

## POLYGAMY: VIOLATION OF SEXUAL AND REPRODUCTIVE RIGHTS OF WOMEN\*

### ABSTRACT

*Polygamy is not a new concept, it started in the olden days and it is still being practiced especially in the Northern part of Nigeria. Reproductive and sexual rights of women have never been accorded full attention and recognition in many parts of the world till date. This may be as a result of wide spread illiteracy on the part of women and certain cultural and political factors. As result, women's rights to reproduction and sexual rights are violated. This has brought pains and regrets to many women especially the ones engaged in polygamous marriage. This research had set out to critically review polygamy and how it violates sexual and Reproductive rights of women. The research methodology was doctrinal approach, using expository and analytical research design. The main sources of data collection were various legal literatures, both from the physical library and the e-library. It was observed that Nigerian legislators and the judiciary do not adopt the sound principles and related provisions in foreign jurisdictions to advance women's sexual and reproductive rights against the practice of polygamy. Therefore, it was recommended among others that Nigerian legislators and the judiciary should adopt the sound principles and related provisions in foreign jurisdictions to advance women's sexual and reproductive rights to check the illegality of polygamy. Finally, this article was made to be significant to all stakeholders in human right and feminism.*

**Keywords:** Contraceptive, Polygamy, human right, Reproductive right, Sexual right.

### 1. Introduction

Polygamy is a form of marriage in which a man has two or more wives at the same time. The implication is that sexual relationship and other things pertaining to marriage goes on with the man and his numerous wives. Polygamy is the state or practice of having more than one spouse simultaneously. It is also termed plural marriage. Polygamy can be simultaneous (if more than one spouse is simultaneously present) or successive if spouses are married one after the other.<sup>1</sup> Polygamy is marriage to more than one spouse at a time. The most typical forms of polygamy have been polygyny, in which co wives share a husband, or polyandry, in which co husbands share a wife.<sup>2</sup>

According to the United Nations Human Rights Committee, polygamy violates the dignity of women and should be abolished in whatever regions they currently exist. Polygamy

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<sup>1</sup> B Garner, *Black Law Dictionary* (8<sup>th</sup> edn, Thomas West, 2004) p. 1197.

<sup>2</sup> 'Sexual and Reproductive Health and Rights, including Family Planning' *Online Database* <[https://www.google.com.ng/search?q=polygamy&sxsrf=ALiCzsZXL3OoCvm-kB6r-fMjgbUOI20\\_hA%3A1651402284744&source=hp&ei=LGZuYtnjK5qFhbIPkp2yuAo&iflsig=AJiK0e8AAAAAYm50PGtBjuq2gJryjW->](https://www.google.com.ng/search?q=polygamy&sxsrf=ALiCzsZXL3OoCvm-kB6r-fMjgbUOI20_hA%3A1651402284744&source=hp&ei=LGZuYtnjK5qFhbIPkp2yuAo&iflsig=AJiK0e8AAAAAYm50PGtBjuq2gJryjW->) Accessed on 2<sup>nd</sup> May, 2022.

infringes upon women's free will.<sup>3</sup> One of the potential pitfalls of polygamy is the adverse effects it tends to have on women. In most polygamous relationships, there is power imbalance between men and women in the relationship, especially in polygyny where one man has multiple wives.

In many polygamous relationships women are often pitted against each other to compete for men's attention. In a 2013 study into the impact of polygamy on women's health, researchers found that women in polygamous relationships are more likely to have mental health issues than women in monogamous relationship. They reported significantly higher level of anxiety, depression and decreased life and marital satisfaction.<sup>4</sup> Polygamy is defined as a marriage in which one spouse (man or woman) has several other spouses. The most common form of polygamy is when a man has more than one wife.<sup>5</sup> Most polygamous marriages involve one man married to two women, although there are some marriages with men married to three or four women. Polygamy is practiced by both young and old men and also among men with higher education.<sup>6</sup>

