



## RESPONSES AND THEIR ADEQUACIES TO GENDER VIOLENCE: A CRITICAL APPRAISAL\*

### Abstract

Gender violence is a global phenomenon and it is almost a common occurrence in the homes and cultures but they are treated with hand in gloves in many cases. These issues range from violence against women, discrimination, subjugation, injustice, rape, female genital mutilation, prostitution, sexual abuse, wife beating and slavery, widow disinheritance, trafficking in women ex cetera. The dignity of womanhood is not sufficiently appreciated in developing nations where sex inequality is a strong belief and the majority of women are placed under severe social-political disabilities and discrimination. Women have always been seen and treated as unequal to men. However, the aim of this article and the major objective, is to critically appraise and analyze in details the responses and their adequacies to gender violence. The research methodology is doctrinal approach, using expository and analytical research design. It was observed that some Nigerian laws are inimical to women's rights; also, most international and regional laws protecting women's rights are still not domesticated and cannot be used in our domestic courts and gender issues originate from negative orientation towards the female and the positive stance towards the male. The female is valued less than male. The main sources of data collection are from various legal literatures, both from the physical library and the e-library. Therefore, it is recommended among others that Nigerian legislators and the judiciary should adopt the sound principles and related provisions in foreign jurisdictions to advance women's rights and it is also recommended that section 12(1) CFRN 1999 should be jettisoned so that international treaties such as CEDAW can be made enforceable in Nigeria by domesticating them. Finally, this article is made to be significant to all stakeholders in human right and feminism.

**Keywords: Fundamental Right, Gender, Human Right, Sexual right, Violence.**

### 1. Introduction

The dignity of womanhood is a rich and complex concept. It comes on the honour, respect and role due to women, and it is a concept and value not sufficiently appreciated in developing nations where sex inequality is a strong belief and the majority of women are placed under severe social-political disabilities and discrimination. The dignity of womanhood has recently been violated in different ways and by different culture and time such as, the issue of inheritance, childlessness and male child preference, exploitation of women, domestic violence, polygamy, obnoxious widowhood practices and sexual harassment to mention but a few. Women have always been seen and treated as unequal to men. Gender based violence is the fate of millions of women all over the world and this violation is experienced and noticed in many facets of life, spanning from social, religious, political, economic, moral, psychological ex cetera to the extent that most people have taken it as the norm. Gender based violence is a universal reality in all societies. Women and men are treated differently and as such women are placed on very big disadvantaged positions. The treatment of women does not just stop at discrimination, marginalization and subjugation but extends to outright violence and violation of the women's rights.

#### 1.1. The Concept of Gender

Gender is a range of characteristics distinguishing between male and female. In the English Literature, the tracheotomy between biological sex, psychological gender, and social sex role first appeared in a feminist paper on the transsexual in 1978.<sup>1</sup> Gender is not determined biologically, but it is constructed socially. Gender issues focus on the relationship between men and women, their

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<sup>1</sup> Gender <http://wikipedia.org/wiki/gender> culled on 23/04/2023



roles, access to and control over resources, division of labour, interests and needs. Gender relations affect household security, family well-being, planning, production and many other aspects of life.<sup>2</sup> Gender is part of the broader social-cultural context which include class, race, ethnic group and age.<sup>3</sup> Gender can be seen as the process by which individuals who are born into biological categories of male or female become the social categories of women and men through the acquisition of locally defined attributes of masculinity and femininity.<sup>4</sup>

## 1.2. The Concept of Violence

The word violence has been defined as the use of physical force, accompanied by fury, vehemence or outrage unlawfully exercised with the intent to harm.<sup>5</sup> Violence is any kind of behaviour that one person uses to control another through fear and intimidation. United Nations in 1993 described violence against women as encompassing, and also to include violence perpetuated by state, physical, 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 including rape and intimidation at work in educational institutions and elsewhere, trafficking in women and forced prostitution.<sup>6</sup>

This violence may include physical, sexual, emotional or financial abuse.<sup>7</sup> The United Nations General Assembly defines ‘violence against women as’ any act of gender-based violence that results in or is likely to result in physical, sexual or mental harm or suffering to women occurring in public or private life.<sup>8</sup> Other acts of violence against women also include forced sterilization and forced abortion, coercive forced use of contraceptive ex cetera.<sup>9</sup> It is therefore believed that violence against women, particularly at domestic level has been the function of the belief fostered and nurtured in all cultures that men are superior being and that the women they marry as wives are mere physical possessions or chattels which can be treated anyhow not minding their feelings.<sup>10</sup> The concept of millennium goal 3 which centers on equality of and empowerment of women can never be over emphasized. The constitution of the Federal Republic of Nigeria 1999 in its Chapter IV captioned Fundamental Rights provides for equality under the law and guarantees the right to life and protection from inhuman and degrading treatments.<sup>11</sup> Added to this right guaranteed by the constitution are other provisions as found in our criminal and penal codes identifying certain acts as crimes and therefore susceptible to punishment. Examples are sexual as well as non-sexual assaults. Other standards setting instruments exist such as Universal Declaration of Human Rights (UDHR),<sup>12</sup> Convention on Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>13</sup> which Nigeria signed and ratified without reservation, and the National Assembly has been tarrying in

