



AHMADU BELLO UNIVERSITY LAW JOURNAL

FACULTY OF LAW

AHMADU BELLO UNIVERSITY, ZARIA - NIGERIA.

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AN ANALYSIS OF THE LEGAL REGIME FOR CHANGE OF NAMES BY MARRIED WOMEN IN NIGERIA AND ITS POSITION IN ISLAMIC LAW

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Abstract

Changing the surnames of married women is one of the issues affecting married women in these modern days. Some people change their surname out of love at will, based on religion, while some are compelled to change their names due to governmental policies. Change of surname by women due to marriage, divorce, death, or quarrels with husbands is one issue giving rise to complaints of breach of fundamental rights of women in Nigeria and even the world over. It has become a common practice in Nigeria that once a woman marries, her surname changes to that of her husband. And the moment she is divorced or the husband dies, the need for another change arises. So, a woman mostly doesn't stand the chance of maintaining a single name/identity. It has become a norm, to the extent that government agencies like the National Youth Service Corps (NYSC), Nursing and Midwifery Council of Nigeria (NMCN), Nigeria Immigration Service (NIS), among others, compel married women to change their surnames to that of their husbands. This has become a problem for the identity of women's lineage. This paper looks at the practices and policies to determine whether they conflict with the fundamental rights of women in Islamic law. The study adopts a purely doctrinal research method. The paper critically examined the policies of compulsory change of women's surnames as required by some governmental organizations and found that they violated women's rights. The study recommends that other similar agencies like NYSC with such policies should stop and or reverse them for they are a direct affront to the Constitutional rights to freedom from discrimination and that of thought, conscience and religion.

Keywords: Legal Regime, Change of Name, Married Women and Islamic Law

1.1 Introduction

Understanding the different perspectives of human nature and their reactions to laws, policies, or conventions in a multi-religious and multi-cultural society like Nigeria, with its pluralistic legal system, is an area that is unique and simple, yet complicated for others to comprehend. In Nigeria, it is common practice, upon marriage, for a woman to change her surname from that of her father to that of her husband, and upon divorce or the death of the husband, to either that of her father's name or that of a new husband. This practice is becoming almost normative, to the extent that some government agencies are implementing policies to ensure the actualization and strict compliance with this change of name and identity practice. Some of the government agencies that have formalized a policy to this effect are the National Youth Service Corps (NYSC), Midwifery Council of Nigeria (NMCN), and the National Health Insurance Scheme, among other governmental agencies.

These policies seem to be at par with Islamic law injunctions on people's identity. Islamic Law makes provision for a name, commanding parents to name their children with good names, and children are typically named after their father, even if the father is deceased, divorced, or not a Muslim. However, a child born out of wedlock is named after his mother. This position of Islamic law might sound strange to some individuals or cultures that take pride in changing their maiden names upon marriage to that of their husband.

The plurality of our legal system in Nigeria makes it difficult for some individuals, religious adherents, and certain governmental agencies to understand that the policy on the change of name contradicts Muslim women's beliefs. Muslim women who insist on going by their beliefs by refusing to allow their identity to be altered are often denied some basic rights and privileges to which they are entitled. These situation breeds intolerance, chaos, and hatred toward one another, especially when the individual enforcing the policy does not share the same religion as the affected Muslim woman. This becomes a religious and human

rights issue that need to be addressed, as doing so will promote religious tolerance, social solidarity, and mutual understanding among the diverse religions in Nigeria, in particular, and among the people across the globe, in general.

The objective of this paper is to analyze NYSC's and similar institutions' policies and guidelines to determine whether those policies are in violate of women's Constitutional rights in relation to the Islamic law position on change of married women's names. The NYSC has shifted its stance by reviewing such policies due to the controversy surrounding a serving corps member, Aisha Saneeya Abdulhamid,¹ which shall be the case study in this paper. Women are subjected to these policies on change of name in hospitals, voter registration, National I.D Card registration, and among other venues or centers that deals with their bio data.

1.2 Conceptual Clarifications

1.2.1 Name, Surname and Maiden Name

According to the Black Law Dictionary, name is defined as “a word or phrase identifying or designating a person or thing and distinguishing that person or thing from others”.² While Surname is defined as “the family name automatically bestowed at birth, acquired by marriage, or adopted by choice. Although in many cultures a person's surname is traditionally the father's surname, a person may take the mother's surname or a combination of the parents' surnames- also termed *family name*”.³ On the other hand, maiden name is defined as “a woman's childhood surname (which may or may not remain her surname for life).

From the definitions of the three terms above, one unique attribute that can be discern from all the terms is the attribute of identification of a particular person or

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¹ *Aisha Saneeya Abdulhamid v NYSC & Anor (Unreported suit No: FHC/ABJ/CS/751/2023)*.

² Garner, B. A. *Black's Law Dictionary*, (Tenth Edition, Thomson Reuters, U.S.A 2014). 1181.

³ *Ibid* p. 1182.

thing. Name, surname and maiden name clearly identify a person or a thing, distinguishing the person or thing from others. Surname and maiden name are private affairs that ought not to be regulated by the government as meddling into it by government might infringe on the individual private life that is protected by the Constitution.⁴

1.2.2 Change of Name

Change of name is “a legal process in which a person officially changes their name.”⁵ It also means “the legal act of a person officially adopting a new name, different from their current one, usually requiring government approval; essentially, it's when someone changes their legal identity by taking on a new name.”⁶ By these definitions it is safely to conclude that changing name is a legal act, which must be strictly done within the bounds of law as people can change their names for various reasons, including change in religion marriage, gender transition, cultural reasons, or to distance themselves from a past identity, depending on the situation requiring the change.