In many cases, it is accompanied by lower marital satisfaction and involves sexual, physical and emotional abuse by the husband, which has severe psychological and physiological consequences for the wives, including low self-esteem, low life satisfaction, loneliness, depression, somatization, phobia, anxiety, and paranoia<sup>7</sup> as well as impaired socio-emotional and academic adjustment in the spouses' children. Less is known about the experience of mothers in polygamous families. Studies conducted in different countries have suggested that family functioning in polygamous families tends to be more problematic and impaired than in monogamous families. This is primarily because it involves co-wife jealousy, rivalry, and an unequal distribution of household and emotional resources, and can produce hostility among co-wives and between the children of the different wives. The findings tend to indicate that the negative intra-psychic consequences for the mother affect the quality of her parental involvement and care giving, which is manifested in low maternal involvement and monitoring, emotional detachment, and high levels of hostility toward her offspring.<sup>8</sup>

## **2. CONCEPTS OF POLYGAMY**

### **2.1 Types of Polygamy**

There are generally three forms of polygamy. These are polygyny, polyandry, and group marriage.

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<sup>3</sup> T Ohwovoriole, 'What is Polygamy?' *Online Database* <<https://www.verywellmind.com/what-is-polygamy-5207972>> Accessed on 2<sup>nd</sup> May, 2023.

<sup>4</sup> *Ibid.*

<sup>5</sup> F Gadban and LGoldner, 'I Have No Hope: The Experience of Mothers in Polygamous Families as Manifested in Drawings and Narratives' *Online Database* <<https://www.frontiersin.org/articles/10.3389/fpsyg.2020.608577/full>> Accessed on 2<sup>nd</sup> May, 2023; A Al-Krenawi, 'A Study of Psychological Symptoms, Family Function, Marital and Life Satisfaction of Polygamous and Monogamous Women: The Palestinian Case' *Journal of Social Psychiatry*. 58, 79–86.

<sup>6</sup> *Ibid.*

<sup>7</sup> Gadban (n 6).

<sup>8</sup> *Ibid.*

**(a) Polygyny**

Polygyny is the specific form of polygamy where a man marries multiple wives. This term is most commonly used interchangeably with polygamy because it's the most common form of the concept. Polygyny is the condition or practice of having more than one wife at the same time.<sup>9</sup> A man has multiple simultaneous wives. This is the most popular type of polygamous marriage.

**(b) Polyandry**

Polyandry is a less common form of polygamy. With polyandry, you find a woman marrying multiple men. A condition whereby a woman has multiple simultaneous husbands

**(c). Group Marriage**

Group Marriage is a family unit consisting of multiple husbands and multiple wives. Any of them share the parental responsibility arising from the children of the marriage.<sup>10</sup> Group marriage, as the term implies, is when several men and women marry each other. This is a rarer form of polygamy. While some people might consider the above as types of polygamy, others might recognize them as concepts of their own. And in some instances, the terms are used interchangeably. Polygamy is practiced in most African countries. In Nigeria it is predominantly practiced in the Northern part of the country

**2.2. Conceptualizations and Definitions of Marriage**

The word marriage have different meanings to different people so also do the lexical definitions. The word marriage is defined as the legally and formally recognized union of two persons as partners in a personal relationship and in some jurisdiction a union between man and woman. It is also construed to mean the state of being united as spouses in consensual and contractual relationship recognized by law.<sup>11</sup> Marriage is also defined as legal union of a couple as husband and wife.<sup>12</sup> While the Cambridge Advance Learner's Dictionary<sup>13</sup> defines marriage as a legally-accepted relationship between two people in which they live together. The above lexical definitions appear too vague, incomprehensible and not too functional for our purpose, as relates to passive use of gender specifically capable of corrupting Africa moral, This is understandable considering the introduction and acceptance of same sex marriages consisting of two persons of the same sex which is lawful in some jurisdictions though unlawful in Nigeria into the world social order and its adoption constitute a stern rebuff of gender discrimination. Recourse has to be made to works of eminent scholars and legal jurist Nwogugu<sup>14</sup> defined marriage as

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<sup>9</sup> Garner (n 1) p 1198.

<sup>10</sup> WHO, 'Reproductive Health' *Online Database* <<http://who.int/topics/reproductive.health/en.answers.com/topic/plural-marriage>> accessed on 12<sup>th</sup> May, 2023.