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<sup>2</sup> International telecommunication Union <http://www.fao.org/docrep/007/y5608e/y568ec01.htm> culled on 23/04/2023; FAO Corporate Document Repository <http://www.itu.int/gender/about/gender.html> culled on 23/04/2023 accessed on 23rd April 2023.

<sup>3</sup>Ibid.

<sup>4</sup> Gender concept in Development Planning-Basic Approach (United Nations) International Research and Training Institute for the advance of women) p.11

<sup>5</sup> A Garner Black’s Law Dictionary, U.S.A, Ilomas west 8th edition 2004

<sup>6</sup> C Arinze-Umobi, *Domestic Violence against Women in Nigeria: A Legal Anatomy* (Onitsha: Folmech Printing Co, 2008) 3

<sup>7</sup> Ibid P.4

<sup>8</sup> JN Ezeilo, *Law Reproductive Health and Human Rights*, women’s Aid Collective (Enugu: 2006) 29

<sup>9</sup> Ibid P.30

<sup>10</sup> Ibid

<sup>11</sup> Constitution of the Federal Republic of Nigeria, 1999

<sup>12</sup> Universal Declaration of Human Right

<sup>13</sup> Convention on Elimination of All forms of Discrimination Against Women 1979



making it a domestic law plus the hindrance created by section 12 of the 1999 Constitution.<sup>14</sup> Declaration of Elimination of all forms of violence against women, the African charter on Human and peoples Right,<sup>15</sup> which has already been domesticated, also guarantees these rights already mentioned. More so the Supreme Court in *Abacha v Fawehinmi* stated that the Africa charter like chapter iv of the 1979 and 1999 constitution of Nigeria gives citizens of members states of the organization of African Unity Right and Obligations.<sup>16</sup> These rights and obligation are to be enforced by our courts if they must have meaning.

## 2. History of Violence against Women

History of violence is tied to the history of women being viewed as property and gender role assigned to them. The orientation of treating women as such is nurtured in man, not from nature. This in turn, is rooted in patriarchy. Violence against women seems to be as old as humanity when her role is second class and to serve the male folk. Hence, Lane<sup>17</sup> writes

Down through the ages women have been regarded as second-class citizens. They are stereotyped into roles of dependence, submission and passivity.... exploited as objects... defined in terms of men.... excluded from the centers of power and decision-making processes in the society and church.

This obnoxious, oppressive and exploitative picture of women subjugation as a second-class citizen and as an object is behind all forms of violence against women. In general, the women are seen as a foe to friendship, an inescapable punishment, a necessary evil, a natural temptation, a desirable calamity, a delectable delight, an evil of nature, painted with fair colours, the eternal seductress.

### 2.1. Levels of Gender Based Violence

There are three levels of gender-based violence. These are the home or family level, the community level and the state level.<sup>18</sup>

#### **Violence within the Home:**

Domestic violence is sometimes referred to as intimate partner violence. It encompasses all acts of violence against women with the context of family or intimate relationship. Accurate information on the extent of domestic violence at home is difficult to obtain because of extensive under reporting due to cultural restrictions and orientation, many even say nothing of it outside. It is often shrouded in silence.

#### **Violence within the Community:**

Psychological violence that occurs within the community include, battery, sexual assault, harassment, rape, intimidation in work place and school, trafficking of women and children, abusive medication, the exploitation and commercialization of women's bodies. Other types of violence occurring in the community also include contraception imposed on women by force, forced sterilization or abortions, selective abortion of female foetus and female infanticide.

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<sup>14</sup> Constitution of the Federal Republic of Nigeria, 1999

<sup>15</sup> African charter on Human and peoples Right

<sup>16</sup> (2000) 4 NWLR (P.4) 532.

<sup>17</sup> D A Lane 'Christian Feminism' in the Furrow (1985) vol. 36 No. 11

<sup>18</sup> [Http://www.psnews.net/Africa/nota.asp](http://www.psnews.net/Africa/nota.asp) on 6/04/2023



### **Violence within the State:**

Physical, sexual and psychological violence are often perpetrated or tolerated by states. We do not have the statistics of their occurrence and these issues are very much under reported especially when they involve family members. The female is valued less than the male.

