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NAVIGATING A COMPLEX TERRAIN: EXPLORING THE LIMITS OF HARMONIZING MARRIAGE LAWS IN NIGERIA

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Abstract

Marriage laws in Nigeria represent a complex amalgamation of native law and customs, religious doctrines, and legislative provisions. This has made its application and administration extremely complex especially where more than one of these laws apply to the parties. Such a situation has heightened the calls for harmonization of marriage laws in Nigeria. However, not much attention has been given to the limits of harmonization in this complex field. This is especially true considering the difficulty in reconciling some customary/religion norms with modern practice on the one hand and the resistance of Nigeria community to certain modern marriage practices on the other hand. This paper argues that harmonization of marriage laws in Nigeria is an admirable objective, but it grapples with significant constraints owing to the nation's intricate cultural, religious, and legal heterogeneity. The paper suggests a balanced approach that respects diversity while simultaneously upholding fundamental rights and gender equality. Acknowledging the boundaries of harmonization is vital for developing legal structures that accommodate the distinct needs and traditions of Nigeria's multifarious society.

Key words: Marriage, Customary law, Globalization, Harmonization, Islamic law

1.1 Introduction

Harmonization of laws is a contemporary issue in countries that have a multi-cultural, multi-legal and multi-religious system. This is a common occurrence in

Africa inclusive of Nigeria. In the precolonial era, the people relied mainly on the cultural, indigenous and Islamic laws of the various tribes. The North was peculiar as it operated the Islamic law system and this is accrued to the fact that Islamic system is ingrained into the cultural practice of the people of the North due to the high devotion to the religion.⁶⁹³ This plurality of laws in addition to the existence of a variation in culture and religion is also linked to colonization which brought about the Received English Law albeit a third system of law. These laws have now been integrated into the Nigerian legal system and referred to as the statutory laws.⁶⁹⁴ Likewise, there are three systems of marriage in Nigeria: English Law marriage (statutory marriage), Customary law marriage and Islamic law marriage (Shariah). The three legal systems are with distinct peculiarities. The statutory marriage is understood as a monogamous marriage which is contracted within the provisions of the Matrimonial Causes Act⁶⁹⁵ (MCA) and the Marriage Act⁶⁹⁶ (MA). The customary law system of marriage is based on a set of practices, largely unwritten which have gained acceptance over time and binding on the people.⁶⁹⁷ Accordingly, before a marriage is considered valid under customary law, it must be amenable with the requirements in the particular community. Islamic law marriage is a union between two parties in accordance with the Islamic law injunction as contained in the Quran, sunnah and other sources of shariah and of course

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⁶⁹³ Abdullahi A. An-Na'im (ed), *Islamic Family Law in a Changing World: A Global Resource Book*, (Zed Books, London 2002) 284 in Abdulmumini A. Oba, 'Judicial Practice in Islamic Family Law and Its Relation to 'Urf (Custom) in Northern Nigeria', p. 373.

⁶⁹⁴ Wuraola O.T & Ojibara, H.B (2018): Revisiting the Effects of Colonialism on the Development of Customary Laws in Nigeria. *The Nigerian Law Journal*, Vol. 20, No. 108.

⁶⁹⁵ Matrimonial Causes Act, Cap.M7, L.F.N 2004.

⁶⁹⁶ Marriage Act, Cap. M6, L.F.N 2004.

⁶⁹⁷ Niki Tobi, *Sources of Nigerian Law*, (MIJ Professional Publishers Limited, Lagos 1996).