<sup>11</sup> Mariam –Webster Dictionary

<sup>12</sup> Garner (n 1) The Black's Law Dictionary

<sup>13</sup> Cambridge Advance Learner's Dictionary

<sup>14</sup>El Nwogugu, Family Law in Nigeria (Heinemann Educational Books Nigeria Ltd, 1985)

A universal institution which is recognized and respected all over the World as a social institution. Marriage is founded and governed by the Social and religious norms of the society. Consequently, the sanctity of A marriage is well acceptable principle in the world community. Marriage is the root of the family and the society.

The use of the phrase the root of the family and the society by Nwogugu actually connotes spousal union of a man and a woman since the root of family is expectedly procreative productivity. Sagay<sup>15</sup> adopted the judicial interpretation in *Hyde v Hyde*<sup>16</sup> which defined marriage as voluntary union for life of one man and one woman to the exclusion of all others. Gujo<sup>17</sup> avers that it is universally accepted that marriage being a union of man and woman, involves two persons of opposite sex, Thus sex constitutes an essential determination of marriage relationship. In establishing the validity of a marriage, it must be proved that the persons involved are man and woman. Such marriage can be monogamous or polygamous, depending on the number of women which the marriage system accommodates.<sup>18</sup>

#### **Statutory Marriage (Monogamous Marriage)**

A statutory marriage otherwise called the monogamous marriage, is predicated on a family relationship between a man and a woman. It is also referred to as a Christian marriage which is statutorily defined by<sup>19</sup>

as a marriage recognized by the law of the place where it is contracted as the voluntary union, for life, of one man and one woman to the exclusion of others. Marriage contracted under the statute prohibits either of the spouse to conduct another wedding with any other person during the continuance of such statutory marriage.

#### **Customary Marriage (Polygamous Marriage)**

Customary marriage is a marriage conducted under the native law and custom otherwise known as customary law.<sup>20</sup> Customary marriages also extend to marriages conducted under the Islamic Law<sup>21</sup> These two systems of marriage has common similarities, not only because they are both customary marriages but also because both allow the practice of polygamy. Accordingly, polygamy in Nigeria is customarily instituted and regulated by customary law which highly infringes on the sexual and human rights of the women. The patriarchal hegemony has contributed greatly in violating human rights of the female gender and this affects their physical and mental wellbeing and destroy their self-esteem

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<sup>15</sup> I Sagay, *Nigerian Family Law: Principles, Statutes and Commentaries* (Malthouse Law Books, 1999)

<sup>16</sup> (1886) LR IPD 130

<sup>17</sup> F Gujo, *Assessment on Observance of Essential Conditions of Marriage under Customary Marriage of Sidama, Southern Ethiopia*. Beijing Law Review 10, 62-76 <https://doi.org/10.4236/blr2019.101004>

<sup>18</sup> Nwogugu (n14) 3

<sup>19</sup> Criminal Code Act Laws of the Federation of Nigeria 2004 s3

<sup>20</sup> Nwogugu (n 14) 3

<sup>21</sup> SM Olokooba, *Analysis of Legal Issues involved in the Termination of the 'Double Decker Marriage' under the Nigerian Law*, *Nigerian Current Law Report* 2007-2010 p184, 196

and confidence. They are treated as a property that do not have a feeling and affection as an individual and this is an aberration to human existence. Accordingly, Nwogugu<sup>22</sup> avers that the term covers a multitude of systems of law which differ from one locality to another. Customary marriage is a voluntary union for life of one man and one or and several wives though the number of wives, in the case of an Islamic marriage is limited to four.<sup>23</sup> Thus Nwogugu cautioned against misunderstanding the nature of polygamy when he posited that

The mere fact that, at a given moment, he has only one wife does not affect the character of the marriage so long as the capacity of taking more wives is retained. Generally, there is no limit to the number of wives a husband could take under the polygamous system except that Islamic law limits the number of wives to four. This invariably depends On his affluence.