### **3. Types of Gender Based Violence**

There are innumerable examples of violence and injustice against women. Battery is a type of gender based violence. Battery means an unlawful application of force to another person.<sup>19</sup> Battery is the intentional or negligent and direct application of force to another person.<sup>20</sup> There are some instances of battery leading to murder, an example is the case of a girl (Miss Pamela Sunday) who visited his police boyfriend Mr. Etim Ukpong to prepare salad for him but unfortunately, she was battered, stabbed several times, killed and was deposited in a mortuary with a false name.<sup>21</sup> There is another pathetic story of Deborah Odeyemi, a mother who the police husband Superintendent Odeyemi poured acid on together with her 15 years old daughter Bose Odeyemi, accusing the woman of having extra marital affairs and building a house without his knowledge.<sup>22</sup> Wife battering is the order of the day in our society. Wife battering is almost a normal occurrence all over the world. As Odudoye has rightly observed:

In Africa, wife beating is one aspects of domestic violence around which a heavy cloak of silence is drawn. Worse, some men see wife beating as a duty and are proud to declare their compliance.... Battering of women at home is one clear example, often trivialized by responses such as women deserve it, they ask for it, men feel it a duty or it is a sign of authority over their wives, women think it is a sign of love, and so much else. The name of these practices is the violence of women by men.<sup>23</sup>

#### **3.1. Sexual Violence**

Sexual abuse occurs when a woman is forced to have an unwanted sexual activity. Incest is the sexual relationship between family members or close relatives including children related by adoption<sup>24</sup>. Rape is provided by section 357 of the criminal code Act<sup>25</sup> and also The Penal Code<sup>26</sup> Section 6 of Criminal law states as follows 'Unlawful carnal knowledge" means carnal connections which take place otherwise than between husband and wife' This law should be amended. A woman's consent to marriage is not a continuous consent to intercourse. We should take cognizance of natural factors like ill health of the woman, their husband's abhorrent and animalistic behaviours such as excessive intake of alcohol or narcotics, vituperative outfits and his extra marital sexual jamboree, which the wife is expected to swallow without asking question in these days of uncontrollable atmosphere of sexually transmitted diseases.<sup>27</sup>

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<sup>19</sup> Carol Arinze-Umobi (n 6) 43

<sup>20</sup> IP Enemuon Notes on the law of Tort (Onitsha: Syscom Ltd 1998) 157

<sup>21</sup> Carol Arinze-Umobi (n 6) 52

<sup>22</sup> Ibid P. 55

<sup>23</sup> Mercy A Oduyoye, *Daughters of Anowa: African Women and Patriarchy* (New York: Books, 1995),166; A Oduyoye, "Violence against women: A challenge to Christian Theology", *Journal of Enculturation Theology*, vol; No 1 (1994): 38

<sup>24</sup>C Arinze-Umobi (n 6) 136

<sup>25</sup> Cap C38 LFN 2004

<sup>26</sup> Cap P.31 LFN 2004

<sup>27</sup> Carol-Arinze Umobi and Ogugua Ikpeze, *Gender Rights Law in Nigeria* (Onitsha: Folmech Printing Publishing Co. Ltd 2008) 8



### 3.2. Harmful Traditional Practices

Inherent in Nigerian society are norms, attitudes, harmful traditional practices and values which continue to render women powerless and hopeless.

### 3.3. Female Genital Mutilation

Female genital mutilation is the most serious form of violence against women. It is violent caused to girls and women by exercising (removing) parts of the organ or causing substantial damage.<sup>28</sup> Female genital mutilation primarily interferes with the female libido, their bodies and self-esteem.<sup>29</sup> This practice can be associated with the spread of HIV, and AID, psychological and sexual problems, obstructed labour, Vesico Vaginal Fistula (VVF) and Rector Vaginal Fistula (RVF).<sup>30</sup>

### 3.4. Child Marriage

In Nigeria societies early child marriage are practiced, pre-teenage girls are married off at a tender age without their consent. Reports from Nigeria shows that girls given into marriage at a very tender age between 9 years and 17 years suffer from pelvic cancer.<sup>31</sup> It is therefore not a marriage.<sup>32</sup> In Muslim law, fathers can contact marriages on behalf of their virgin daughters without their consent by the power of Ijabar. But our courts are becoming more proactive on this issue. Thus is *Karimatu Yakubu v Alhaji Paiko*.<sup>33</sup> At the court of Appeal, the Sharia Court of Appeal decision was reversed.

### 3.5. Obnoxious widowhood practices

#### Widowhood:

Other diminishing matters include widowhood rites. In certain communities a widow is forced to swear to a Juju or drink water used in bathing the corpse to prove her innocence.