contracted by persons of the Muslim faith.⁶⁹⁸ The customary marriage and Islamic marriage are both polygamous in nature. The multiplicity of these legal systems of marriage have resulted in persons contracting marriages in compliance with more than one system of marriage thereby having conflicting rights and obligations.⁶⁹⁹ This multiplicity of laws and its legal complexities has resulted in several debates and clamour for the unification or harmonization of the laws.⁷⁰⁰ Boodman⁷⁰¹ advocates for the harmonization of laws, whereby he proffers that harmonization ‘presupposes and preserves the diversity of the objects harmonized’. Oseni and Rashid also posit that despite the notable differences between the Shariah and common law, they share certain values, a convergence which would promote better understanding for the effective administration of justice in societies.⁷⁰² There are also contradictory opinions on the purposefulness of harmonization, Tsoukala for example is of the view that it leads to rigidity and obscures the stakes of the laws.⁷⁰³ Harmonization of laws is more often than not used interchangeably or misunderstood to mean unification of laws. Harmonization refers to adopting various laws applicable to a

⁶⁹⁸ Ambali M.A, *The Practice of Muslim Family Law in Nigeria* (Tamaza Publishing Co ltd, Zaria 2003)

⁶⁹⁹ Imam-Tamim M. K, Mohd Zin N, Ibrahim N & Che Soh R, ‘Impact of Globalisation on Domestic Family Law: Multi-tiered Marriage in Nigeria as a Case Study’ (2016) 48(2) *The Journal of Legal Pluralism and Unofficial Law* 259-260.

⁷⁰⁰ Charles Manga Fombad, *Some Reflections on the Prospects for the Harmonization of International Business Laws in Africa: OHADA and Beyond* [https://repository.up.ac.za/bitstream/handle/2263/31659/Fombad_Some\(2013\).pdf?sequence=1](https://repository.up.ac.za/bitstream/handle/2263/31659/Fombad_Some(2013).pdf?sequence=1) accessed 04 May, 2024.

⁷⁰¹ Boodman M, *Myth of Harmonization of Laws* (1991) *American Journal of Comparative Law* 39:963-979 in Charles Manga Fombad, *Some Reflections on the Prospects for the Harmonization of International Business Laws in Africa: OHADA and Beyond* [https://repository.up.ac.za/bitstream/handle/2263/31659/Fombad_Some\(2013\).pdf?sequence=1](https://repository.up.ac.za/bitstream/handle/2263/31659/Fombad_Some(2013).pdf?sequence=1) accessed 04 May, 2024. See also, Allot A.N, ‘Towards the Unification of Laws in Africa’, (1965) 14 (2) *The International and Comparative Law Quarterly* 366-389.

⁷⁰² Umar A. Oseni and Syed Khalid Rashid, ‘Transformative Accommodation’: Towards the Convergence of Shariah and Common Law in Muslim Minority Jurisdictions, *Arab Quarterly* (2016) 30 (3) 260-261.

⁷⁰³ Philomila Tsoukala, ‘Marrying Family Law to the Nation’ *The American Journal of Comparative Law* (2010) 58 (4) 873-910.

particular subject matter for coordination.⁷⁰⁴ According to Fombad, it is a process where differing laws are made easier to understand or comply with and its exact outcome cannot be predetermined.⁷⁰⁵ It contemplates the ‘substitution of different legal orders with a single legal order’.⁷⁰⁶ Unification on the other hand, is ‘the process whereby two or more different legal provisions or systems are supplanted by a single provision or system.’⁷⁰⁷ With this clear understanding of the two concepts, most scholars have supported the harmonization of laws as opposed to the unification of laws. Porcelli and Zhai are of the view that harmonization is preferable and more feasible than unification considering the possible difficulties especially in areas like family law, property and real rights law.⁷⁰⁸ Harmonization of laws has shown to be more practicable and achieved in the area of international trade, commercial law, contracts and has assisted in bridging the gap of trade and resolving conflict of laws in this regard.

It is against this backdrop that this article reconnoitres the possibility of harmonization of the Nigerian marriage laws. Marriage is the foundation or core of interpersonal relationships, family and the society. The universality of its institution in the world and its peculiarity in Africa is indicative of its importance. One field of law that has been affected by the multiplicity of laws and globalization is marriage laws. Therefore, in order to have an articulate system especially in addressing contemporary issues and newly sprung up perception of marriage, there is a need for a synergy in the Nigerian marriage laws.