In the case of *NMCN v Adesina*,⁷ the respondent change her name on the ground of changing her religion and marriage and submitted an application to the Nursing and Midwifery Council of Nigeria (NMCN) to reflect the change, but NMCN refused and asserted that by the Council's policy, a married woman is allowed to drop her maiden surname and adopts her husband's surname and it is not allowed for a person to drop all his/her name and adopt new names that bears no nexus to the previously registered name. The court then declared the act of NMCN refusing the respondent to change her name as unconstitutional and in breach of *Section 38 of the Constitution of federal Republic of Nigeria, 1999*, which guaranteed freedom of thoughts, conscience and religion.

⁴ See *Section 37 of the Constitution of federal Republic of Nigeria, 1999*.

⁵ <https://dictionary.cambridge.org/dictionary/english/change-of-name>. Accessed on 7/11/2024

⁶ *Ibid*.

⁷ (2016) LPELR-40610 (CA), p. 27, paras. D-E.

1.3 Historical Context of Name Change for Married Women in Nigeria

Name, although a minor part of the individual's identity, can have numerous effects on an individual. Name influences attitudes and thoughts towards the individual. An individual's name can affect his or her height of ambition or outlook towards life. A name is an inseparable part of an individual's status and personality. Name change by married women in Nigeria can be historically traced to the traditional dominance of men over women, the patriarchal system of African society.⁸ This tradition indicates men's dominance over women and has a linkage with the English old-day tradition where women are considered as properties that can be inherited, which is passed on to their male folk.⁹ Philips-Kemenanabo while trying to link the change of married women's name with the English medieval tradition states thus:

Kerrie O'Brien, mirroring, perhaps, the thoughts of all women, claims that the tradition dates back to a time when women were considered the property of their fathers to be passed on, like chattel, to their husbands. Brandwein also offers a brief history of the tradition, taking us back to the 11th century, a proudly patriarchal time. She states that in England, this practice began after the Norman Conquest, when the Normans introduced the concept of coverture to the English.

Thus, coverture, under English common law, demanded that upon marriage, a woman's identity was "covered by her husband." This meant that both man and wife became one, and (sic) wife's identity was essentially obliterated. Under this terribly discriminatory law, husbands boasted of legal and financial ownership of their wives, married women were allowed no legal rights over their children,

⁸ Philips-Kemenanabo, N, 'Married Nigerian Women Should be Allowed to Decide Their Surnames' <<https://www.afrocritik.com/married-nigerian-women>>. Accessed on 10 October 2024.

⁹ This tradition is similar to the traditions of the Arab at pre-Islam era (*Jahiliya Period*). Women are considered as chattel that can be inherited by their biological sons, step sons, father in-laws or any male child associated with their deceased husband or parents.

and marital rape and domestic violence thrived due to (sic) limitation in available recourse.¹⁰

In 1961, the Ohio Appeal Court had decided a similar case in *Krupa v. Green*¹¹, an action seeking to prohibit a Board of Elections from placing the maiden name of a married woman on the ballot, the court held thus:

It is only by custom, in English-speaking countries, that a woman, upon marriage, adopts the surname of her husband in place of the surname of her father. "The Supreme Court of Ohio in the case of *Pierce v. Brushart*, 153 Ohio St. 372, at page 380, 92 N.E.2d 4, at page 8, said: "It is universally recognized that a person may adopt any name he may choose so long as such change is not for fraudulent purposes.' "In England, from which came our customs with respect to names, a woman is permitted to retain her maiden surname upon marriage if she so desires.

From the above, it can easily be concluded that the historical context of changing married women's surname to that of their husbands in Nigeria can be traced to the medieval tradition in England that relegated women to second-class citizens in society. The dominant tradition in the southern part of Nigeria is likely connected to the region's romance with English people first, before the northern part. The tradition is a common law theory on marriage and the unity of the spouse, which is a matter of custom, not law. In the case of *Dunn v Palermo*,¹² the Tennessee Supreme Court, Per Henry, while commenting on the common law theory of marriage, held thus:

It is undoubtedly true that the tendency of a wife to take her husband's surname was spawned by the common law theory of marriage. Under that theory, upon marriage, a man and a woman became one and that one was the husband. In view of that theory of marriage, it is perhaps surprising that the English common law, out of which grew the theory of coverture, did not require that the

¹⁰ Philips-Kemenanabo, N., *Op. cit.*

¹¹ (1961) 177 N.E.2d 616, 114 Ohio App. 497.

¹² (1975) 522. SW.2d, 679

husband's surname be assumed in all cases by the wife. On the contrary, however, when the wife did assume the husband's name, it was a matter of custom or practice and not of law.

This historical perspective clearly shows that changing a woman's name after marriage under Common law is not supported by any written law. However, it is just a common practice adopted by the English people that is adopted by some governmental agencies in Nigeria without looking at the nation plurality of legal system. The Marriage Act, which largely regulates the conduct of statutory marriage in Nigeria, has no provision recommending or mandating that a married woman must change her surname after marriage.