#### Lack of Communication/Seclusion:

The widow is quarantined for a definite period to avoid defiling others.<sup>34</sup>

#### Shaving of Hair and Mourning Attire:

Another area of violence is forced shaving of the widow's hair as a symbol of respect for the dead and to make her unattractive to other men while mourning. In her defacement status, the widow looks abandoned, hopeless, ugly, rejected and helpless. The imposition of black mourning cloth makes mourning frightful and gloomy. It instills fear in the widow and generated nightmares. It makes them look like outcasts and people avoid them as such,<sup>35</sup> Right to personal liberty,<sup>36</sup> Right to peaceful assembly and association,<sup>37</sup> Right to Freedom of movement<sup>38</sup> and Right to Freedom from discrimination.<sup>39</sup>

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<sup>28</sup> C Arinze- Umobi (n 6) 60

<sup>29</sup> Ayo Ogundipe, "Power in Gender Discourse" In Ukhun, Critical gender Discourse, 38

<sup>30</sup> JN Ezeilo, Law Reproductive Health and Human Rights, Women's Aid Collective, Enugu: 2006 P. 140

<sup>31</sup> Esther Lasebkan, "African culture and the Quest for women's Right A general Overview, " In Dorcas

<sup>32</sup> C Arinze-Umobi (n 6) 89

<sup>33</sup> (Unreported) Appeal NO. CA/K/805/85

<sup>34</sup> Des Obi Obioma & Boniface Ifesinachi Ogbenna, Women Issues: Violence Against women in Africa. An Exposition, *The Kpim of Feminism issues and women in a changing world* Trafford publishing, USA 2010 P. 335

<sup>35</sup> Ibid

<sup>36</sup> Section 33 of CFRN 1999

<sup>37</sup> Section 34

<sup>38</sup> Section 35

<sup>39</sup> Section 40



### 3.6. Non-Inheritance Right:

Furthermore, on the issue of inheritance in Nigeria, widows are not allowed to administer their deceased husbands' estate. In case of *Oshilaja*<sup>40</sup> it was held that a widow cannot inherit because as a chattel under native law and custom.... she could be inherited. Just on the same vein in *Nzekwu v Nzekwu*,<sup>41</sup> it was held that the widow's right over the husband's estate is only possessory and not proprietary. She has the right to occupy the building or part of it subject to good behaviour. Also, in *Nezianya & Anor v Okagbue*<sup>42</sup> the Supreme Court held that a wife is a property of her husband to be inherited by the deceased husband's male relatives. Also in *Akinnubi v Akinnubi*<sup>43</sup> it is a well settled rule of native law and custom of the Yoruba that a wife wouldn't inherit her husband's property. Our courts are now trying to be more proactive. Some activist judges in some judicial pronouncements made by them, declared those customs null and void. In *Ukeje v Ukeje*<sup>44</sup> the court held that the Igbo native law and custom which disentitle female from sharing in their deceased father's estate is void. As it is in conflict with the provision of S. 42(2) of the 1999 constitution. Also, in *Uke & Anor v IRO*<sup>45</sup> the court was of the view that any laws or custom that seek to relegate women to the status of second-class citizen thus depriving them of their invaluable and constitutionally guaranteed rights are laws and customs fit for the garbage and must be consigned to history; *Azika v Atuanya*,<sup>46</sup> *Muojekwu v Ejikeme*,<sup>47</sup> *Muojekwu v Muojekwu*,<sup>48</sup> *Muojekwu v Iwuchukwu*.<sup>49</sup>

### 3.7. Male Child Preference

Male child preference makes a girl child feel less valued, inferior or have low self-esteem and violates the fundamental right to freedom from discrimination.

### 3.8. Trafficking in Women/Girls

Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, defined trafficking in persons and Article 2,3,4,5<sup>50</sup> and Article 2<sup>51</sup> prohibits against this dehumanizing treatment meted to the women folk.

## 4. Responses to Gender Violence against Women and their Adequacies

There are many forms of responses to domestic violence against women and they are divided into legal and non-legal responses.

### 4.1. Types of Responses to Gender Violence: Legal Responses

#### 4.1.1. Criminal Law Responses

In most jurisdictions, Nigeria inclusive, normal criminal provisions cover physical violence at home with exception to crimes of wife rape and sexual assaults on wives: Section 6 of the Criminal Code<sup>52</sup> Some countries have introduced special criminal provisions to deal with wife abuse as exemplified

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<sup>40</sup> Section 41

<sup>41</sup> section 42

<sup>42</sup> (1972) 2 UILRP. 313

<sup>43</sup> (1989) 2 NWLR (Pt 104) P. 317

<sup>44</sup> (1989) 1 ALL NLR 352

<sup>45</sup> (2202) AHRLR 1555

<sup>46</sup> (2008) 17 NWLR (Pt. 117)484

<sup>47</sup> (2007) 17 NWLR (Pt. 117)413

<sup>48</sup> (1997) 5NWLR (Pt 512) 413

<sup>49</sup> (2004) 11NWLR 196

<sup>50</sup> African charter on Human and people's Rights, 1981

<sup>51</sup> Convention on Elimination of All of Discrimination Against Women 9CEDAW), 1979.