After the main introduction; the second part discusses legal pluralism in the realm of marriages in Nigeria; the third part focuses on the harmonization of marriage

⁷⁰⁴ Charles Manga Fombad, Some Reflections on the Prospects for the Harmonization of International Business Laws in Africa: OHADA and Beyond [https://repository.up.ac.za/bitstream/handle/2263/31659/Fombad_Some\(2013\).pdf?sequence=1](https://repository.up.ac.za/bitstream/handle/2263/31659/Fombad_Some(2013).pdf?sequence=1) accessed 04 May, 2024.

⁷⁰⁵ *Ibid.*

⁷⁰⁶ Stefano Porcelli and Yuanjian Zhai, The Challenge for Harmonization of Law, *Transit Stud Rev* (2010) 17:431.

⁷⁰⁷ Kamba W.J, *Comparative Law* (1974) 23 *International and Comparative Law Quarterly* 485.

⁷⁰⁸ Stefano Porcelli and Yuanjian Zhai, The Challenge for Harmonization of Law, *Transit Stud Rev* (2010) 17:431.

laws; the fourth part discusses the limits of the marriage laws vis-à-vis the impact of globalization, constitutional challenges and challenges of religious laws; the last part which is the conclusion gives a summary of the work and the prospect of marriage laws in Nigeria. The work finds that the pluralistic nature of marriage laws is one that calls for harmonization and it is imminent considering existing complexities.

1.2 Legal pluralism in the regulation of marriages in Nigeria

The institution of marriage is a universal phenomenon that is widely acknowledged all over the world. In Nigeria, marriage generally is in two main category that is the monogamous marriage and polygyny, widely referred to as polygamous marriage. The Interpretation Act⁷⁰⁹ defined a monogamous marriage as a marriage which is recognized by law of the place where it is contracted as a voluntary union of one man and one woman to the exclusion of all others during the continuance of the marriage. Polygyny on the other hand is the union between one man and several women.⁷¹⁰ This is in contrast with the generally accepted definition of polygamy as the union of one gender to several of the other gender.⁷¹¹ Considering these explanations, what seems to be widely practiced and accepted in Nigeria is polygyny as opposed to polygamy. Despite the two broad categories that is, polygyny and monogamy, marriage in Nigeria is categorised mainly in accordance to the legal systems.

There are three systems of marriage in Nigeria: English law marriage (statutory marriage), customary marriage and marriage under Islamic law (Shariah). Basically, the Nigerian legal system recognizes three basic forms of marriages which are: Statutory law marriage, Customary law marriage and Islamic law marriage. The statutory marriage is monogamous while the customary and Islamic law marriage could be polygynous.⁷¹² The monogamous marriage is used interchangeably as statutory law marriage in Nigeria.

As stated earlier, each of these marriages are regulated by different legal systems and hence distinct peculiarities. The statutory law marriage is regulated by the Matrimonial Causes Act⁷¹³ (MCA) and the Marriage Act⁷¹⁴ (MA). As such, statutory marriage is understood as

⁷⁰⁹ No 1 of 1964, Section 18 L.F.N 2004

⁷¹⁰ Meek C.K, *The Northern Tribes of Nigeria: An Ethnological Account of the Northern Provinces of Nigeria together with a Report on the 1921 Decennial Census*, (Frank Cass & Co. Ltd., London 1971) Volume 1p. 195.

⁷¹¹ Ndabayakhe V & Addison C, 'Polygamy in African Fiction', (2008) 20(1) *Current Writing: Text and Reception in Southern Africa*, 89-104.

⁷¹² Ojibara H.B (2023). Customary Law Approach as Alternative Legal Response to Domestic Violence Against Women Towards Preserving Marriages in Kwara State. (*Ph.D. Thesis, University of Ilorin*) 100.

⁷¹³ Matrimonial Causes Act, Cap.M7, L.F.N 2004.