1.4 Marriage and Women's Rights in Nigeria

1.4.1 Recognized Marriages in Nigeria

In Nigeria, there are three types of marriages recognized by the extant law, i.e. marriages under Islamic, Customary Law, and marriages under the Matrimonial Causes Act (Statutory marriage).¹³ One common feature in the laws regulating these marriages in Nigeria is that each of these marriages is between a man and a woman. In essence, Same-sex marriage is not a marriage recognized in Nigeria¹⁴ and any custom that seems to permit it is repugnant to natural justice, equity, and good conscience.¹⁵

A. Islamic Law Marriages

The laws governing the formation of marriage in Islamic law include the primary sources of *Shariah* (law) i.e. Glorious *Qur'an* and *Hadith* or *Sunnah* (the actions, the sayings, and the taciturn approval of the Holy Prophet Muhammad (Peace be upon Him)); the secondary sources, consisting of the *Ijtihad* (Juristic reasoning),

¹³ Item 61 of Part 1 to the Second Schedule to the Constitution of Federal Republic of Nigeria, 1999. See *Jadesimi v Okotie-Eboh* (1996) LPELR-1590(SC), Pp. 21-22 paras. B.

¹⁴ Section 1 of the Same Sex Marriage (Prohibition) Act, 2013.

¹⁵ *Meribe v Egwu* (1976) LPELR-1861(SC), Pp. 12-13 paras. E.

Qiyas (analogical deduction), *Ijmaa* (consensus of scholars/jurists), *Masalihul-mursalah* (public interest), etc. In this paper, we are only relying on the primary sources. Allah said in the clear verses of His Book: the glorious *Qur'an*, thus: "And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your (hearts): Verily in that are Signs for those who reflect".¹⁶ In another verse, Allah says; "And marry those amongst you who are single and pious. If they be poor, Allah will enrich them out of His Bounty. And Allah is All-Sufficient for His creatures' needs, All-Knowing."¹⁷

The preceding *Qur'anic* verses encourages marriages in Islamic law and also states part of the rationale behind marriage. The Islamic marriage is generally polygamous, which permit a man to marry more than one wife with maximum of four wives as the limit.¹⁸ The basic requirements for the formation of marriage under Islamic law are parties, offers, acceptance, dowry (*Sadaq*), and witnesses.¹⁹ The consent of the bride is a condition precedent for the validity of an Islamic marriage. This is in line with the tradition of Prophet Muhammad (peace be upon Him) where He said, thus "A non-virgin woman may not be married without her command, and a virgin may not be married without her permission; and enough permission for her is to remain silent (because of her natural shyness)."²⁰

A Muslim man is permitted to marry four wives maximum if he can be able to do justice to them, else he sticks to one wife or even refrains from marrying at all.²¹ It should be noted that marriage in Islamic law is not compulsory. It can either be *Fard* (Obligatory) *Wajib* (compulsory), *Sunnah* (Advisable), *Makruh*

¹⁶ *Surah-al-Rum (Qur'an 30 verse 21)*

¹⁷ *Surah- an-Nur (Qur'an 24 verse 32)*

¹⁸ *Surah- an-Nisa (Qur'an 4 verse 3)*

¹⁹ Doi, A.I., *Shari'ah: The Islamic Law*, (1st Edition, Ta-Ha Publishers, London, 1984). 139

²⁰ *Sahih Al-Bukhari*, Book 9, *Hadith* No. 98 and 100.

²¹ *Surah- an-Nisa (Qur'an 4 verse 3)*

(impermissible), *Haram* (Illegal), and *Mandub* (recommended) depending on the needs and capability of the person or party(s).²² The consent of the bride guardian is also required for a woman to be validly married. Where she has no guardian, the leader is her guardian and can validly give her out in marriage.²³ Under Islamic law marriage there is no provision for change of name after marriage. The spouses maintain their maiden names.²⁴

B. Customary Marriage in Nigeria

Customary marriage is a marriage contracted under any native law and custom of a particular culture, which is followed by a celebration of handing over the bride to the groom's family and payment of dowry to the bride's family,²⁵ depending on the particular custom in focus. Under the Benin custom, for instance, a valid customary marriage must be followed by the cohabitation of the couples, which can be ascertained by the couple living together after the solemnization of the marriage.²⁶ The customary marriage in Nigeria is also polygamous, just as the Islamic Law marriage. On the issue of change of name after marriage, this depends on the custom applicable to the marriage or the personal choice of the couple. There are arguments for and against the existence of this issue of change of married women surname in Igbo custom. The most sound and reasonable is the argument distancing the Igbo culture from it as submitted by Chimamanda, where she posits thus:

²² Doi, A.I., *Op.cit.* 118-119

²³ *Ibid.* 140-141

²⁴ *Surah-Al-Ahzab (Qura'an 33 v. 5)*

²⁵ In *Okafor & Ors v Okafor & Anor* (2022) LPELR-59136(CA), Pp. 12 paras. D, the court of Appeal held, "the defendants failed woefully to adduce any evidence to show or support the essential elements of a valid customary law marriage. *These essential elements are the payment of dowry and the handing over of the bride to the bridegroom's family. The law is trite that for a marriage under native law and custom to be valid there must be payment of dowry and a ceremony of handing over of the bride to the bridegroom family.*" See section 35 of the Marriage Act, 1914.

²⁶ *Osamwonyi v Osamwonyi* (1972) LPELR-2789(SC), Pp. 9 paras. A.

I didn't change my surname to my husband's name because I love my surname, and all my documents bear my father's surname. I don't have the strength to run around to change it. People often tell me that I am abusing Igbo culture by still bearing my father's surname. I laugh when I hear people say this. But the fact is that those women who bears their husband's surname are the ones abusing Igbo culture. In pre-colonial Igbo culture, women didn't bear their husband's surname; they bore their father's surname. Everything changed when the British colonized us. We then abandoned our own culture and followed British culture.²⁷

C. Statutory Marriage or Marriage under the Act in Nigeria

In *Amobi v Nzegwu & Ors*²⁸ the Supreme Court, defined marriage under the Marriage Act in the following terms, to wit, "Marriage under the Marriage Act generally means the legal union of a couple as spouses. In other words, it is "the voluntary union for life of one man and one woman to the exclusion of all others." See: *Hyde vs. Hyde and Woodmansee* (1866) LRP & D 130, per Lord Penzance." Statutory marriage is generally monogamous and its validity depends on compliance with the extant law in Nigeria.²⁹ There is no provision under the extant laws regulating marriage in Nigeria³⁰ that requires a woman to change her surname to that of her husband's name.