A couple is at liberty to conduct either a polygamous or monogamy marriage. However, cultural inclination and patriarchal hegemony in Nigeria and in some African countries have resulted in a contraption at which the couple celebrates both the customary marriage and the statutory marriage and this polygamous marriages violates the sexual and human rights of the female gender. It is more like animalistic form of relationship where the women are subjugated, humiliated and relegated to the lowest form of living thing and they are projected by the society to bear the male rascality and sexual jamborees thereby encouraging the men to have multiple wives and inflicting these women with all forms of sexual transmitted diseases which lead to increased maternal mortality rate. How can a man be cohabiting with three or more wives at the same time and be fulfilling his conjugal rights and show equal affection to his numerous wives. This is the highest degree of degradation of the female gender and it portrays a society that treats women as a property without considering their mental health. Stringent laws should be enacted to stop this menace and when the family is not properly formed with love there can never be a peaceful and meaningful development in any society.

A number of legal framework for regulation of marriages have been identified which includes the Constitution of Federal republic of Nigeria which by its chapter 37 preserve the right to private life and family. Marriage Act 2004 and Matrimonial Causes Act make provisions for the contraction, celebration and dissolution of marriages. Section 47<sup>24</sup> prescribes the penalty where the couples married under the Act goes contrary to the Act or breached any of the provisions by contracting a marriage to another person will be sanctioned and provides as follows;

Who ever having contracted marriage under the Act or any modification or re-enactment thereof, or under any enactment repealed this Act during

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<sup>22</sup> Nwogugu (N 14)

<sup>23</sup> Ibid

<sup>24</sup> Marriage Act, Laws of the Federation of Nigeria 2004 s 47

the continuance of such marriage and contracts a marriage in accordance with customary law shall be liable to imprisonment for five years.

Just on the same vein, the Criminal Code<sup>25</sup> provides thus;

Any person who, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife is guilty of a felony and is liable for imprisonment for seven years.

This section does not extend to any person whose marriage with such husband or wife has been dissolved or declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time.

It should be noted that after the statutory marriage contracted, no other marriage either statutory or customary is allowed any longer either between the couple or with either of them with any other person, under the Nigerian Marriage Legislation the couple risks a five year imprisonment. The formation of a marriage has with it the introduction of the law regulating spousal relationship. It is noted that statutory marriages are predominantly monogamous while customary marriages are potentially polygamous. In the case of *Jadesimi v Okotie-Eboh & Ors*<sup>26</sup> the Supreme Court explain the legal effect where two marriages are contracted at different times by the same party. In Nigerian many couples first contract statutory marriage and subsequently contract traditional marriages. The Supreme Court held that;

It is a matter of common knowledge that most people in Nigeria who contract Marriages under the Marriage Act undergo a form of customary marriage as Matter of practice and adherence to the custom of their fore fathers ... it is never Intended by the practice that the marriage under the Marriage Act should nullify the customary marriage ... but rather it would supplement the practice and custom. The parties are however aware that by applying the Marriage Act to their relationship,

Their marriage will become monogamous.

The best effect derivable from the above supreme court decision is that it identified that the subsequent statutory marriage did not nullify the customary law marriage earlier contracted, but rather supplemented same. This means that all that was necessarily incidental to the marriage contract under the customary law are still in force except that the potentiality of polygamy inherent in customary law marriages, has ceased to operate during the continuance of the statutory marriage, otherwise it will expose the person doing that to criminal sanction under the Marriage Act.<sup>27</sup>

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<sup>25</sup> Criminal Code Act, C 38 Laws of the Federation of Nigeria 2004 s 370

<sup>26</sup>(1996) 2NWLR (pt 429) 128

<sup>27</sup> Marriage Act s 47

## **2.3 Reasons for Practicing Polygamy**

### **(a) Affluence**

In Nigeria, men marry more than one wife to show how powerful and financial strength they have. In the olden days, rich men are determined by the number of the wives they married. It command respect and frame in ones favour. In this present world, people are more enlightened to the extent that a man marrying more than one wife especially in Eastern Nigeria is seen as illiterate, local and ignorant man.