<sup>52</sup> C. C Act Cap C38 LFN 2004



in the Indian Penal Code, chapter XXA in its sections 498(a) deals on cruelty of husband or relative of husband and wife.<sup>53</sup> There are some provisions in the criminal code that deal with offences against morality; sections 222 to 362 and a host of others<sup>54</sup>. Batterers were not punished for their actions and the women were not adequately protected. For years, battered women faced police officers who routinely supported the offenders' position, challenged the credibility of the victim, often blaming her for her own victimization, and trivialized her fears.<sup>55</sup>

### **How Appropriate is the Criminal Justice system as Response to Gender Violence?**

We have two different views on this issue. The first is the use of criminal law as the last resort for the management of violence against women in the home, and is totally inadequate. Those who hold this view favour an approach focusing on mediation or conciliation or a model which is welfare oriented.<sup>56</sup> The criminal law has its final solution as punishment rather than rehabilitation. Even where he is arrested, prosecuted, convicted and sentenced, this sentence is likely to be trivial amounting to a fine or a short period of custody and any sentence will finally penalize the victim and the family.<sup>57</sup> Any fine will be paid by the joint family finances and imprisonment of the abuser may cause financial hardship because he may be the breadwinner or because he may lose his employment permanently. Certainly, where the man is imprisoned, the woman is temporarily relieved from victimization but she may as well be confronted with an even more violent man on his release and the wife will be isolated or ostracized by her husband's relatives.

On the other hand, those who support the criminal response method accept the fact that the application of criminal justice to issues of domestic violence may be defective but they attribute these defects to societal values. The criminal process focuses on the interest of the woman whereas the counseling/meditation model down grade the violence seeking to-re-establish the relationship and preserve the family.

They further suggested that mediation schemes and neutrality of the criminal justice system encourage violent men and unfairly place the blame on the women for being involved in the violence or even removing the entire blame from the violent men. The criminal justice system places full blame on the men and again avoid further victimization of the women and creates a general culture in community where violence in the home is condemned.<sup>58</sup>

It is revealed that arrest with its associated intimidating proceeding reduce the risk of recidivism in the abuser and secondly that a policy of mandatory prosecution has positive effect in the management of abuse.<sup>59</sup> It is observed that foreign jurisdiction like Canada opted for the criminal justice model but this has not always worked smoothly,<sup>60</sup> police have in some cases been reluctant to charge and some women often ask that the charges be dropped after they had been laid and some women are of the view that the police left feeling oppressed and hopeless. The criminal justice system has in some cases resulted in the imprisonment of the women because they refuse to testify against their abusive spouses or failed to co-operate with the prosecution processes<sup>61</sup>. The researcher recommends that the two methods should be used for affective result.

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<sup>53</sup> C Arinze-Umobi (n 6) 155

<sup>54</sup> Ibid P. 156

<sup>55</sup> Ibid P. 156

<sup>56</sup> Ibid P. 157

<sup>57</sup> Ibid . 158

<sup>58</sup> Ibid P. 161

<sup>59</sup> Ibid. 161

<sup>60</sup> Ibid

<sup>61</sup> Ibid



#### 4.1.2. Matrimonial Reliefs

In the matrimonial Causes Act<sup>62</sup> the grounds known as 'Matrimonial Cruelty' has been replaced by the provision of section 15(2) (c) entitling the petitioner to a decree on the ground that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent<sup>63</sup>. The closest matrimonial reliefs that can be used to deal with domestic violence are the decrees of divorce or judicial separation. Every conduct, or series of conducts constituting matrimonial cruelty would constitute intolerable behaviour section 15 (2) (c) of matrimonial causes Act. Divorce severs all elements of marital ties as the marriage relationship has broken down irretrievably whereas judicial separation severs temporarily as only co-habitation is affected, until the parties apply to be united by the discharge of the order of court or a formal petition for divorce is made.<sup>64</sup>

#### How Adequate are Matrimonial Reliefs to Gender Violence?

We have seen the effects of the two decrees. Divorce severs all ties of marriage as the marriage has broken down irretrievably, judicial separation severs temporarily, until the parties apply to be united by the discharge of the order, or a formal petition for divorce is filed.