1.5 Fundamental Rights in Nigeria

The Constitution contains some fundamental rights which apply to all citizens in Nigeria, irrespective of sex, race, religion, political affiliation, or nature of birth. It is safe therefore to conclude that all these rights are given to men and women, without any difference. These rights include the rights to life, the dignity of human

²⁷ Chimamanda Adichie, 'Embracing Igbo Heritage: Why I Chose to Keep My Father's Surname' <https://www.facebook.com/story.php?story-fbid=792569606308931&id=100066676973079>. Accessed on 15 January 2025.

²⁸ (2013) LPELR-21863(SC) Pp. 61 paras. D.

²⁹ Section 34 of the Marriage Act, 1914

³⁰ The Marriage Act, Cap M6, LFN, 2004; Matrimonial Causes Act, Cap M7 and the Matrimonial Causes Rules, 1983 (MCR).

person, personal liberty, fair hearing, privacy and family life, freedom of thoughts, conscience and religion, freedom of expression and the press, peaceful assembly and association, freedom of movement, freedom from discrimination, right to acquire and own immovable property anywhere in Nigeria, and freedom from compulsory acquisition of property³¹ and also, covers the rights under the African Charter.³² Just like we have several men who approach the courts to enforce their rights, we equally have an uncountable number of women who have explored the judiciary to enforce their rights that are violated.³³

1.6 National Youth Service Corps Policy on Change of Name

The NYSC was an initiative to foster national patriotism and unity among Nigerian youths founded after the Nigerian Civil War. It was promulgated by the then Military President, General Yakubu Gowon, under the National Youth Service Corps by Decree No.24 of 22nd May, 1973.³⁴ The primary purpose for the establishment of the scheme is clearly stated on the websites of the organization, thus:

The purpose of the scheme is primarily to inculcate in Nigerian Youths the spirit of selfless service to the community, and to emphasize the spirit of oneness and brotherhood of all Nigerians, irrespective of cultural or social background. The history of our country since independence has indicated the need for unity amongst all our people and demonstrated the fact that no cultural or geographical entity can exist in isolation.³⁵

In discharging their national duties under this program, it is suggested that individuals must use their academic qualifications, which in Nigeria, typically

³¹ Sections 33 – 44 of the Constitution of Federal Republic of Nigeria, 1999.

³² *African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. A9 Laws of the Federation of Nigeria, 2004.*

³³ *Lagos State Govt & Ors v Abdulkareem & ORS* (2022) LPELR-58517(SC), Pp. 42 – 44, Paras C - C.

³⁴ NYSC, *About the Scheme*, www.nysc.gov.ng Accessed on 10 August 2024.

³⁵ *Ibid*

means a university degree. Upon graduation, some Nigerian women are addressed as "Ms," a title preferred by Western feminists, as opposed to "Mrs," which normally associates women with their husbands. Following marriage, there is a notable number of married women in the field of employment and NYSC who are referred to as "Mrs. (Husband's name)." It is a common practice in Nigeria to, upon marriage, change a woman's surname from that of her father to that of the husband, and upon divorce or death of the husband, to either that of her father or a new husband. The practice is almost becoming a norm, to the extent that some government agencies are making policies to ensure the actualization and strict compliance with this change of name and identity practice. One of such government agencies that has formalized a policy to this effect is the National Youth Service Corps (NYSC).

The NYSC, with a view to giving concessions to Female Married prospective Corps members (PCM) in posting them to the place of domicile of their husbands, has a policy that allows the PCM to serve in their husbands' place of domicile. The policy requires such PCM to upload the following documents during registration, to wit: (a) evidence of the state of residence of the husband, (b) evidence of Marriage (Marriage Certificate/Affidavit,) (c) identity of the husband (Drivers' license, National ID etc.), (d) Newspaper change of Name, and (e) Letter from employer/Utility bills.³⁶ Once a female PCM uploads these documents, the NYSC portal is designed automatically to pick her husband's name, which will be used to replace the surname that she was initially mobilized for the service from her university.³⁷ This is where the Female PCM has more than two names (maiden name and surname) on her certificate. But where she has only two names, her husband's name is added as the third name. Any attempt to change the name to the maiden name of the married female PCM will be rejected by the system.³⁸

³⁶ <https://portal.nysc.org.ng/nysc1/RemobInterest.aspx>. Retrieved on 10/10/2024

³⁷ *Aisha Saneeya Abdulhamid v NYSC & Anor (Supra)*.

³⁸ *Aisha Saneeya Abdulhamid v NYSC & Anor (Supra)*. In this the PCM apply to correct her name due to being wrongly identified under another name (Suleiman Aisha Saneeya) and to recover her

This attitude of rejecting applications for correction is sometimes being challenged for being against the Data Protection right of the Female PCM, as they have the right to object to any attempt to tamper with their data.³⁹

The NYSC scheme's reason for subjecting married female PCMs to this identity change is simply to take care of the possibility of fake marriages presented only to secure favourable postings. It should be noted herein that this policy applies to married women, not married men. The question we ask here is, is the policy not discriminatory? We will get the answer later in this paper.