⁷¹⁴ Matrimonial Causes Act, Cap.M7, L.F.N 2004.

marriage which is contracted within the provisions of the Act. Furthermore, statutory marriage was defined in the case of *Hyde v. Hyde*⁷¹⁵ by Lord Penance, I conceive that marriage as understood in Christendom may be defined as the voluntary union for life of one man and one woman to the exclusion of all others.

The monogamous nature of statutory law marriage is further strengthened by the MCA which provides that neither of the two parties of an intending marriage should be previously married to other persons.⁷¹⁶

The customary law system of marriage is not uniform. This means that customary practices differ from community to community. They are a set of practices, largely unwritten which have gained acceptance over time and binding on the people.⁷¹⁷ Despite the difference in culture, there are certain practices that are similar to most tribes like the payment of bride price, parental consent, handing over of the bride to the groom's family. Consequently, before a marriage is considered valid under customary law, it must be in compliance with the essential requirements in the particular community.⁷¹⁸

Islamic law marriage is a union between two parties and it is contracted by persons of the Muslim faith.⁷¹⁹ Marriage is considered sacred and a compulsion for persons that are capable as a way to curb immorality and also fulfil one's commitment to God.⁷²⁰ The Islamic law marriage is guided by the Quran which is the main book of reference and then the hadith which provides for practices of the prophet and serves as real life experiences. It is equally guided by other sources of Shariah such as Ijmah and Qiyas (juristic interpretations of the Quran and Sunnah).

The Customary law marriage and Islamic law marriage in as much as it allows for polygyny does not necessarily mean that every person that contracts a marriage under either of this system has to take multiple wives. In other words, they can stay monogamous or then be in polygyny. Also, despite that these two systems allows for polygyny, they still differ in the sense that while customary law permits a man to take multiple wives he is not restricted as to the number of wives a man can marriage. However, Islamic law restricts a man to just four wives.⁷²¹

The multiplicity of these legal systems of marriage have resulted in persons contracting marriages in compliance with more than one system of marriage. This type of marriage is

⁷¹⁴ Marriage Act, Cap. M6, L.F.N 2004.

⁷¹⁵ (1886) LR IPD 130.

⁷¹⁶ Section 3(1) (a) Matrimonial Causes Act, Cap M7, L.F.N 2004.

⁷¹⁷ Niki Tobi, *Sources of Nigerian Law*, (MIJ Professional Publishers Limited, Lagos 1996).

⁷¹⁸ Sagay I, *Nigerian Family Law: Principles, Cases, Statutes & Commentaries* (Malthouse Press, Lagos 1999) 819-827.

⁷¹⁹ Ambali M.A *The practice of Muslim Family Law in Nigeria* (Tamaza Publishing Co Ltd, Zaria 2003)

⁷²⁰ Doi A. I, *Shariah: The Islamic Law*, p.119. Also, Al Mu'jamul Awsat, Hadith: 976 and Mustadrak Hakim, vol. 2 p. 161. Orire A. Sharia: *A misunderstood Legal System* (1st ed, Sankore Educational Publishers Ltd 2007) 1.

⁷²¹ The Quran, al-Nisa 4:3.

then referred to as ‘double-deck or multi-tiered marriage’. It is double-deck when the parties have contracted marriage under two legal systems and multi-tiered when the marriage was contracted under the three legal systems. Imam-Tamim *et al* considers this form of marriage as a fourth system of marriage in Nigeria.⁷²² The question now hinges on the possibility of having two or three subsisting marriages considering their peculiarities and also difference in certain rights and liabilities. For example, the possibility of a man who has contracted a statutory marriage and then goes ahead to contract a customary law marriage and vice versa, whether or not he can take multiple wives. The reason why persons contract marriages under more than one legal system has been attributed to ignorance, perception of superiority of one system than the other and globalization.⁷²³ This complexity, conflicting rights and obligations among these legal systems beacons on the possibility of harmonization of the marriage laws in Nigeria.

