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## Patriarchy: A Driving Force for the Abuse of Reproductive Rights of Women in Nigeria

**Felicia Anyogu**

Associate Professor, Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria

**B. N. Okpalobi**

Associate Professor, Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria

### **Abstract:**

*Reproductive health is a state of complete psychological, physical and social well-being of individuals and reproductive health rights means that everyone has the right to integral well-being in reproductive concerns. This further implies people have the right to practice sexual relationships, reproduce, regulate their fertility, enjoy sexual relationships and protection against sexually transmitted diseases and so on. Women in Nigeria are in every context socially, economically, legally and culturally disadvantaged as a result of the deep patriarchal nature of the Nigerian society. Patriarchy is also the root of the cultural norms and traditions which are all forms of abuse of the reproductive rights of women. This paper looks at patriarchy as the root of the subjugation of women in Nigeria and analyses its overriding effect on all the factors that militate against the reproductive rights of women. Recommendations that will make a positive change if adhered to, shall also be proffered.*

**Keywords:** Patriarchy, abuse, reproductive rights, women, Nigeria.

### **1. Introduction**

The Constitution of the Federal Republic of Nigeria (1999) in Chapter IV guarantees the Right to Life (S. 33) to all citizens. The enjoyment of good health, and by extension reproductive health is incidental on right to Life but these are not guaranteed as of right by the Constitution since they are not presented as fundamental. This contradiction leaves a lot to be desired by all, especially women whose reproductive rights are impaired by many factors, and who most often bear the brunt of the consequent reproductive ill-health. Reproductive Rights are supposed to be constitutionally protected rights relating to the control of procreative activities such as pregnancy, abortion, sterilization and in relation to women especially, the personal right to decide whether to become pregnant and bear a child, with whom, and when to do this. This includes the ability to make reproductive decisions free from coercion or violence. For these to amount to rights, they must clearly be provided for in the constitution as such with an accompanying right of justiciability. Unfortunately, the Nigerian Constitution has clustered such rights in its Chapter II and made them non-justiciable. This means that agents and factors that perpetrate the violation of what should have been a constitutionally protected reproductive right, and promote reproductive ill-health are not condemnable using legal redress since the constitution has not been made a base line for the protection of these rights in Nigeria. Top among and the root of the factors that affect the reproductive rights and health of women in Nigeria is the concept of patriarchy. This paper will briefly examine the disempowering features of patriarchy and its driving force on the reproductive health rights of women in Nigeria.

### **2. Patriarchy Examined**

The term 'Patriarch' means the father or chief of a clan. It is also used in Christianity as an official title and derives from the Greek Patriarches via the Latin Patriarcha (internet 2016). Generally a patriarch is one of the spiritual fathers of the Hebrew people, a man who is father or founder; or a man who is head of a patriarchy. The official title of patriarch also refers to any of the ancient or Eastern orthodox seers of Constantinople, Alexandria, Antioch, Jerusalem or ancient and Western Rome, with authority over other bishops. It also refers to the head of any of various Eastern Churches or Roman Catholic Bishops or a Mormon of the Melchizedek priesthood (internet 2016). A deep historical, etymological or jurisprudential analysis of patriarchy is not within the ambits of this work, however within feminist theory; patriarchy refers to cultural and political systems which are ruled by men. Although patriarchal systems of a government do not benefit all classes of men equally, such systems are said to be detrimental to women. While patriarchy refers to both institutions and societal attitudes, the notable difference is that institutions may last into eras whereas societal attitudes have experienced a lot of change. The 'Patrist' assertion is that patriarchal system of authority was the original and universal system of social organization and this has led to the establishment of corresponding institut9uon (internet 2016).

Some have contended that biological makeup is responsible for patriarchy but Sanderson (2001) rejects the assertion that social and cultural conditioning is responsible for establishing the male and female gender roles and that these are handed down from generation to generation. These constructions are most pronounced in societies like Nigeria with deep traditional cultures and corresponding shallow economic development. Patriarchy means men are in control and is best defined as 'control by men'. It not only explains how our society functions but also how it controls women. Defining patriarchy explains the reasons for the treatment of women through the ages and what it means to their future, success in life, health issues and even life expectancy. Patriarchy breeds gender inequality and is a major opposing force against women empowerment, and these two in turn affect the reproductive rights/health of women.