1.7 Islamic Law Perspective on Change of Name

Islamic law is a universal law applicable to all Muslims across the globe. It has answers to every issue of global concern. Islamic law teaches the minute things any human being is expected to know about life, relationships, behaviour, and anything governing human life. Islamic Law makes provision for a name. Parents are commanded to name their children with good names, and the children are named after their father, even if the father is dead, divorced, or not even a Muslim. However, the child born out of wedlock is named after his mother.⁴⁰ The Glorious Qur'an, which is the primary source of Islamic Law, clearly commands Muslims to be called by their father's name, while several traditions of the Prophet (Peace be upon Him) forbid Muslims from adopting any name other than that of their fathers as their surname. The Glorious Qur'an⁴¹ provides that:

lost reputation, which they refused and she sued NYSC who later bowed to her request by issuing her a certificate with her maiden name after they filed terms of settlement.

³⁹ NYSC, *Data Subjects' Rights*, <https://www.nysc.gov.ng/privacy.html>. Accessed on 10/10/2024. It should be noted that the use of affidavit and newspaper publication are not the legal means of changing name in Nigeria. The Supreme Court state that "the only means through which a person can legally change his name is through a Deed Poll" See the dictum of Per EKO, J.S.C in *PDP & Ors v Degi-Eremienyo & Ors (2020) LPELR-49734(SC)*, Pp. 8-16 Paras. D-D.

⁴⁰ Al-Munajjid, M. S, "How to Name a Child in Islam". <https://islamqa.info/en/answers/7180/how-to-name-a-child-in-islam>. Accessed on 13 October 2024

⁴¹ *Surah-Al-Ahzab (Qura'an 33 v. 5)*

Call them by (the names of) their (real) fathers: it is more equitable in the sight of Allah. And if you do not know their fathers, then they are your brothers in faith and your friends. There is no sin on you in the mistake you make, but in that which you do with intention of your heart; and Allah is most-Forgiving, very-Merciful.⁴²

The above verse was revealed to stop the Dark Age (*Jahiliya*) practice of the Arabs of distorting the lineage of a free slave adopted by their masters. In the *Jahiliya* period, slaves are named after their masters just as a way of distorting their lineage to forget their real parents. Some are given the surnames of their adopted masters because their adopted masters don't know their real parents' names. The Prophet (Peace be upon Him) also try to name his slave *Zaid Bin Thabit* after Himself, but Allah stopped the prophet (Peace be upon Him).⁴³ The verse was then revealed in generic terms, commanding Muslims to call their fellow Muslims by their father's name to keep them attached to their surname/family name. A wife, after marriage, is not sold to her husband to warrant the change of her surname to that of her husband. She maintains her maiden name and is called by the same. The change of surname and replacement with the husband's name distorts the lineage of a Muslim married woman in contravention of the Glorious Qur'an. The Court of Appeal in Nigeria has acknowledged the fact that "*names are borne for a variety of reasons, some for ethnic, religious reasons as well as circumstances of birth*".⁴⁴ The Hadith of the Prophet (Peace be upon Him) forbids the practice of affiliating oneself to another family. *Hadith* No. 2609 narrates thus:

It was narrated from Ibn Abbas that the Messenger of Allah said: "Whoever claims to belong to someone other than his father, or (a freed slave) who claims that his *wala* is for other than his real

⁴² Justice Mufti Usmani, T. *Quran-e-Karim*, available at <http://www.noorehidayat.org>. Accessed on 15 March 2023

⁴³ Doi, A.I. *Op. cit.* 406-407.

⁴⁴ *NMCN v Adesina (Supra)* p. 27, paras. D-E.

master, the curse of *Allah*, the angels and all the people will be upon him. (*Sahih*)⁴⁵

Hadith No. 2609 reads thus:

It was narrated that Abu Uthman Nahdi said: "I heard Sa'd and Abu Bakrah both say that they heard directly from Muhammad (PBUH) saying it and memorized: "Whoever claims to belong to someone other than his father knowing that he is not his father, Paradise will be forbidden to him". (*Sahih*)⁴⁶

The above tradition is a very serious threat to anyone who changes his father's name or the name of his family and affiliates himself to a family or people to whom he does not belong, whether a man or a woman. Any married woman who is compelled to change her surname is going to be against the above tenets of her religion if the act persists. A married woman belongs to her parent, and she is only related to her husband by marriage, which does not translate to changing her identity or family name. It is against this background the Prophet (Peace be Upon Him) did not allow any of his wives to adopt His name as their surname. Prophet Muhammad (peace be upon Him) wives keep their respective parent names, despite being married to the best of the best among mankind. Examples are Khadijah Bint Khuwaylid, Sawdah Bint Zam'ah, Aisha Bint Abubakar, Hafsat Bint Umar, Zaynab Bint Khuzaymah, Hind Bint Abi Umayya, Zainab Bint Jahsh, Juwayriyah Bint Al-Harith, Ramla Abi Sufyan Ibn Harb, Safiyyah Bint Huyayy and Maymunah Bint Al-Harith. He equally married Rayhanah Bint Zayd and Mariya Bint Sham'un.⁴⁷ Prophet Muhammad's (Peace be upon Him) daughter, *Fatimah*, who is married to *Aliyu Bin Abi Talib* (Peace be upon Him), did not bear *Aliyu*'s name after marriage. She maintained *Fatimah Bint Muhammad* (Peace be

⁴⁵ Al-khattab, N. 'English Translation of Sunan Ibn Majah by Imam Muhammad Bin Yazeed Ibn Majah Al-Qazwini', (Dar-us-Salam Publishers, 2007) 495-497.