1.3 Harmonization of marriage laws: The Nigerian Perspective

Marriage laws in Nigeria reflects an evolving synthesis of past and present developments. In addition to the post-colonial effect on the laws, the diversity of the people in terms of culture, religion is all causes of the multidimensional approaches to marriage. The pluralism of laws in Nigeria is attributed to the colonial era when a foreign system of law was introduced.⁷²⁴ The foreign system of law was believed to be adopted for certain issues like commercial transactions, while the traditional laws were supposed to exist as personal laws to cover areas like family. However, with time, its application spilled into one another and individuals brought their claims under the legal system they assumed was most convenient in certain circumstances.⁷²⁵ According to Ige, the uniqueness of multiple laws gives room for competing claims, diverse perspectives and a build-up of legal knowledge.⁷²⁶ Albeit this, the distinctiveness of the three systems i.e., statutory law, customary law and Islamic law has brought about certain complexities. First and foremost is that despite the constitution making provision for the recognition of customary law and Islamic law in practice and to the understanding of many, it is not put on same pedestal as its statutory counterpart. The statutory family law is

⁷²² Imam-Tamim M. K, Mohd Zin N, Ibrahim N & Che Soh R, ‘Impact of Globalisation on Domestic Family Law: Multi-tiered Marriage in Nigeria as a Case Study’ (2016) 48(2) The Journal of Legal Pluralism and Unofficial Law 259-260.

⁷²³ *Ibid* 261-264.

⁷²⁴ Agbede, I.O. 1991. “The Different Systems of Law: Nature and Basis of Conflict of Law.” In Towards a Restatement of Nigerian Customary Law, edited by Y. Osinbajo, and A.U. Kalu, 45. Lagos: Federal Ministry of Justice.

⁷²⁵ Rhoda Asikia Ige, Legal Pluralism in Africa: Challenges, Conflicts and Adaptation in a Global Village, Journal of Law, Policy and Globalization Vol.34, 2015, p. 60.

⁷²⁶ *Ibid*.

believed to have more weight or legal recognition.⁷²⁷ And this counts as one of the reasons why even though most desire a traditional marriage, they still contract another under the statutory law system. This bias is evident in some decided authorities; *Okwueze v Okwueze*⁷²⁸, where the court introduced the English practice of denying custody of children under 16 years of age. Also, in *Anekwe v Nwekwe*⁷²⁹ and *Ihejiobi v Ihejiobi*⁷³⁰ where the cases were said to fail the validity tests of application.

The clamour for a uniform system also stems from the prevalence of multi-tier marriage and incompatibility of the rights and obligations resulting in instances where one system subsumes another and presents superiority of some systems above the others.

1.4 Limits of harmonizing marriage laws in Nigeria

Harmonization of marriage laws is no doubt a noble course and would go a long way in eliminating the potential conflicts in the smooth application of the law. However, the harmonization project is a complex task as earlier noted. The nature of ethnic diversity, cultural and religious norms has shown that each marriage has its unique character and practice. Reconciling these extremely diverse practices will obviously constitute a challenge. Beyond this, there are other specific challenge in harmonization which this study seeks to explore in greater detail.

One of the greatest obstacles to the harmonization of marriage laws in Nigeria is the challenge of harmonizing any aspect of law involving native laws and customs. Accordingly, Oba contends that the existence of customary law poses a more complex terrain for the harmonization of laws in Nigeria.⁷³¹ In the context of marriage for example, a very controversial question is the issue of marriageable age. The statutory laws do not state explicitly what marriageable age is. Also, in Islam like some customs, marriageable age is put at the age of puberty.⁷³² Thus, marriageable age varies in the three legal systems, while some are silent about it, others are open as to as to a precondition which is not definite. Generally, conflicts of law issues will naturally be a huge obstacle to harmonization efforts involving customary laws. As aptly noted by Boporai 'If two persons governed by the same customary law marry each other no conflict of law problems arises.

⁷²⁷ Nwogugu E. I, *Family Law in Nigeria*, (Heinemann Educational Books Nigeria Plc, Ibadan 2001) 66.