### **3. Gender Inequality and Reproductive Rights/Health**

Gender equality as opposed to inequality ensures that the female child is educated alongside her male siblings. It also ensures that where parents have properties, the female child inherits with her brothers. This gives the female child a good start in life. She will be in a position to know that she has a right to marry and found a family which right includes choice of spouse. She is less likely to have an unwanted pregnancy than an uneducated female and this decreases her chances of complications in pregnancy and abortion related morbidity. Inheriting alongside her brothers will empower the female economically and a good platform for economic independence. This way, she is capable of taking care of herself in any resultant accidental pregnancy. This will in turn reduce the incidences of illegal abortions.

### **4. Women Empowerment and Reproductive Rights/Health**

The Dictionary (Bolander 1991) meanings of empowerment is 'enablement' and in the context of women, it is making them able to stand favourably in the various spheres of life and making them less vulnerable than they are at present. Women need to be empowered politically, economically, legally, socially, culturally and most importantly educationally. These aspects of life are interrelated and deficiency in one may result in lack of the others. In other words, they have a 'cause and effect' on one another. However educational and economic empowerment seem most relevant to issues of reproductive rights and health. In many countries in Africa (Nigeria inclusive), many women do not belong wholly to themselves. As a result of the deep patriarchal nature of these societies, women remain properties of either fathers, brothers or husband all their lives. Their physical well-being, health and integrity are often beyond their control. When women have no control over money, they cannot choose to get health care, especially reproductive health care including HIV/AIDS. When women are not empowered, it seems that the easiest way for them to acquire some status or value for themselves is through continuous breeding of children. By this fact, frequent pregnancy and labour become life threatening issues.

### **5. Patriarchy and the Incidence of Abuse of Women's Reproductive Health/Rights**

#### *5.1. Patriarchy and Female Genital Mutilation*

Female Genital Mutilation is an old practice perpetrated in many communities around the world. It is a cultural practice of the removal of part, or all of the female external genitalia and consists of all procedures that involve cutting of the female sex organ for non-medical reason (Anyogu 2016). It is a common practice in many communities in Africa especially in Nigeria. The three forms of it involve;

- a) Excision of the clitoral hood,
- b) Excision of part or all of the clitoris,
- c) Removal of part or all of the external genitalia, and all are performed using mostly unsterilized instruments and without anesthetics.

The first type is very common in South-East of Nigeria, and the third one is common in Northern Nigeria. Female genital mutilation has very serious medical, legal and cultural implications on the victims. Health complications, whether short or long term concur. Victims can bleed to death. The use of the same unsterilized instruments poses the risk of HIV/AIDS. Keloid formation, pelvic inflammatory diseases leading to primary infertility, and painful intercourse may also result. The cultural reason advanced for this practice is to curb the sexual excesses of the female and thereby reduce promiscuity. For them, to eliminate promiscuity, only the female libido has to be controlled.

#### *5.2. Virginity Testing*

This is another cultural practice which violates the reproductive rights of the female gender. It is normally done to curb the sexuality of girls, and is an attempt by men to control women, and the elders to control the young (Kaarshalm 2005). Whether done in the home or community level, virginity testing involves the inserting of the fingers of the tester into the vagina of the person being tested. As observed by Le Roux (2006) girls resort to dangerous practices for fear of being shamed when found not to be virgins. An intact hymen presents with something like a white veil and so, such girls insert toothpaste or freshly cut meat into their vaginas to make it appear tight. This is endangering to their reproductive health. Inserting a finger into a girl's vagina is tantamount to digital penetration and is akin to a sexual abuse. Where native women use the same gloves for several girls, this leaves them open to sexually transmitted diseases including HIV/AIDS. A man is not expected to take pride in being a virgin or remain so by the male controlled traditions, neither is the virginity test ever carried out on males. Despite the fact that medical knowledge and its experts have revealed that the

loose hymen does not always mean intimation of sexual activity, as this could be caused by other factors such as physical activities (exercises) or the insertion of tampons.

### 5.3. *Child Marriage/Forced Marriage*

Child marriage is a violation of the human rights to marry and found a family which includes choice of spouse. It is giving legality to otherwise illegal sexual acts. It also probably represents the most prevalent form of sexual abuse and exploitation of girls (UN 2007). Child brides by the very fact of such are not exposed to sex education and cannot abstain from sex as the much older husband is totally in control of her whole being. This leaves her at the mercy of such serious health risks as sexually transmitted infections including HIV/AIDS. They also stand the risk of bearing children at tender age with the attendant possibility of maternal complications like obstetric fistula (UN 2003). Patriarchy is the controlling weapon for the decisions that bring this practice to bear. Men are in control in the families and the communities and make decisions which affect even important aspects of the lives of women such as reproductive rights/ health.