⁴⁶ *Ibid.*

⁴⁷ Khaalid, K.M. and Eliwa, A. 'Men and Women around the Messenger' (*Dar Al-Mansoura-Egypt*, 2003) 521-556.

upon them).⁴⁸ The Prophet (Peace be upon Him) is a role model to Muslims (male or female), and Allah commands every Muslim to follow His words and deeds in practice. The Glorious Qur'an provides that "Indeed, in the messenger of Allah you have a good example to follow, for him who hopes in Allah and the last Day, and remembers Allah much."⁴⁹

The relationship between a married woman and her husband is contractual, which can be terminated by several factors like death and divorce. The death of the husband or divorce by him gives the married woman the freedom to marry another person. This shows that subjecting married women to change their surname will be subjecting the married women to the unnecessary hardship of changing names *ad infinitum*. The surname of a married woman shows her lineage, which is permanent and not subject to change, as she cannot have several fathers. Some women accept the change of their surname due to a lack of knowledge of their religion and the injunction as ordained by Allah and His beloved Prophet (Peace be upon Him). Adhering to the Islamic position will prevent the unnecessary fracas between married couples on the issue of stopping the wife from using the husband's name after divorce. Recently, a former Chief of Naval Staff, Admiral Alison Madueke, asked the court to stop his former wife, Diezani Alison Madueke, a former Petroleum Minister in Nigeria, from using his name, Madueke, as part of her name. He asked the Nasarawa State High Court, to order her to revert to her maiden name, Agama.⁵⁰ More than 1400 years ago, Islamic Law has provided women with enough liberation that is futuristic. In recent times, Western/English feminists have been calling for the same right, the right to maintain a parent's name after marriage. In *Dunn v. Palermo*,⁵¹ a married woman instituted an action challenging the restriction of her right to register her name

⁴⁸ *Ibid.* 597-602.

⁴⁹ *Surah-Al-Ahzab (Qur'an 33 v. 22)*

⁵⁰ <https://punchng.com/stop-ex-minister-diezani-from-using-my-name-estranged-husband-urges-court/>. Accessed on 15 October 2024.

⁵¹ (*supra*)

under Tennessee state-wide, compulsory Registration Law, on the ground that she refuses to adopt her husband's name. The Court confirmed her right to retain her maiden name and confirmed the right of women to retain their maiden surnames. Prior to that they either change to their husband's last names or forget anything about exercising their franchise.⁵²

1.8 Analysis of National Youth Service Corps Policy on Change of Married Women's Name and Women's Rights: A Reflection on the Case of *Aisha Saneeya Abdulhamid v NYSC & Anor*⁵³

It is said that the NYSC policy on the change of married women's names in Nigeria and the Islamic law position on the use of names and the change of fathers' names are in a seeming conflict. This section sets out to analyze the NYSC policy vis-à-vis women's rights in Nigeria to determine whether the policy is an affront to women's rights. In this analysis, the significance of the concept of women's right to freedom of thought, conscience, and religion, as well as freedom from discrimination in the Constitution of the Federal Republic of Nigeria, 1999, and other international laws or conventions regarding the use of the surnames is considered. The analysis will be based on a brief reflection on the Federal High Court case of *Aisha Saneeya Abdulhamid v NYSC & Anor*⁵⁴ and its outcome.

1.8.1 Brief Fact of the Case of *Aisha Saneeya Abdulhamid v. NYSC & Anor*

The Applicant, *Aisha Saneeya Abdulhamid*, an indigene of Adamawa State, who was then a serving Corps member in Kaduna State, was mobilized by the University of Maiduguri for the one-year NYSC scheme in her maiden name, as *Aisha Saneeya Abdulhamid*. She is married to a lawyer, and they both reside in Zaria, Kaduna State, Nigeria, with their little son, *Ammar*. In the process of registration for the NYSC scheme, she uploaded the following documents on the NYSC portal, to wit; (a) evidence of state of residence of husband, (b) Affidavit

⁵² **Philips-Kemenanabo, N, *Op. cit.***

⁵³ (*Unreported Suit No: FHC/ABJ/CS/751/2023*)

⁵⁴ *Supra*

of Marriage, (c) Drivers' license of husband, (d) Newspaper publication reflecting her marital status with the prefix (Mrs.) to her maiden name indicating she is married and (e) Utility bills of their residence in Zaria, Kaduna State. After uploading the documents and submitting her application for registration, to her greatest surprise, she was registered as "*Suleiman Aisha Saneeya*" against her maiden name. Suleiman is her husband's first name. The applicant's application for correction of name to reflect her maiden name, which is on all her academic credentials on the portal was refused. She proceeded to the NYSC Camp in Kaduna and was refused registration because her newspaper publication did not reflect the change of surname to her husband's name as required by the NYSC policy and all explanations to let the NYSC officials understand that changing her name were against her religious beliefs, proved abortive. She was emphatically informed to choose between serving and her religion. The applicant then instructed her lawyers to write to the Director General (DG) of NYSC, requesting for correction of her name and also for a copy of the policy that was said to have mandated married women to change their names. Her solicitor's letter was snubbed by the NYSC and her solicitors wrote an appeal to the President of the Federal Republic of Nigeria in compliance with Section 20 of the NYSC Act. The appeal was also not replied to and this prompted the applicant to file an action for the enforcement of her fundamental rights before the Federal High Court, Abuja Judicial Division, praying for a declaration of court that the act of NYSC and its DG of changing/substituting the Applicant's surname with that of her husband's name without any justification, is unconstitutional, unlawful and infringement of the Applicant's right to freedom of religion and freedom from discrimination, among other reliefs.