### **(b) Religion**

Some religion like Christianity discourage people from being polygamous, while other types of religion like Islamic religion encourage people to marry more than one wife.

### **(c) Traditional Factors**

This is earliest reasons for practicing polygamy. Polygamy ensures that every family had many surviving male children who would work to provide for the entire family, therefore a man needed to have many children.

This historical need for offspring equally touches a situation whereby a man's wife is unable to have male children. In this case, custom and tradition allows the man to take another or other wives to make up for the inability of the first wife to conceive or bear male children.

### **(d) Patriarchy**

Patriarchy is an institutionalized social system in which men dominate over others, but can also refer to dominance over women specifically; it can also extend to a variety of manifestations in which men have social privileges over others to cause exploitation or oppression, such as through male dominance of moral authority and control of property.<sup>28</sup> Patriarchal societies can be patrilineal or matrilineal, meaning that property and title are inherited by the male or female lineage respectively.<sup>29</sup>

### **(e) The Quest for a Male Child**

The quest to have a male child has been a dominant phenomenon in many parts of Nigeria especially among the Igbos. Reasons leading to this quest for males have pointed to the tradition of having an heir to continue the family lineage. Reasons for this also point to gender roles ascribed to males and females in our society; Males are revered and females are regarded as less important. Because of the high value we have for the male child, not having one is not up for an argument in many families.<sup>30</sup>

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<sup>28</sup> 'Gender and Reproductive Rights' Online Database <<http://who.int/reproductive-health/gender/indexhtml>> accessed on 31st March, 2023.

<sup>29</sup> *Ibid.*

<sup>30</sup> C Onyenezi, 'The Unnecessary Quest for a Male Child' *Online Database* <<https://www.opinionnigeria.com/the-unnecessary-quest-for-a-male-child-by-chukwuemeka-onyenezi/>> Accessed on 2<sup>nd</sup> May, 2023.

#### **(f) Title Taking**

Taking of titles is an honour among the Igbos which enjoys great respect. It is the highest honour in the land and is a sign of wealth and prosperity.<sup>31</sup> Most of titled men are prone into engaging in polygamy to showcase their wealth, affluence and power.

### **3. THE MEANING OF REPRODUCTIVE AND SEXUAL RIGHTS OF WOMEN**

Reproductive right is a complete physical, mental and social wellbeing and not merely the absence of disease or infirmity in all matters relating to the reproductive system and to its function and processes. Reproductive health include promotion of safe and responsible sexual behaviour, particularly during adolescence, family planning; prevention and management of unsafe abortion and reproductive tract infections, including those which are sexually transmitted and or harmful practices such as Female Genital Mutilation (FGM), early and forced marriage and of violence related to sexually and reproduction.<sup>32</sup>

As a human right discourse, reproductive rights have been defined as embracing certain human right recognized in national and international legal and human rights documents including the basic right of all couples and individuals to decide freely and responsibly the number and spacing of their children and to have information, education and means to do so, the right to attain the highest standard of sexual and reproductive health; the right to make decision concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents. Reproductive health implies that women can go safely through pregnancy and childbirth, that fertility regulation can be achieved without health hazards and that people are safe in having sex. It contributes enormously to physical and psychological comfort and closeness and to personal and social maturation while poor reproductive health is frequently associated with disease, abuse, exploitation, unwanted pregnancy and even death.

The current international understanding of sexual and reproductive rights includes the right to:

- (a) Reproductive and sexual health as a component of overall lifelong health.
- (b) Information on all matters relating to sexual and reproductive health.
- (c) Sexual and reproductive decision making, including choice of marriage partners, family formation and determination of the number, timing and spacing of children and the means to exercise those choices.
- (d) Equality and equity for women and men to make free and informed choices in all spheres of life, free from all forms of discrimination and violence.
- (e) Sexual and reproductive security includes freedom from sexual violence and coercion and the right to privacy.<sup>33</sup>

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<sup>31</sup> 'Taking Ozo Title is an Honour among the Igbos' *Online Database* <[http://www.columbia.edu/itc/mealac/pritchett/00fwp/igbo/secondary/txt\\_traditions\\_1115.pdf](http://www.columbia.edu/itc/mealac/pritchett/00fwp/igbo/secondary/txt_traditions_1115.pdf)> accessed on 2<sup>nd</sup> May, 2023.

