

**Review of the Obnoxious Widowhood Practices in Nigeria: Anambra State in Perspective\***

**Abstract**

*Bereavement of a breadwinner of the family is a traumatic experience that last for a life-time for every member of the family. The effects of this irreparable loss are somewhat insurmountable as the family may never be able to be on their feet again. This great loss is compounded by the obnoxious cultural practices meted on the mother of the home or the wife of the deceased popularly known as the widow. Over the years it has been found that cultural practices against widow have several negative effects on them and the family, the ultimate of it is the early death of the widow leaving the children as orphans and escalating poverty and moral ills in the society. Recent developments and most especially in Nigeria's constitution indicated some improvement but much needs to be done to arrest the ugly practices. There is need to highlight the contemporary situation regarding the obnoxious cultural practices in Nigeria and the need for more reforms on the practices. More often than not, a widow is accused of being responsible for the death of her husband, especially when the man dies at a young age. Therefore, widows are coerced into going through degrading and dehumanising rituals all in an effort to prove her innocence. These practices are fundamental violations of women's human rights and the Nigerian law. The widow is usually subjected into terrible or painful experience which is referred to as trial by ordeal.*

**Keywords: Widowhood, Rituals, Ordeal, Culture, Discrimination**

**1. Introduction**

The state of the loss of the head of the family is known as widowhood for the woman especially when she did not marry again. Therefore a widow is one whose husband has died and has not married again<sup>1</sup> while widowhood is the state or period of being a widow or widower. Widowhood is unwanted and unpleasant stages that women pass through in life. It is a period of sadness, unhappiness, loneliness and helplessness. The pain and agony of this period cannot be expressed in words. Widowhood entails emotional loss and change in lifestyle, identity, social status and role. The period of mourning is expected to continue and may span through a pre-determined period according to the cultural practices of every society. Expression of grief and mourning of the loss of a loved one most especially the bread winner, who is the husband, is mostly culturally determined. Widowhood is a process that is characterized by rituals, forced marriages, rejection, loneliness, poverty, loss of status, fear of the future and depression<sup>2</sup>. Each culture the world over has its way through which the widow is expected to react to the death of the husband, also known as the mourning rites peculiar to every culture.

**2. Widowhood Rituals and Plight**

The Constitution of the Federal Republic of Nigeria 1999 has guaranteed human rights to all citizens of this Country with particular references to equality of all, whether male or female,<sup>3</sup>

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<sup>1</sup> A Hornby, *Oxford Advanced Learners Dictionary of Current English* (8<sup>th</sup> edn, Oxford: Oxford University Press 2010) p.1700.

<sup>2</sup> Ibid, n1.

<sup>3</sup> Constitution of Federal Republic of Nigeria 1999, sec 40.

and right to freedom from discrimination<sup>4</sup>The subjugation of women is deeply rooted in our culture and tradition emanating from the alleged inferior status of women, unstable character and impropriety of women's political and social participation, stretching also economic circles. Predicated on these factors, women were depersonalized and regarded as chattels, objects of rights, rather than subjects' rights<sup>5</sup>. A widow is defined as a woman whose husband has died, and who has not married again.<sup>6</sup> Widowhood rituals include the physical and emotional torture, which a widow is subjected to. Widows are made to suffer double jeopardy of losing their husbands, sometimes even at the early period of their marriages, and going through some excruciating culture rites of proving their innocence in the death of their husbands. In many towns in Anambra State of Nigeria, widows are made to appear before a deity where they swear to an oath of innocence in the causes of their husband's deaths and their movements are restricted and they are deprived basic things of life.<sup>7</sup>This obnoxious practice contradicts with our constitutional provisions which protect right to freedom of movement<sup>8</sup> and right to freedom of expression and the press.<sup>9</sup>The United Nations distinctly defined violence against women in the 1993 Declaration on Elimination of Violence against Women as physical, sexual, and psychological, including battering, sexual abuse of female children dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, rape, sexual harassment and others.<sup>10</sup>Again another important provision of Convention on Elimination of All Forms of Discrimination against Women (CEDAW) provides that State parties shall take all appropriate measures to eliminate discrimination against women.<sup>11</sup> One major reason for this is that there is no co-ownership of property by couples in traditional Nigerian culture, the presumption being that all substantial property, including land and home belong to the husband. By and large, after the husband's death, his male relatives descend on the household to take possession of as many valuable assets as possible. The widow, who is in the midst of mourning, is usually powerless to resist although she may end up with a few leftovers<sup>12</sup>. The widows in certain parts of Nigeria are required to go into confinement and suffer various deprivations during the period of mourning which may last for several weeks or months<sup>13</sup>. To express their grief, widows are sometimes required to sleep on the floor, abstain from taking baths, compulsory hair shave, dirty wears, and ragged cloths (without changing), cook and eat with broken pots and plates. These practices are prejudicial to health and extra ordinarily harsh.<sup>14</sup> The case of Cecilia Akuego-Onwu from Eastern Nigeria vividly portrays this<sup>15</sup>. She was forced to sit near the corpse of her husband till day break; she eats without washing her hands and other inhuman treatment were meted out to her. About 2,000 women

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<sup>4</sup> Ibid.