Divorce as a do or die affair explains why even after the decree of divorce nisi or absolute, reports are made of incessant attacks of one spouse (especially the husband) on the wife by sending either assassins, thugs to either kill, or harass the wife. This is also noticed in decree of judicial separation and it is only through legal processes like injunction that such problems can be reduced.

#### 4.1.3. Fundamental Rights Enforcement

Section 46 of the Constitution of the Federal Republic of Nigeria 1999 guarantees any person direct access to a high court of a state to seek redress to infringement of his/her fundamental rights; Violence against women violates the provisions of section 33 to 45 of the CFRN. In order, to invoke the jurisdiction of a High Court in a State for the protection of any of these Fundamental Rights, the applicant must follow the new Fundamental Rights (Enforcement Procedure Rules, 2009) which eliminated some of the technical rules of procedure that have proved counterproductive in the realization of protection of human rights.

#### Venue of Application

The State Courts have the original jurisdiction to entertain complaints pertaining to fundamental rights as evidenced in section 46(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended. An action becomes incompetent if it is filed outside the state where the infringement occurred as laid down in *Military Administrator Benue State v Abayilo*.<sup>65</sup>

#### Adequacy of Fundamental Rights Application to gender Violence against women.

The Fundamental Rights (Enforcement Procedure) Rules 2009 is a great improvement on the 1979 version in a number of ways. The new Rules are more adequate in solving gender violence.

#### Mode of Commencement

Unlike the 1979 Rules,<sup>66</sup> the new Rules no longer require the leave of court before an action for the enforcement of Fundamental Rights may be commenced. All that is now required is to file any

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<sup>62</sup> Cap M7-1LFN 2004

<sup>63</sup> I Sayay, Nigeria Family Law (Malthouse Press Ltd) 246

<sup>64</sup> C. Arinze-Umobi (n 6) 164

<sup>65</sup> (2001) FWLR (Pt.45) 602

<sup>66</sup> Order 11, Ruler 2 of the 1979 Rules



originating process accepted by the court.<sup>67</sup> The Rules now require parties to file written addresses which was completely absent under the 1979 Rules. The Applicant is required to file his written address along with his application,<sup>68</sup> while the respondent has five days from the date of service on him of the Application to file his address which he may accompany with a counter-affidavit.<sup>69</sup>

The applicant has five days upon receipt of the Respondent's address, to file any reply on points of law and accompany it with further affidavit.<sup>70</sup> Similar to the 1979 Rules, the 2009 Rules require the application to be supported by a statement stating the name and description of the applicant, the reliefs sought and the grounds upon which the reliefs are sought and supported by an affidavit setting out the facts upon which the application is made.<sup>71</sup>

The 1979 Rules require an application for the enforcement of fundamental rights to be brought within twelve months from the date of the happening of the event. The 2009 Rules states that such application shall not be affected by any limitation statute whatsoever.<sup>72</sup> The application shall be fixed for hearing within seven days.<sup>73</sup>

### **Preliminary Objection**

The 2009 Rules provide that a Respondent may apply to court by way of notice of preliminary objection to strike out the suit for want of jurisdiction. The notice must be filed along with the counter affidavit to the main application.<sup>74</sup> On the date fixed for hearing, the preliminary objection shall be heard with the main application<sup>75</sup> and where the court has jurisdiction, it shall go on to give its ruling on the substantive application. The reason for taking the two applications together is to save time.

### **Hearing of the Application**

The application is heard based on the written addresses filed by the parties along with the court processes. Each party is given twenty minutes to present their oral arguments. The essence of oral argument is to address the court on such matters not in the written addresses provided such matters came to the knowledge of the party after he has filed his written address.<sup>76</sup> Upon the date fixed for hearing or for adoption of their written addresses and if any of the party is absent, the Rules enjoin the court to upon its own motion or upon the application of the counsel for the party present order that the address be deemed adopted provided the court is satisfied that the party absent had notice of the hearing date.<sup>77</sup>

### **Effect of non-Compliance with the Rules**

Moreover, if any of the party fail to comply with the requirement as to time, place or manner or forum, the failure shall be treated as an irregularity and may not nullify the proceedings except they relate to mode of commencement of the application or the subject matter is not within chapter iv of the constitution or the Africa charter on Human and people's Rights (Ratification and Enforcement) Act<sup>78</sup> Under the old 1979 Rules, noncompliance is not treated as an irregularity but rather, it may be

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<sup>67</sup> Order 11, Rule 2 of the 2009 Rules