<sup>32</sup> J N Ezeilo, *Law Reproductive Health and Human Rights, Women's Aid Collective* (Enugu Publishing Company, 2006) 23.

<sup>33</sup> *Ibid*, 24.

The norms establishing the existence of the right to reproductive and sexual health rights as an international system are numerous. The obligation to provide for equal rights and treatment without discrimination is strongly rooted under the Articles, 7, 16 and 25 of UDHR<sup>34</sup> by the United Nations. This is further re-enforced by the provisions of the International Covenant on Civil and Political Rights (ICCPR) 1966,<sup>35</sup> Convention on Elimination of all Forms of Discrimination against Women,<sup>36</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, Convention on the Rights of Child (CRC) 1989 etc. but these were a bit more general in their approach. The first international order dealing with specific issues of reproductive and sexual health rights issue is the Convention on Elimination of all forms of Discrimination against Women (CEDAW) 1979 which deals more specially with the issues of family planning, care, nutrition pregnancy and other related matters in Articles 10 (h), 11(f), 12 and 16 CEDAW.<sup>37</sup>

Also Article 14, Protocol to African Charter on Human and People Rights 2005, and Article 18(3) African Charter on Human and people Rights (ACHPR) 1981 protects the right to health of women including sexual and reproductive health. Then later Charter<sup>38</sup> provides as follows:

Article 10 (h): “Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.”

Art 11 (f): “The right to protection of health and to safety in working conditions, including the safe guarding of the function of reproduction.”

Art 12 (I): State parties shall take all the appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services including those related to family planning.<sup>39</sup>

(2) Notwithstanding the provisions of paragraphs 1 of this article, state parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post natal period, granting free services where necessary as well as adequate nutrition during pregnancy and lactation.<sup>40</sup>

Art 16: “State parties should take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.”

Art 14: “Protocol ACHPR - State parties shall ensure that right to health of women including sexual and reproductive right- is respected and promoted.

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<sup>34</sup> *Universal Declaration of Human Rights* (UDHR) 1948.

<sup>35</sup> *Ibid*, Article 2 and 3.

<sup>36</sup> *Ibid*, Article 2.

<sup>37</sup> CEDAW.

<sup>38</sup> *African Charter on Human and people Rights* (ACHPR) 1981.

<sup>39</sup> *Ibid*.

<sup>40</sup> *Ibid*.

#### **4. POLYGAMY AS A VIOLATION OF SEXUAL AND REPRODUCTION RIGHTS**

Having known the meaning of polygamy and what reproductive sexual rights entail, one can state whether polygamy violates sexual and reproductive of women. Polygamy can have an adverse impact on the mental and physical health of women and children. I will restrict myself to physical health. It should be noted that multiple sexual activities is one of the characteristics of polygamy. Therefore where any partner is infected with sexually transmitted diseases (STD's) like Gonorrhea, syphilis, staphylococcus Aureus, Genital herpes, HIV, AIDs etc, then the disease is likely to spread to all the partners through sex and other means. Uganda, Kenya and other African jurisdictions have high level of HIV/AIDS and the risk of spreading such diseases is obviously increased if a man has several sexual partners.

The African women is not by nature superimposed on majority of women the status of vulnerability and one of them is the practice of polygamy because it exposes the husband and wives to the risk of contracting HIV/AIDS<sup>41</sup>. Women in Polygamous marriage sometimes engage in extra-marital sexual intercourse despite the fact that it is frowned upon, due to lack of attention received from their husbands. If a wife acquires a sexually transmitted disease from an extra-marital sexual partner, she will transmit it to her husband who will in turn pass it on to the other wives. The number of babies born with HIV will also increase. The unsafe sex practice violates the sexual right of women. Most latter wives in Polygamous marriages are young, ploygyny drives down the age of marriage for females.