### 5.4. *Male Preference*

Male preference is the reason why some parents will educate their male children in preference to the females and the lack of education gives rise to inadequacy in many other areas in life such as accessing health care including reproductive health care, or even accessing information on reproductive rights. Male preference is also the reason why a woman that has produced nine children all of whom are girls would continue to have more children in search of a male child to the detriment of her reproductive health. In most cases, she does so to satisfy the agitation of her husband and his relatives. In the typical Nigerian society, until a man produces a male child, he is regarded as less a man. This is despite the fact that science has proved that the man is responsible for the sex of the child. Instances also abound where men have asked their wives to abort a pregnancy or leave the house. Maria got pregnant in 2004 after four girls. Her husband believed that if they waited a while before another pregnancy, she would produce a baby boy. He asked her to abort the pregnancy. When she refused, he sent her out of the matrimonial home. She spent eight months of the pregnancy in her father's house. It took the ultimatum given to her husband by his father, not to allow her deliver that baby in her father's house, to make him bring her back to her matrimonial home to deliver the baby which turned out to be a boy after all. Many other women would have chosen (against their will) to abort the baby in violation of their reproductive right. The deep, patriarchal nature of the Nigerian society ensures that in the family, the decision on the number of children rests on the man. The woman's opinion (and sometimes cries) is ignored even though she bears the brunt of the consequences of pregnancy and child bearing.

### 5.5. *Polygamy*

The popular form of polygamy in Nigeria is Polygyny, where a man marries more than one wife. Many Nigerian men still practice this form of marriage notwithstanding their level of education. It is indeed an anathema that most Nigerian men hold the notion that men are polygamous by nature and that for a normal African man one woman is not enough to satisfy his sexual needs. For them a man needs to either marry more than one wife or marry one wife and have other women outside the matrimonial home. Funny enough many women have condoned this, and are willing to share their husbands with other women. Hence under the customary law, a man is not precluded from taking other wives after his first marriage. In other words, he is free to take as many wives as it tickles his fancy; however the fact that a woman is already married is a complete bar to her further marriage (Obi 1976). Marriage under the Act is deemed to be monogamous while customary law and Islamic law marriages are potentially polygamous, and parties are bound by these principles in their relationship with third parties. Thus a person married under the Act (M6 2004) cannot contract another marriage with a third party either under the Act, or under customary law (S. 35) else he commits the offence of bigamy. In like manner, a person married under customary law, may not contract a marriage with a third party under the Marriage Act (M6 2004 C38 2004) people married under customary law may however go into a valid marriage under the Marriage Act with each other thereby transforming a potentially polygamous marriage into a monogamous marriage. In most polygamous marriages, the reproductive rights and health of the wives are non-existent.

First of all, each of the wives is sharing a man with other women whose sexual life they do not know, and if one of the wives contracts a sexually transmitted disease or even HIV/AIDS, so much for the others. The wives of a polygamous marriage usually have no say as to when to have sex, when to get pregnant and have a child or the number of children to produce. Some of them are also only relevant when they are pregnant, and so their reproductive right becomes an issue at this point. There is usually also competition for the attention of their husband, with each of the wives trying to undo the other and drafting even their children into it. There is no doubt, patriarchy is the driving force as the man stays on his high horse and pontificates how events will go on in his household. He is the manor of all he surveys as the wives, the children and the entire household belongs to him and is all under his control.

### 5.6. *Rape and Defilement*

Rape is a crime where the victim is forced into sexual activity against his/her will, and is considered by most societies to be among the most severe crimes. Most experts believe the primary cause of rape is an aggressive desire to dominate the victim rather than an attempt to achieve sexual fulfillment. They consider rape as an act of violence rather than principally a sexual encounter (Encarta 2006). In some ancient societies, men obtained wives through the practice of bride capture. In this custom, a man would kidnap a woman and force her to have sexual relations and then he would marry her (Encarta 2006). In such societies, what we now call rape was socially acceptable. While some ancient societies accepted rape socially, some others considered it a punishable offence but many

of these societies punished the rape victim (women) as well as the rapist. For instance, under the ancient Babylonian Code of Hammurabi, a married woman who was raped was considered to have committed adultery. The law required that the woman and her rapist be thrown into the river. The woman's husband reserved the right, option, and discretion to either rescue her or allow her to die (Encarta).

In some other ancient societies women were treated as a form of property and rape was therefore defined in line of an offence against the property owner (the woman's father or husband), and not against the woman herself. This informed the provision in the Old Testament book of Deuteronomy (Good News 2004) delineating ancient Hebrew law thus

Suppose a man is caught raping a young woman who is not engaged, he is to pay her father the bride price of fifty pieces of silver and she is to become his wife, because he forced her to have intercourse with him. He can never divorce her as long as he lives.