<sup>5</sup> AO Otaluka, *The Rights of Widows*, (FIDA, Anambra Family Law Centre Publication, 1992), p.1.

<sup>6</sup> *Supra* (n 1)1365.

<sup>7</sup> C Arinze-Umobi, *Domestic Violence against Women in Nigeria: A Legal Anatomy* (Onitsha: Folmech Printing & Pub. Co.Ltd, 2008) p.98.

<sup>8</sup> Constitution of Federal Republic of Nigeria 1999, sec 41.

<sup>9</sup> Ibid, sec 39.

<sup>10</sup> Art. 2(a) & (b).

<sup>11</sup> Convention on the Elimination of All Forms Discrimination against Women (CEDAW) 1979 Art.16.

<sup>12</sup> A Hedges, *Children's and Women Rights in Nigeria: A Wake-up Call*, (Abuja, National Planning Commission, Abuja 2001) p.202 as quoted in C Arinze-Umobi *op cit* p.99.

<sup>13</sup> B Owosanya, (eds), M (1997) *'Widowhood in Nigeria: Issues, Problems and Prospects'* (Lagos: in Friedrich Ebert Foundation and Human Development Initiative) p. 146 as quoted in C Arinze-Umobi *op cit*.

<sup>14</sup> Ibid, p.101.

<sup>15</sup> Ibid.

from Enugu Agidi in Anambra state protested against the custom and tradition that humiliated women in the area.<sup>16</sup> Madam Monica Iioduba, 60 years of age, gave her testimony about the harmful widowhood rites meted against her, 12 days after her husband's death; she refused to undergo this rite and suffered greatly for her decision. She was ostracized by the community and lost her five children in mysterious circumstances.<sup>17</sup> Imasogie<sup>18</sup> reported that in Cross River State in Nigeria, when a traditional ruler dies, his widow is confined to a corner of the house and is not allowed to go out, take her bath and brush her mouth'

### **3. Widows and the Issue of Inheritance: Deceased Intestate**

Widows and the issue of inheritance is nothing to write home about. The nature of marriage celebrated determines what accrues to widows at the demise of their husband. If the marriage was celebrated under the Act, and in the absence of any valid will, the widow is entitled to one third of the property where she has children, while she is entitled to half of the estate after cost if there are no issues. The Administration and Succession<sup>19</sup> (Estate of Deceased Persons) of Anambra State provides;

In all cases to which this law applies the residuary estate of an intestate shall be distributed in the manner or be held on the trusts mentioned in this section and the distribution of the residuary estate of an intestate shall be in accordance with the following table.

- (a) If the intestate leaves a husband or wife but does not leave any children or parent or children's children.

The residuary estate shall be held on trust for the surviving spouse absolutely provided; that where the surviving spouse is the wife and the intestate leaves brothers and sisters of the half blood, such wife's interest shall be for life or until she marries (whichever first occurs) after which the residue of her interest shall go to the intestate's brothers and sisters absolutely in equal shares. This provision is discriminatory and unjust against the woman. When the woman dies, the man takes absolutely without any conditions attached. It is the principle of ownership of the woman as a property by the man that has informed this provision. The condition of remarriage attached is so that the woman and the property she has inherited from the intestate of the deceased will not pass on to another man in the event of her remarrying. This provision again puts the woman at the level of "property" amenable to acquisition and is therefore undesirable as a provision in our law. It is observed that this provision is not adequate at all for a woman should be entitled to the estate of her marriage is under customary law, the customary law of intestate of her deceased husband at least half even if she has children. If the marriage is under customary law, the customary law of intestate succession applies.

Under the Marriage Act<sup>20</sup> the widow of a marriage under the Act takes one third of the deceased husband's estate if he died intestate while the rest go to the children (both male and female) equally. If there are no children to the marriage, she gets half the estate while the deceased's next of kin of equal rank gets the remaining half<sup>21</sup>. A widower will inherit everything if the

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<sup>16</sup> MO Imasogie, 'Interstate Succession and Widowhood Rites under African Customary Law in Nigeria and South Africa', in M O Ogungbe (ed) *Nigerian Law: Contemporary Issues* (Okada: Benin State Igbinedion University, 2003) p. 38 as quoted in C.Arinze- Umobi p.102.

<sup>17</sup>Ibid.

<sup>18</sup>Ibid.

<sup>19</sup>Administration of Estate Law Cap.4 Laws C 4 Laws of Anambra State of Nigeria 1991 s. 120.

<sup>20</sup>M.6 LFN 2004.