1.8.2 Arguments for and Against the Policy for Change of Married Women's Name

A. Summary of the Applicant's Arguments against the Policy for Change of Married Women's Name

The applicant argued that the policy for change of married women's surname to that of their husband's name is an affront to her fundamental right to freedom of thought, conscience, and religion and freedom from discrimination as enshrined in the Constitution of the Federal Republic of Nigeria and the African Charter for Human and Peoples Rights.⁵⁵ On her right to religion, the applicant placed reliance on the *Qur'an* and *Hadith* positions discussed earlier in this paper and cited several judicial authorities to back this argument.⁵⁶ On the argument that the policy is a violation of the right to freedom from discrimination as the policy is strictly targeted against married women, without their opposite-sex counterparts, married men, she cited the provisions of Section 42⁵⁷ and other judicial authorities.⁵⁸

B. Summary of the National Youth Service Corps' Arguments in Favour of the Policy for Change of Married Women's Name

The NYSC's response to the applicant's application raised two issues. The first was on jurisdiction based on non-compliance with Section 20 of the NYSC Act, which mandates any Corps member who is aggrieved with any decision of the NYSC to appeal to the President of the Federal Republic of Nigeria before approaching the court.⁵⁹ They argued that not waiting for the President to act before filing the action robbed the court of its jurisdiction. The second was on the claim that the application did not disclose reasonable cause of action. They argued

⁵⁵ Sections 38 and 42 of the Constitution of Federal Republic of Nigeria and Articles 2, 8 & 18 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria, 2004.

⁵⁶ *Lagos State Govt & Ors v Abdulkareem & ORS* (2022) LPELR-58517(SC), Pp. 42 – 44, Paras C – C; *Jack v University of Makurdi* (2004) All FWLR (PT. 200) 1506 AT 1512; *Agbakoba v A-G, Federation & Anor* (2021) LPELR-55906(CA) and *Medical and Dental Practitioners Disciplinary Board v. Emewulu* (2001) 3 SCNJ 106 @ 224.

⁵⁷ Constitution of the Federal Republic of Nigeria, 1999.

⁵⁸ *Agbakoba v A-G, Federation & Anor* (2021) LPELR-55906(CA), Pp. 58 - 61 Paras E – A and *Okafor & Ors v. Ntoka & Ors* (2017) LPELR-42794(CA), Pp. 30 – 31, Paras E – D.

⁵⁹ See the NYSC written address in opposition of the application in *Aisha Saneeya Abdulhamid v NYSC & Anor* (*Supra*)

that the applicant having known that the change of her surname was on the ground of concession given to her to remain in her husband's State of domicile, had acquiesced to her rights and cannot complain of any violation thereafter.⁶⁰ They concluded that there was no cause of action.

1.8.3 The Consent Judgment

While the matter was pending, the applicant concluded her one-year compulsory service and was issued a Certificate of National Service dated the 19th day of July, 2023 in the name “*Suleiman Aisha Saneeya*.” The DG invited the applicant and her counsel to settle the matter amicably. This culminated in the filing of terms of settlement between the applicant and the NYSC before Hon. Justice Joyce O. Abdulmalik of the Federal High Court, Abuja Division, in which terms were adopted by the parties and entered as a consent judgment. The NYSC agreed to issue a new Certificate of National Service to the applicant with her real name, “*Aisha Saneeya Abdulhamid*” which is in accordance with her religious belief. That was done and the initial Certificate dated the 19th day of July, 2023 issued to the applicant with the name “*Suleiman Aisha Saneeya*”, was retrieved, in accordance with the agreed terms.⁶¹

1.9 Reflection on the National Youth Service Corps’ Policy for Change of Married Women’s Name

A reflection on the case and policy will reveal the following issues, to wit:

- a. The applicant's religious belief in using her father’s surname is acknowledged, which restores her maiden name on her Certificate of National Service.

⁶⁰ These argument is not stated in any written policy known to any serving or past Corps members of the scheme. It is made and applied based on the whims of the so called policymakers working in the scheme without any law supporting same.

⁶¹ Delivered on the 10th day of June, 2024. See <https://nigeriansketch.com/how-female-corps-member-sued-nysc-forced-replacement-of-husbands-name-with-fathers>. Accessed on 20 July 2024. NYSC had issued her a new Certificate of National Service dated 26th February 2024 after the terms was adopted, but before the court adopt it as it consent judgment.

- b. The policy on the change of married women's names is discriminatory as it is only applicable to women without any corresponding effect on the menfolk. It is also contrary to the Constitutional provision that prohibits encroachment of the freedom of thought, conscience and religion. In the case of *NMCN v. Adesina*⁶² the Nigerian Court of Appeal held, thus:

Names are meant not only to identify. In Nigeria, names are borne for a variety of reasons, some for ethnic, religious reasons as well as circumstances of birth. In the instant case where the reasons advanced for the change of the names are religious and marital, the names are interwoven with the fundamental rights to practice religion of her choice and not to be discriminated against on that account."