In all this, the woman's feeling is not considered. Her father seems to be the one who is placated, and the punishment or the atonement the rapist makes is just to marry her and that appears to be a big favour to her. In recent times many states have widened the definition of rape to include certain non-consensual acts such as the use of objects other than the penis, and even rape by a spouse. In other states, rape remains narrowly defined as forcibly sexual intercourse by a man with a woman and so it is in Nigeria where the concept of patriarchy is imported into many laws. In Nigerian law (P<sub>3</sub> 2004) a man can never be said to commit rape against his wife. The two (Criminal Code Act for the South), and the (Penal Code Act for the North) both construe rape to mean unlawful, non-consensual, carnal knowledge of a woman by a man. It is only committed by a man against a woman and this makes it a gender-oriented offence. The reason may not be far-fetched if the patriarchal nature of the society is anything to go by. It is to protect the property of the man in the woman, and it is no wonder then that the man cannot be criminally liable for taking it from his wife forcibly without her consent. Rape and other sexual crimes put the reproductive rights/health of woman at risk. The stigma attached to a rape victim in Nigeria, most incidents of rape are unreported and the victims suffer in silence at the detriment of their reproductive health.

## 6. Legal Framework on Reproductive Health/Rights Protection in Nigeria

### 6.1. *The Constitution of Nigeria (1999)*

The Constitution of the Federal Republic of Nigeria has no specific provision on health and reproductive rights, although tangentially it mentions the existence of these rights (SS 14, 17, 33, 35). The Constitution specifically protects the right to life and under S. 17(3) (d) recognizes the right to health, and this, it made non-justiciable, but mandates government in the directive principles of state policy to direct its policies to ensure adequate medical and health facilities for all persons. SS. 37 and 39 respectively guarantee women's right to privacy, right to freedom of expression including freedom to hold opinion and receive and impart ideas and information without interference, and this includes the right to seek, receive and impart HIV related prevention and ante-natal care information (Ikenga 2015). It has posited that if these provisions by the Constitution are properly and strictly adhered to, they would contribute in no small way, to improve, and protect the reproductive health/rights of women in Nigeria.

### 6.2. *The Criminal Code Act*

Abortion is criminalized in SS 228 and 229 of the Criminal Code Act (C<sub>38</sub> 2004). In these provisions, it is a criminal offence to tamper with a pregnancy, no matter the stage of such pregnancy. This is only allowed if the health of the mother is at great risk, and so performed to preserve the life of the mother. Both the Criminal Code Act and the Penal Code (SS 357 and 282) also criminalize rape and defilement which are all issues that militate against the reproductive health/rights of the women and girls.

### 6.3. *Labour Act*

The Labour Act (C11 2004) has provisions covering the obstetric demands of women. It therefore makes provision for maternity leave of six weeks before and six weeks after delivery and this is with full pay. S. 58 (1) of the same Act considers the breach of any law on maternity leave a criminal offence in addition to any civil liability.

### 6.4. *State Legislations*

Some states in Nigeria have also made Legislations at their state levels to forestall the violations of the reproductive rights/health of women. Edo, Ebonyi, Cross River, Ogun and Delta states have legislated against Female Genital Mutilation in 2000. Other state legislations affecting the reproductive rights/health of women include:

- The Child's Right Law (for states that have adopted it) which has outlawed child/forced marriage.
- The prohibition of Infringement of a widow's and widower's Fundamental Rights Law 2001 of Enugu and Anambra States.
- The Zamfara state Sharia Penal Code 2000 also protects women and young girls from all forms of cruelty, sexual, labour and economic exploitation and trafficking.

Policies such as Adolescent Health Policy 1995, National Policy on Women 2000, National Reproductive Health Policy and Strategy 2001, National Policy on HIV/AIDS 2003 are also in place for the protection of Reproductive Rights and health of women. Some International and Regional instruments are also in place and all these were signed and ratified by Nigeria. These include

- a) The protocol on the Rights of Women in Africa.
- b) The Africa Charter on Human and Peoples' Rights 1981.

c) The Convention on the elimination of all forms of Discrimination against Women (CEDAW) 1979.

All these laws are in place for the protection of the reproductive rights/health of women. It is worthy of note that Patriarchy is still behind the none or improper enforcement of these laws as shown in the next sub-heading.