<sup>68</sup> Order 11, Rule 5 of the 2009 Rules

<sup>69</sup> Order 11, Rule 65 of the 2009 Rules

<sup>70</sup> Order 11, Rule 7 of the 2009 Rules

<sup>71</sup> Order 11, Rule 3 of the 2009 Rule

<sup>72</sup> Order 11, Rule 1 of the 2009 Rules

<sup>73</sup> Order iv, Rule 1 of the 2009 Rules

<sup>74</sup> Order viii, Rule 2 of the 2009 Rules

<sup>75</sup> Order vii, Rule 4 of the 2009 Rules

<sup>76</sup> Order xii Rule 2 of the 2009 Rules

<sup>77</sup> Order xii Rule 3 of the 2009 Rules

<sup>78</sup> Order ix



a ground for the court to strike out the action. In *Chukwuogor & Ors. v Chukwuogor & Anor*<sup>79</sup> the applicant failed to comply with the provision of order 2, Rule 1(4) of the 1979 Rules which require the Applicant to personally file an affidavit of service rather than the court Bailiff. The court struck out the motion for enforcement of Fundamental rights on the basis of non-compliance with this requirement. Also, in *Captain S.A Asemota v Colonel Yesufu & Anor*<sup>80</sup> a wife filed an application in her own name for and on behalf of her husband's name whereas in the 2009 Rules failure to comply with the requirement will be treated as irregularity and may not nullify such proceedings. Again, in the case of *Umoh & Ors v Nkan & Ors*<sup>81</sup> the Court of Appeal, Calabar Division held that noncompliance with the provisions of Order 2, Rule 1(2) of the 1979 Rules which required that the motion or summons must be fixed for hearing within 14 days but the applicant filed the motion 16 days after the leave was granted which was clear two days after the expiration of the 14 days. The court struck out the motion.

### Interim Order

Where the court is satisfied that exceptional hardship may be caused to the applicant before all the parties are served and hearing is concluded, especially when the life or liberty of the Applicant is involved, It may hear the applicant ex-parte motion upon such interim reliefs as the justice may demand. However, where the order is made exparte, an aggrieved party may within seven days after the service of the order or within such further time as the court may allow apply to court by motion to vary or discharge the order.<sup>82</sup>

### 4.2. Non-Legal Responses (Alternative Dispute Resolution)

Disputes occur daily in our private and public life. Different non-legal methods exist for the resolution of disputes in our legal jurisprudence, namely- mediation, conciliation, negotiation and arbitration which are popularly referred to as Alternative Dispute Resolution (ADR).<sup>83</sup>

#### 4.2.1. Customary ADR

In the cultural society, we have the king as the authority and he delegates powers to his subordinates. On the other hand, in a society that is made up of different family units, the different family unit and in conjunction with other elders from different families, form council of elders for that community.<sup>84</sup> In cases of disputes between the different families, the elders from the different families will meet to find the solution to the problem. Customary ADR is not usually mediation, it could take the form of conciliation. In conciliation, the conciliator is usually a trusted and respected friend of the parties in disputes. He is a neutral person who draws up and proposes the terms of an agreement designed to represent what is in his view a fair compromise of a dispute.<sup>85</sup> In most cases the conciliator acts on his own prompting, meeting the parties, seeking to know whether they are willing to settle their dispute amicably. Consequent upon this, he formulates his solution to the dispute, presents same to the parties in form a suggestion. Parties are then free to reject or accept the draw-up proposal.<sup>86</sup>

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<sup>79</sup> (2007) ALL FWLR (Pt. 349) 1154 (CA)

<sup>80</sup> (1981) 1NCRL, 420

<sup>81</sup> (2001) 6 WRN 1 (CA)

<sup>82</sup> Order iv, Rule 6 of the 2009 Rules

<sup>83</sup>C Arinze-Umobi (n 6) 177

<sup>84</sup> Ibid

<sup>85</sup> Greg C Nwakoby et al, "Institutionalizing Alternative Dispute Resolution mechanism in the Nigeria Legal System"

*UNIZIK Law Journal* Vol. 4 No.1

2001 P. 147

<sup>86</sup> Chukwuemeka E Ibeh "An Overview of Alternative Dispute Resolution Methods" *UNIZIK Law Journal* vol. 4 No. 1 2001 P. 214



Furthermore, Arbitration is a method of<sup>87</sup> dispute resolution involving neutral third party, who tried to help disputing parties reach a mutually agreeable solution.<sup>88</sup> He must be seen as a neutral, impartial person and must be a person who is well vast in the custom and norms of the people.<sup>89</sup> In as much as customary ADR is good for reconciliation of domestic dispute, it does not often allow women to ventilate their views in conflict situation. This because society is male oriented with the principle of patriarchy firmly entrenched in the custom.<sup>90</sup>