The Court in the case above, has recognized the right of a married woman to change her name on the ground that she change her religion. It is our view that the court having preserved this right for a married woman who changes her name on the grounds of change in faith, will guarantee such right to prevent any attempt to alter any person's name compulsorily based on governmental policies that are contrary to the person's religion. The right to retain women maiden names is also guaranteed under international conventions like the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, the right to choose a family name/Surname is universal. We refer to Article 16 (1) (g)⁶³ which provides, thus:

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

⁶² *Supra*

⁶³ Convention on the Elimination of All Forms of Discrimination against Women, 1979

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

From the above provision of CEDAW, it is glaring that a woman after marriage, has equal rights with the husband to choose her family name, which includes retaining her maiden name. The use of the prefix Mrs. followed by the husband's name shows the subjugation of women, therefore women should be allowed to retain their name no matter the status they acquired subsequently in life.

- a. There is a lack of religious tolerance while trying to adopt some governmental policies, such as the NYSC policy on the change of female PCM names. This is clearly against one of the NYSC objectives, which provides "that the Nigerian youths are encouraged to eschew religious intolerance by accommodating religious differences."⁶⁴
- b. The policy on the change of married women's surnames by NYSC or any other agency with similar policy can only be justified where the retention of maiden name/surname/family name will jeopardize public interest, or else it will be a violation of Muslim women's rights to religion. In the case of *Medical and Dental Practitioners Disciplinary Board v Emewulu*⁶⁵, the Supreme Court, Per Ayoola, JSC (as he then was), held thus:

The right to freedom of thought conscience or religion implies a right not to be prevented, without lawful justification, from choosing the course of one's life, fashioned on what value one believes in, and a right not to be coerced into acting contrary to one's religious belief.

A married woman retaining her surname is an injunction under Islamic law and keeping the name will never jeopardize public interest. Rather, it will prevent the public from the mental stress of choosing which name to address a married woman

⁶⁴ Section 1 (4) (d) of the National Youth Service Corps, Decree 51 of 16th June 1993

⁶⁵ (2001) 3 SCNJ 106 @ 224

with. Coercing her to change will jeopardize her mental health as she will be psychologically traumatized for violating what she is ordained to keep by her Lord, *Allah*. It is observed that some of the changes are done without the knowledge of the owners of the names⁶⁶ and it's carried out by Muslim who ought to know the implication, though ignorance plays its role sometime because people just assumed something are normal once it is practice for long time.

The NYSC's reason that its policy is justified for changing the surname to the husband's name or adding a husband's name to a married woman's name to prevent unmarried women from feigning that they are married to get favourable postings is baseless. As an organization, they ought to create other means of verifying the marital status of the PCM, than encroaching on the female PCM's fundamental rights.

1.10 Recent Development After the case of *Aisha Saneeya Abdulhamid v NYSC & Anor*

Auspiciously, by a circular dated the 25th day of November, 2024 signed by the Director, Corps Mobilization on behalf of NYSC Director General, NYSC review its earlier stance on change of name. The circular is titled "REVIEW OF CRITERIA FOR CONCESSIONAL DEPLOYMENT/RELOCATION APPROVAL FOR MARRIED FEMALE CORPS MEMBERS" and its second paragraph read thus: "Accordingly, State Coordinators are to henceforth follow the under listed guidelines in processing request for relocation:

- a. Changing a maiden name to that of a spouse is no longer a requirement for the approval of such request by Married Female Corps Members.
- b. Other requirements remain as they were.⁶⁷

⁶⁶ It was observed in a hospital where a village woman was being called Hadiza Sani, Sani which is her husband's name but she did not answer and the file opener had to yell at the village woman and exclaimed "you are the one I am referring to!" The village woman said that is not my father's name, my name is Hadiza Sani. My father is Sani not Saminu, which is my husband's name.

⁶⁷ Abubakar Mohammed, 'Review of Criteria for Concessional Deployment/Relocation Approval for Married Female Corps Members' National Youth Service Corps Circular, 25 November, 2024.

1.11 Conclusion

Changing the identity of women as a result of marriage by compelling them to adopt their husbands' names after marriage has become a normal thing in Nigeria. We keep seeing people going to court to do affidavits of change of name and newspaper publications on change of marital status. This trend of forcing married women to change their surname to that of their husband in Nigeria is a violation of their fundamental rights, as enshrined in the Constitution of the Federal Republic of Nigeria and other international conventions. Therefore, the policy is an affront to married women's rights. This paper makes the following findings:

1. There are serious violations of women's rights as a result of the policies on change of name by NYSC or other governmental agencies in the various States across the federation, which completely try to regulate the identity of the Muslim woman. This is an affront to Muslim women's rights as guaranteed by the Constitution and other regional and international legal instruments. It is also an affront to the right to privacy, which guaranteed private family life.
2. There is a lack of religious tolerance while trying to implement the policy. NYSC staff telling a Corps member to choose between her religious beliefs and the scheme portrays a lack of religious tolerance.
3. Lack of Islamic knowledge on the principles of change of names. Some Muslims don't know the injunction of *Allah* about name-calling and changing the same.

Given the above, the paper recommends as follows:

1. That NYSC and other similar agencies with such policies should stop and or reverse them for they are a direct affront to the Constitutional rights to freedom from discrimination and that of thought, conscience and religion.

2. Government agencies must be made to understand and implement their objectives without intruding into the private life of married couples and Nigeria being a pluralistic nation, promoting religious tolerance is key to the existence of peace. Therefore, governmental agencies should tolerate and accept Muslim women's rights as ordained by their religion to avoid unnecessary uproar. The step taken by NYSC is commendable and will promote the peaceful co-existence that will keep the country united.
3. Muslims need to be more enlightened about their religious tenets. They should read Islamic books, ask pious Islamic scholars questions on mundane issues, and attend places where Islamic knowledge is taught in the community. This will widen their horizons regarding the basic knowledge about their religion. Thus, keeping their maiden names is in line with the injunction of *Allah*.