⁷²⁸ (1963) 1 ANLR 352; *Edet v Essien* (1932) 11 N.L.R 47

⁷²⁹ (2014) All FWLR (Pt 739) 1154.

⁷³⁰ (2013) LPELR-21957 (CA) 23.

⁷³¹ Abdulmumini A. Oba, *Harmonisation of Shari'ah, Common Law and Customary Law in Nigeria: Problems and Prospects*, (2008) 35 JMCL 119-120

⁷³² Doi A. I, *Shariah: The Islamic Law*, (Taha Publishers, London 1984) 129.

But which customary law will govern family matters where, say, a Muslim Hausa from the North marries a Christian Yoruba from the South?⁷³³

Yet another potential limit to the harmonization of marriage laws in Nigeria is the different attitude by each of the systems of law to women's rights and the issue of equality in family matters. The challenge of achieving gender equality in family matters in Nigeria is heightened due to the discrepancy between statutory laws, which affirm women's rights and equality, and certain customary or Islamic laws that seems to perpetuate discrimination against women. While statutory law acknowledges women's rights to enter marriage consensually, inherit property, divorce under equal terms as men, and are entitled to maintenance and custody of their children, these rights often repudiated when intersecting with customary or Islamic legal norms. For instance, certain customary laws disallow women from inheriting property from their husbands or parents and stipulate that divorce is contingent upon returning the bride price.⁷³⁴ These customary practices are guided by the dictates of the law. Similarly, Islamic law grants men certain privileges such as polygyny, divorce, custody, and inheritance based on the dictates of divine sources. These disparities not only pose a formidable obstacle to the harmonization of family laws in Nigeria but also in the opinion of promoters of superiority of statutory marriage undermine the dignity and autonomy of women in the realm of family affairs.

The lack of political will and public awareness to promote harmonization is a further limitation to the harmonization of marriage laws in Nigeria.⁷³⁵ The harmonization of marriage laws in Nigeria requires the cooperation and coordination of various actors and institutions at the federal and state levels, such as the legislature, the judiciary, the executive, the religious authorities, the civil society groups, and the general public. However, there is often a lack of political will and public awareness to support harmonization efforts, as some people may perceive them as a threat to their religious or cultural identity or interests.⁷³⁶ There is also a lack of adequate data and research on the current situation and impact of marriage laws in Nigeria, which hinders the development and implementation of effective policies and programs for harmonization.

This article will examine this issue in greater detail and identify feasible means of overcoming some of the challenges.

1.4.1 Constitutional challenge

⁷³³ Harinder Boparai 'The customary and statutory law of marriage in Nigeria' (1982) 46 *Journal of Comparative and International Family Law in Nigeria* 544.

⁷³⁴ Anthony C. Diala, 'A Critique of Judicial Attitude Towards Matrimonial Property Rights Under Customary Law in Nigeria's Southern States' (2018) 18 (1) *African Human Rights Law Journal*.

⁷³⁵ Arthur H, *Harmonisation in Africa, Quality Assurance and Safety of Crops & Foods*: 11 (7)- Pages: 613 - 622

⁷³⁶ Philomila Tsoukala, 'Marrying Family Law to the Nation' *The American Journal of Comparative Law* (2010) 58 (4) 873-910.

Nigeria has a plural system of laws due to its multi ethnicity and different religious affiliations, so each of this system have their own rules or norms regarding marriage, divorce, inheritance as stated earlier. Therefore, one main challenge is how to bring all of the laws under one umbrella. The constitutional challenge has to do with the proper body that has the authority to work on marriage issues. The Federal government has the power to legislate on statutory law marriage (exclusive list), while the state has the power to legislate on customary and Islamic law marriage (concurrent list).⁷³⁷ This difference in power and jurisdiction forms a complexity in fusing the laws. In essence customary issues are more effective from state structure or perspective if more decentralised it would take into cognisance the peculiarity of each custom to avoid one size fit all.