## **7. Factors that Inhibit Enforcement of Laws that Protect the Reproductive Right/Health of Women in Nigeria**

### *7.1. Proof of Rape in Nigeria*

In a charge of rape in Nigeria, 'sexual intercourse' or 'carnal knowledge' must be proved. As the law stands now, only penal penetration of the vagina can constitute rape. Other acts on a woman which could have health hazard effects such as insertion of objects into her genital or anal cavities are not within the ambit of the definition of rape in Nigeria. Section 138 of the Evidence Act which is founded on adversarial system of criminal justice, is of the effect that criminal cases must be proved beyond all reasonable doubt. This has proved insurmountable as rape is mostly committed in secret and this has made it very difficult to successfully secure conviction. The issue of corroboration required in proof of rape further complicates the issue as nobody ever invites another to witness her being raped. In Islamic law parties are not competent witnesses in their claims. In *Jatau vs. Mailafiya* (2998) it was held that for such a statement to be evidence, it must be supported by the testimony of two male unimpeachable witnesses, one male and an oath, one male and two female, or two female witnesses and an oath. The import here is that Moslem men and women are not equal even in their testimonies in Court. By analogy a man is equal to an oath, and an oath is equal to two women. This greatly inhibits the proof of rape and jeopardizes the reproductive rights/health of women. Since the proof of rape is difficult, recalcitrant rapist would not relent in the act, knowing that it would be difficult to prove the offence against them. The fact that Nigerian law does not recognize as rape when a man claims his conjugal right even with violence not regarding the physical, psychological and health condition of the woman is another issue. This is a gross violation of her constitutional right to liberty (S. 35 (1)) and life (S. 33) which is incidental on good health.

At common law, it was not thought possible that a man could rape his wife as typified by the dictum of Sir Hale (1936). Within the last two hundred years of the period of Sir Hale, the 'rights of man' according to Freeman (1997) have gradually come to include woman, hence in *Regina vs. R* (1992), the House of Lords in England declared that husband and wife are for all practical purposes, equal partners in marriage and condemned the common law view on marriage. It is the position of the common law that still subsists in Nigeria. It is no doubt that patriarchy which designs the customs and traditions of the Nigerian society is at the root of this position.

### *7.2. Customs and Traditions*

Cultural and traditional forces greatly inhibit women's reproductive rights and health. Practices like female genital mutilation, child/forced marriage, male preference and wife inheritance have been recognized as strong agents of reproductive rights/health violations of Nigerian women and the main determinant of these practices is Patriarchy.

### *7.3. Domestication of International Instruments*

Nigeria is a signatory to and has ratified the international instruments protective of the reproductive rights/health of women. Nigeria has put a stricture on the application of these instruments by virtue of S. 12 of the 1999 Constitution. The import of this provision is that no such international instrument shall have the force of law in Nigeria, unless they are re-enacted and made part of Nigerian Legislations. This requires that 2/3 of all the Houses of Assembly in Nigeria shall ratify before this can happen. Considering the multi-ethnic and religious nature of Nigeria all commonly held together by deep patriarchal philosophy this seems like a tall order to achieve. This is responsible for the non-domestication of an important instrument like CEDAW which protects all spheres of life of women.

### *7.4. Economic Factors*

Many Nigerian men forbid their wives working for other men. These women are therefore kept at home to raise child, and depend economical on their husbands who salaries can barely run the homes. When needs are prioritized, some areas of life suffer. Most of the time, it is the woman's own needs especially her health. When the children's needs are met, and the very necessary things taken care of, someone barely have enough left to take care of their health including reproductive health. This turn of events arise because the home is under the complete control of the man and not a partnership. This is patriarchy at play.

## **8. Recommendations**

This paper posits recommendations as to the way forward as follows:

- 1) The Legal provisions that make the proof of rape difficult should either be relaxed or expunged. The definition of rape should also include forcible intercourse without consent by spouse.
- 2) S. 12 of the 1999 Constitution which required the domestication of international instruments before they became legally enforceable should be expunged.
- 3) All customs and traditions which militate against the reproductive rights/health of women should be abrogated.
- 4) More effort should be put into mass economic and educational empowerment of women.
- 5) Patriarchy in the Nigerian community should either be eliminated or reduced to the barest minimum.

## 9. Conclusion

The reproductive rights/health of women and girls seem to be under threat every day in Nigeria. Legislations and policies exist to protect these rights but enforcement seems to be difficult. The fact that most of the reasons why the violation of the reproductive rights/health of women derives their root from patriarchy is undisputable. Women hardly ever know the existence of the rights nor have the means to access them. Some recommendations have been made in this work, and it is hoped that if adhered to, they would help improve on the reproductive rights/health of women in Nigeria.

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