#### 4.2.2. Western Type ADR

**Arbitration:** Arbitration is where two or more persons agree that a dispute between them shall be decided in a legally binding way by one or more impartial persons in judicial manner, that is, upon evidence put before him or them. This is closely related to litigation but it is different from it in that it involves a third impartial party (who must not be a lawyer), who meets with the parties, listens to their presentations of facts and law and renders an award. The parties may stipulate in advance that the award will be binding, in which case the award is converted to judgment of the court, where arbitration is not binding, either party upon request to the court will be granted a trial *de novo* if dissatisfied with the award.<sup>91</sup>

**Negotiation:** Here, parties in dispute seek to settle or resolve their conflict. It means bargaining. Even though decisions are determined by disputants in negotiation, outcomes are not usually 50/50 and win/win but parties are satisfied.<sup>92</sup>

**Mediation:** Mediation is a process in which disputing parties engage the assistance of a neutral third party respected by them who acts as a mediator providing a non-binding decision. The opinion expressed by a mediator in the process of settlement no matter how good and fair such opinion may be is non-binding on the parties until they agree to accept it.<sup>93</sup>

#### Gender Violence, Is ADR Adequate?

Women affected in domestic violence rushes first to her neighbours, friends, sister or brother to take refuge and some words of consolation and advice. ADR looks at conflicts in its natural phenomena unlike litigation people see themselves as enemies.<sup>94</sup> When there is domestic violence, many couples want to reconcile and live together. It is the traditional belief that a wife who takes her husband to court has committed an abomination and she may be ostracized or driven back to her matrimonial home. Most of these wives are poor and illiterate, they cannot afford high cost of litigation and another hindrance is inordinate delays in our court leaving little or nothing to desire and in situation like this, ADR will prove productive.<sup>95</sup>

#### Gender Violence Reporting and Inadequacy

A great majority of women who are victims of domestic violence decide to remain silent over their plight due to bully, nonchalant altitude of the police, rigours of cross-examination by defense counsel, the difficulty in getting witness, attitude of law enforcement agents in sexual offences, the

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<sup>87</sup> Bryan A Garner *Black Law Dictionary* (USA: Thomas West 8th Edition 2004)1.

<sup>88</sup> Ibid.

<sup>89</sup>C Arinze Umobi (n 6) 178

<sup>90</sup> Ibid

<sup>91</sup> Ibid

<sup>92</sup> Ibid

<sup>93</sup> Greg C Nwakoby (n 85) 147

<sup>94</sup> C Arinze-Umobi (n 6) 180

<sup>95</sup> Ibid



society, the family and friends who make erroneous assumptions that the victim provoked the attack and also the fear of re-victimization upon her complaint.

## 5. Conclusion

The concept of gender has generated diverse implications in different cultures and groups depending on orientations and intentions. The intricate association of femininity with powerlessness is the basis for the many forms of injustice that are often meted out on women. The dysfunctional conceptualization of gender has caused the abuse of womanhood by the men and a corresponding set of pains and agonies that the women suffer in the society through structures that are male determined and male-controlled. The enumerated responses go a long way in curtailing the domestic violence that are meted out against women.

## 6. Recommendations

1. It is advised that section 12(1) CFRN 1999 should be jettisoned so that international treaties such CEDAW can be made enforceable in Nigeria by domesticating them.
2. Women should be well educated so that gender mainstreaming will get to the decision-making echelon of Nigeria and lead to gender equality.
3. The State Criminal Justice system should provide stringent punishment for any act of violence against women
4. The Nigeria law enforcement agents should be sensitized on gender violence. They should atop trivializing such matters as sexual abuse and wife beating.
5. It has been observed that most Nigeria women are very complacent on the issue of gender rights violation; they have been socialized from infancy into believing that it is cultural and therefore normal. There is need to extend advocacy and enlightenment programmes on gender right violation.
6. The Government media should devise more effective awareness raising programmes especially in the grassroots. The media should enlighten the women on their right and redress available to them in the law courts.
7. More local legislation is needed in all parts of the country like the Widowhood/Widowerhood (Malpractice) Prohibition Law 2005 of Anambra State.
8. Focused public advocacy campaigns could help tackle some of the gender-based violence on women by organizing rural women who have no access to public opinions and who are illiterates to report all cases of domestic violence for prosecution of offenders.
9. Health care system has an important role to play in collaboration with systems such as the legal, police, media, educational sectors and civil society organizations to give necessary support to the victims and to give evidence when required.
10. The government should cater for welfare of the masses. Government should promote policies that can reduce the level of discrimination meted out on women and ensure equality in distribution of resources among the citizens.
11. Nigeria government should endeavour to review all gender discriminatory laws that still exist in our laws. Law is an instrument of social change and social justice and not an instrument of perpetration of injustice on women.
12. The Nigeria government should collaborate with traditional rulers in Nigeria to ensure that all harmful and traditional practices which are inimical to women are uprooted.