Another is that there are certain customary practices that offends the provisions of the Constitution which are the practices hinged on the validity tests that is whether or not certain customary practices are repugnant to natural justice, equity and good conscience.⁷³⁸ Likewise, there are certain provisions of legislations that would ordinarily affect customary practices. For example, the Child Rights Act prohibits marriage below 18 years⁷³⁹ which is in contradiction to the Nigerian constitution. However, the same Constitution⁷⁴⁰ appears to uphold customs through recognition of existing laws in section 315, which in essence, the customary law marriage to girls below 18 years is not prohibited. So, to harmonize the laws in this regard simply means to uphold marriages to persons under the age of 18.

1.4.2 Compatibility in the legal system

Oba posits that the existence of customary law poses a more complex terrain for the harmonization of laws in Nigeria.⁷⁴¹ One huge and unsettled debate is in stipulating the marriageable age. The statutory laws do not state explicitly what marriageable age is. Thus, marriageable age varies in the three legal systems, while some are silent about it, others are open as to as to a precondition which is not definite i.e., the age of puberty. The Child Rights Act on the other hand prohibits the marriage of a person below the age of 18 years and makes sanctions for persons in breach of the provision.⁷⁴² This conflicting provision and interest has been suggested as one of the reasons why some states in Nigeria are yet to enact the Child Rights Act into law.⁷⁴³

⁷³⁷ See Item 61 of Part I of the Second Schedule of the CFRN. See also Abdulmumini A. Oba 'Religious and Customary Laws in Nigeria' (2011) 25 Emory Int'l L. Rev., 881 at 883.

⁷³⁸ Sagay I, *Nigerian Family Law: Principles, Cases, Statutes & Commentaries* (Malthouse Press, Lagos 1999) 800-802.

⁷³⁹ Section 21 Child's Rights Act 2003.

⁷⁴⁰ 1999 Constitution (as amended).

⁷⁴¹ Abdulmumini A. Oba, *Harmonisation of Shari'ah, Common Law and Customary Law in Nigeria: Problems and Prospects*, (2008) 35 JMCL 119-120

⁷⁴² Section 21-23 Child Rights Act 2003.

⁷⁴³ **Zaynab Bashir, 'National Industrial Court of Nigeria, An Evaluation of the Impact of the Child Rights Act in Regulating the Rights of a Child in Nigeria'** <https://www.iawj.org/content.aspx?page_id=2507&club_id=882224&item_id=4600> accessed 20 February 2024.

The tradition of dowry/bride price is common to two systems of marriage i.e., the Islamic law and customary law.⁷⁴⁴ In as much as this is not applicable to the statutory law system, it is not in conflict or contradiction with any of its underlying principles. This is one practice deeply embedded in custom and also widely practiced and accepted, and most likely to meet a resistance if undone.

1.4.3 Impact of globalization on customary practices

Globalization is a process of international integration, which originated from the exchange of ideas, world views and other cultural features.⁷⁴⁵ As a result, the world is growingly becoming homogenised in a lot of aspects. According to the United Nations Educational, Scientific and Cultural Organization [UNESCO], globalization can also be cultural and that way it increases the interconnectedness among different cultures, especially between societies that share same colonialist and have similar legal history.⁷⁴⁶ However, despite sovereignty of states, boundaries through miles and seas, globalization is seen to evade boundaries and this is evident in the myriad of challenges witnessed in the 21st century ranging from terrorism, economic meltdown, covid-19 pandemic, the wide migration drone (*japa syndrome*) and amongst these, its impact on customary practices is also evident.

1.4.4 Challenges of religious laws

Nigeria being a multi religious country, one of the main challenges of harmonization is religion. Islamic law existed and was widely practiced before colonization, however, as a result of colonization, it was then fused with customary law as one and the same. This itself can be attributed to a lack of understanding or an attempt to fuse two systems to avoid multiplicity. No doubt Islamic law poses as the rules and practices of the way of life of the typical Muslim and might seem to be similar to customary law, it is however, totally distinct.⁷⁴⁷ This was an issue that was long debated for years before the settled resolution that they are two distinct practices and laws. The peculiarity of Islam and its doctrines especially that it is largely written clearly shows that it is different from customary law. It is as a result

⁷⁴⁴ Harinder Boparai 'The customary and statutory law of marriage in Nigeria' (1982) 46 *Journal of Comparative and International Family Law in Nigeria* 544.