UNICEF confirms that as the number of females in polygamous union increase, so does the number of girls married before reaching the age of eighteen increases. It is further stated that 36.7% of women in highly polygamous societies are married between the age of 15 and 19.<sup>42</sup> This can affect the females' reproductive and sexual health in several ways. Firstly, she will be required to enter into sexual relationship, which is considered exploitative.<sup>43</sup> Secondly becoming sexually active at a young age will often mean that the girl becomes pregnant at a young age, which and can also affect the girl's fertility. A young girl is more likely to die during pregnancy or childbirth than an older woman and the infant mortality rate is higher if the mother is very young<sup>44</sup>.

It should also be noted that highly polygamous societies often practice female Genital Mutilation and other traditional practice considered harmful to the reproductive health of a woman. FGM is practiced in polygamous communities to curb the women's sex drive and thus ease pressure on the husband to satisfy all his wives sexually<sup>45</sup>. Polyandry is being practiced in some parts of France because of the scarcity of women thereby creating

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<sup>41</sup>UNICEF Women, 'Fourth World Conference on Women' *Online Database* <[www.unicef.org/wcare/desk](http://www.unicef.org/wcare/desk) review. violence. in. schools> accessed on 6<sup>th</sup> May, 2023.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> | Atman, *Polygamous Families in Contemporary Society* (Cambridge University Press, 1996) 12.

a greater risk of marital rape and sexual assault for both married and unmarried women there because there are increased numbers of men who cannot from legitimate union.<sup>46</sup>

In all these ills associated with polygamy, one can correctly conclude that everything about reproductive and sexual rights of women are violated ranging from unsafe sex, sexually transmitted diseases, FGM, early marriage, unsafe pregnancy and childbirth, lack of family planning, absence of timing and determination of the number of children. There is no sexual or reproductive privacy or security in polygamous marriage. The magnitude of Reproductive Health problems reflects the degree to which individual groups have been deprived of their sexual and Reproductive rights. The right to life (survival) is abrogated for example by maternal mortality while denial of access to reproductive health information and quality services for women violates the right to non-discrimination. We should take cognizance of the mental health of the women in polygamous relationship, their husbands 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>47</sup>

Article 14 Protocol to ACHPR provides that state parties shall ensure that the right to health of women including sexual and reproductive health is respected and promoted and that this includes amongst others right to number of children and spacing of children, right to choose any method of contraception, right to be protected against STD's including HIV/AIDs, "right to be informed on one's health status and on the health status of one's partner" particularly if affected with STD's including HIV/AIDs in accordance with international recognized standards and best practices" etc. Deliberate transfer of HIV/AIDs to another is a criminal offence. Thus in *R v Wentzel*,<sup>48</sup> the accused pleaded guilty to criminal negligence causing bodily harm by deliberate transmission of HIV. He knew of his HIV positive status and had been advised not to practice unprotected sex. The court invoking the principle of deterrence, sentence Wentzel to 3 years imprisonment with a recommendation that he receive all necessary treatment and counseling. Also in *R v Summer*,<sup>49</sup> the accused whom engaged in unprotected sex knowing that he was HIV infected, pleaded guilty to a charge under section 180 of 'common nuisance endangering the life and health of the public; Summer was sentenced to one year imprisonment plus three years of probation.

An appeal for the sentence to be reduced was dismissed. It was held at that anyone knowingly exposing another person to the risk of contracting HIV must expect to receive a substantial period of imprisonment section 17(e) and (d) Constitution of the Federal Republic of Nigeria, 1999<sup>50</sup> provides for adequate medical health facilities for all citizens;

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<sup>46</sup> *Ibid.*

<sup>47</sup> Dame Carol-Arinze Umobi et al-Gender Rights Law in Nigeria Folmech Printing Publishinh Co. Ltd 2008 P.8

<sup>48</sup> *R v Wentzel* (1999) 12 CR 10888 N.S.Co Ct.

<sup>49</sup> *R v Summer* (1989) 73 (3d) 32.

