-wide. Lesbians object to sexual intercourse with men. Homosexuals object to sexual intercourse with women, but engage in anal sex. Both groups indulge in pseudo-sexual activity. Lesbianism is alien to Anioma tradition. A woman husband is not a lesbian, has never been and will never be. Traditionally, there is no history of homosexuals in Anioma thought system. It is an abomination. Customary law and statute law are distinctly apart. While statute law is a collection of commands issued by judges to litigants, customary law is not. While the status of legal rules depends on their being understood as communications by those in authority, customary law is decidedly not. And while legal rules are posited by sovereign like authorities, customary law is manifestly not. Thus declaring the traditional and cultural practice of Iha -Idegbe as immoral, repugnant, .is conceived as a deliberate attempt to usurp the valued custom of the Anioma people. It does not change anything. It does not improve on our understanding of the problems of the others. It does not prevent those childless men and women in the communities to relinquish the practice, nor prevent those who want to engage in it from doing so. It does not prevent such men and women from raising a family of theirs from (Iha-idegbe). Repugnancy is, thus, not a solution to the problem of infertility and childlessness among the Anioma people. The truth is that repugnancy test is an obsolescent remnant from a colonial past. According to the legal maxim, "Lex lemini facit injuriam", "The law does wrong to no one". While this may be generally true, Iha-Idegbe is certainly differentiated from this maxim or norm. It is an example where the "Law does wrong to some people", in this case to childless men and women. Moreover, "Lex non deficit in justitia exhibenda": the law does not fail in showing justice. Yet in all the decisions by the courts, the law failed abysmally to show justice to childless men and women in traditional Anioma communities.

Finally, the result of the practice is a refreshing breeze which blows through the lives of those childless men and women as well as women who are husbands and fathers. That is something neither a court nor an act of the National Assembly can take away. The thesis the author have sustained throughout this essay is that culture, tradition and law are not necessarily apposite. They are inseparable companions on the long road to justice. Law, if it is to retain its sapiential quality and not degenerate into a heap of crystallized absurdities, must remain constantly open to the yearnings of the people it is supposed to serve. There has been no attempt in this essay to discover or unearth unfamiliar truths about this aspect of cultural life in some Nigerian communities. Instead, the author have

attempted to refocus attention on what is already familiar and commonplace. Wittgenstein has observed that, “the aspects of things that are most important for us are hidden because of their simplicity and familiarity (One is unable to notice something because it is always before one's eyes Iha- Idegbe is so familiar that what it represents may escape notice altogether. While it does, the stigma, pain, and suffering arising from childlessness just as the joy, the happiness, and the sense of fulfillment arising from its cultural solution remain unquantifiable. As Laing has argued, “the range of what we think and do is limited by what we fail to notice. And because we fail to notice that we fail to notice, there is little we can do to change until we notice how failing to notice shapes our thoughts and deeds .The tradition of Iha-Idegbe comes to our people as men and women of affairs, who have their own feelings of the import of the practice and who know the reason for its existence, We can inquire into the mischief which gave rise to the practice in order to see 'the evil, the problem or the harm which it is supposed to remedy; assuming there is any.

Eschewing technical rules, our courts should endeavor to see simply what the custom is intended to do for childless men and women. The reason is that legal positivism and judges trained in and imbued with its dominant ethos misread, misunderstand, and misplace the quintessence of childlessness and the practice of Iha-Idegbe. We need to remind ourselves that the high concentric waves of cultural life are scoreless, boundless and perhaps underdetermined. The legal aspect of it is but a partial appearance. We grasp but a few meshes of the vast network of existence; this calls for openness, particularly openness of heart and mind, and a determination to find the truth wherever the search leads us. These are steps to a deeper, broader and compassionate awareness and understanding which is, indeed, the essence of a cultured perspective. Finally the author concludes with the words of T . Henry (2002). We cannot change our past. We cannot change the way people act. We cannot change the inevitable. The only thing we can change is the thing we have any control over, and that is our attitude.

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