⁷⁴⁵ Martin, A., and E. King, eds. 1990. *Globalization, Knowledge and Society*. London: Sage.

⁷⁴⁶ United Nations Educational, Scientific and Cultural Organisation [UNESCO]. 2005. "International Flows of Selected Goods and Services." Accessed 31 January 2024. www.uis.unesco.org/template/pdf/cscl/IntlFlows_EN.pdf

⁷⁴⁷ Ojibara H.B (2023). Customary Law Approach as Alternative Legal Response to Domestic Violence Against Women Towards Preserving Marriages in Kwara State. (*Ph.D. Thesis, University of Ilorin*) 237.

of this peculiarity that most Islamic scholars are of the view that unification is impossible.⁷⁴⁸

Statutory law marriage is practiced such that it usurps the other systems of marriage when contracted together. This perception is not tolerated and inconsistent with Islam and this has been stated and restated by Muslim scholars. For instance, in Islam, there are laid down rules to devolve a deceased's property.⁷⁴⁹ Where a Muslim made a will (testate), it must be in accordance with the rules of Shariah and where he dies without a will (intestate), the inheritance will be shared as dictated by Shariah. This is one of the inconsistencies that harmonization seeks to solve. This opinion is echoed by Ambali⁷⁵⁰. Also, in as much as Islam recognises and permits monogamy, it rules out the fact of putting a man under a strict law to practice monogamy when polygamy is permitted to him.

Ambali further argued that any Muslim who marries under the Marriage Act in Nigeria has rejected the injunctions of Allah regarding marriage and succession because forcing himself to monogamy when there are circumstances requiring him to take additional wives will amount to his making unlawful (haram) for himself what Allah has made lawful (halal) for him. Also, because a deceased Muslim's property is clearly explained by the Shari'ah, such a Muslim would have subjugated the rules of succession in Shari'ah for the rules of succession under common law, which is applied through the Administration of Estates Laws of various states in Nigeria.⁷⁵¹

1.5 Conclusion

The complexities surrounding marriage laws in Nigeria underscore the challenges of harmonization in a diverse and heterogeneous society. While there is a call for harmonization to streamline legal frameworks, it is imperative to recognize the inherent limitations and complexities arising from cultural, religious, and legal diversity. This paper has shed light on the intricate interplay between customs, religious norms, and legislative provisions, emphasizing the need for a balanced approach that respects diversity while upholding fundamental rights and gender equality. As Nigeria navigates this complex terrain, it is essential to acknowledge the boundaries of harmonization and develop legal structures that accommodate the unique needs and traditions of its multifarious society. By doing so, Nigeria can move towards a more inclusive and equitable legal framework that reflects the

⁷⁴⁸ Abdur-Rahman I. Doi, Doi A. I, *Shariah: The Islamic Law*, (Taha Publishers, London 1984) 129.

⁷⁴⁹ *Adesubokan v Yinusa* (1973) 3 UILR 22; (1971) NNLR 77.

⁷⁵⁰ Ambali M. A., at 299 – 300

⁷⁵¹ *ibid*

richness of its cultural heritage while promoting justice and fairness for all its citizens.

As discussed, Nigeria has a pluralistic legal system and each has its peculiarity. This multiplicity and peculiarity have led to certain complexities that summons the need for harmonization of the laws. Over time, the harmonization of laws has been met with resistance with most confusing it with the unification of laws which subsumes other laws under a single one. Also, the harmonization of laws is met with certain challenges, a host of them are surmountable considering the benefits that are attributed to harmonization especially in the rising world of globalization and the new marriage and family dimensions.

In as much as the various systems of family laws have its distinct features, harmonizing them give a comprehensive and coherent law in addition to retaining their individuality.