<sup>50</sup> *Constitution of Federal Republic of Nigeria, 1999* (As Amended), section 17(e) and (d).

but the practice of polygamy is adversely affects this right and violates this section of the law though it is not justifiable. Sections 33, 34, 35 and 37 CFRN<sup>51</sup> are also violated through this plural form of marriage.

Studies conducted in different countries have suggested that families functioning in polygamous families tend to be more problematic and impaired than in monogamous families.<sup>52</sup> This is primarily because it involves co-wife jealous, rivalry and an unequal distribution of household and emotional resources and it can produce hostility among co-wives and between the children of different wives. The findings tend to indicate that the negative intra-psychic consequences for the mother affect the quality of her parental involvement and caregiving which is manifested in low maternal involvement and monitoring, emotional detachment and high levels of hostility towards her offspring. Many women in polygamous marriages experience sense of impoverishment, sadness, anger and pain. Their experiences characterized hopelessness, despair, marginalization, alienation, loneliness and abandonment. There is sense of death, no hope, no life in the home and no feeling of belonging. It creates a sense powerlessness and silencing. There is impression of confusion, perplexity and injustice in polygamous marriages. Everything is messy, dark, painful, confusing, fear, despair and hopelessness are the family situation. There is a storm of emotions in the women's heart. It is full of problems, quarrels, shouting at home and a lot of unanswered questions. The women living in polygamous marriages experience a traumatic marital relationship with varying degrees and types of emotional difficulties such as anger, jealousy, competition, loneliness, unhappiness and lack of intimacy. Polygamy display animalistic behavior devoid of human inclination and feelings. It is unimaginable and beyond human comprehension the plight and mental trauma women undergo in polygamous relationship. It leads to their untimely death. Mental health kills women in millions because they are emotional beings. Stringent laws should be made to protect the women's rights. The patriarchal hegemony contributes greatly to low prosecution of bigamy cases in our judicial system. The women especially those in remote villages should be sensitized to know their sexual and reproductive rights and know their rights and obligations in any given situation. Empowerment of the women academically will be of immense benefit in curbing the heinous and animalistic relationship we call polygamy which violates the human rights of women. It reduces them to the lowest degradation of human being, that of being made to perform an animalistic function contrary to their inclination.

## **5. CONCLUSION**

This research has demonstrated the implications of plural marriage in terms of reproductive and sexual rights of women. The negative impact of polygamous marriages outweighs the advantageous part of it. Certain things discussed here can exist in monogamous societies but are more prevalent in polygamous societies, for example child marriage, female genital mutilation (FGM), risk of spreading HIV/AIDs etc. The

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<sup>51</sup> *Ibid*, sections 33, 34, 35 and 37.

<sup>52</sup> Faten Gadban and Limor Goldner, <https://www.frontiersin.org/articles/10.3389/fpsyg.2020.608577/full>, "I have no hope" The Experience of Mothers in Polygamous Families as manifested in Drawings and Narratives assessed on 20 May 2023.

international community has criticized the practice of polygamy and its health risk as stipulated in the international treaties. Polygamy violates the sexual and reproductive rights of women. The socio economic rights in chapter II of the CFRN with the effect of non-justifiability challenge the realization of the right to health including reproductive health. Economic and social rights therefore need to be brought into mainstream human rights.

More current laws are needed on Reproductive and sexual rights of women. I urge the National Assembly review the obsolete laws and enact new laws on reproductive and sexual rights. CEDAW had been ratified by the Nigerian government but not yet domesticated in line with section 12(1) of the CFRN, I don't know why it is difficult to domesticate CEDAW to facilitate enforcements of women's right directly through it. It is advocated that this needs urgent attention. It is suggested that women who are validly married under the statute should sue their husbands for bigamy when any other wife is married (customarily, statutorily or religiously) as this will reduce the practice of polygamy.<sup>53</sup> More information should be disseminated throughout the country on the dangers and management of STDs and HIV/AIDs and specific sanctions approved for people who transmit and encourage the spread of the diseases. This will include the prostitutes and people practicing polygamy. There is need for education and economic empowerment of people to eradicate ignorance and poverty in Nigeria and the entire world.

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<sup>53</sup> *R v Princewill* (1963) NRNLR 54.