<sup>21</sup>Interstate Estate Act 1890 s. 36.

wife died without children. Granting half the estate to the deceased's next of kin of equal rank not only is smacks of mischief; it also portrays the woman not as the husband's next of kin but as a stranger. This unfortunately has been codified in the various state laws. The West African Court of Appeal held in *Dosunmu v Dosunmu*<sup>22</sup>, that where a husband had allotted a farm, a house or some other form of landed property to his wife, for use and enjoyment, the widow does not thereby acquire inheritance rights in it. The above position was presented as if there was a favourable proposition or condition for that wife that had children. It is very unfortunate that a wife inherits nothing from the husband's property even upon his demise. The condition is quite the opposite at the demise of the wife. The absence of the right to inherit by the widow stretches to the ability of the women to administer the intestate estate of their deceased husbands. In *Ejiamike v Ejiamike*,<sup>23</sup> Oputa, J held that a widow of a deceased person had no right under Onitsha customary law to administer the estate of her late husband, particularly where the first male issue of the deceased "*Okpala*" is no longer a minor. This case reminds us of *Aileru & Ors v Anibi*,<sup>24</sup> where Jibowu, J held that widows cannot administer the estate of their husband under native law and custom. All these decisions by even our judges all go to buttress the true position of woman as fashioned out by custom. A situation where a woman is robbed of the capacity to administer the estate of her deceased husband is repugnant to natural justice, equity and good conscience, and our courts should take bold steps to strike them down.

The general rule in Igbo customary law is that a widow lacks the right to succeed to the personal or real estate of her deceased husband. In *Nezianya v Okagbue*,<sup>25</sup> the Supreme Court held that a widow in Onitsha Customary Law may deal with the property of her deceased husband but such deals must be with the consent of the family. The disability is still very manifest as members of the family may decide to make life very difficult for a widow, particularly, a sonless or childless widow. Furthermore, *Quartey v Nartey*<sup>26</sup> vividly epitomized the great injustice to which widows are exposed, as well as incalculable damage and hardship directed to them. The court dismissed a widow's claim although a pronouncement was made to the effect that she made a meaningful contribution towards acquisition of the property in issue. She was therefore awarded to be maintained from her deceased husband's family if she does not remarry, and of course, be of good behaviour. In the case of *Oshilaja v Oshilaja*<sup>27</sup> it was held that a widow cannot inherit because as a chattel under native law and custom...she could be inherited. Also in *Nzekwu v Nzekwu*<sup>28</sup> it is a case on a widows right to inherit her late husband estate under Igbo (Onitsha) custom where the widow has only two female children. The court held that her right is only possessory and not proprietary. She has right to occupy the building or part of it subject to good behaviour. The brutality suffered by widows in issue of denial of inheritance rights was exacerbated in *Sogunro Davies v Sogunro Davis and others*<sup>29</sup>. Beckelay J. held that a wife was deprived of inheritance rights in deceased husband's estate because, 'In intestacy under native law and custom, the devolution of property follows the blood; therefore a wife or a widow, not being of the blood, has no claim to any cause. Such decisions of Jibowu

<sup>22</sup>(1952) 14 WACA, 527.

<sup>23</sup>(1972) 2 ECCLR, II.

<sup>24</sup>(1952) 2 NLR, 46.

<sup>25</sup> (1963), I ALL N.L.R, 352.

<sup>26</sup>(1959), GLR, 377.

<sup>27</sup>(1972)2UILR, 313, 10 CCHCJ II.

<sup>28</sup>[1989] 2 NWLR (pt. 104) 317.

<sup>29</sup>(1929) 2 NLR 79.

J in *Suberu v Sunmonu*<sup>30</sup>, that the law is well settled, that rule of native law and customs of the Yoruba that a wife could not inherit her husband's property since she herself is, like a chattels, to be inherited by a relative of her husband, should be thrown into the doldrums of history and declared repugnant to natural justice, equity and good conscience. The Supreme Court re-affirmed the same decision in *Akinnubi v Akinnubi*<sup>31</sup>. It is a well settled rule of native law and custom of the Yoruba that a wife wouldn't inherit her husband's property. Under intestacy she is regarded as part of the estate of her deceased husband and to be administered and inherited by the deceased family.

#### **4. Female Rights of Inheritance and Succession to Real Property**

From what has been demonstrated earlier, the daughters of a deceased man have no right of inheritance in his real property. Even when the man died leaving no male issue, inheritance is by his brothers or other male paternal next of kin. The system in some circle is known as "Oli-ekpe". This custom was acted upon by the Supreme Court in respect of Onitsha people *Nezianya v Okagbue*.<sup>32</sup> However, by the statutory modifications, the legislature has fired the opening salvo. It is now left for the judiciary, i.e. our courts to salvage the situation where the issues are subjected to litigation. The daughters of Eve are beckoning for the emergence of courageous judges to pick the gauntlet and deliver them from this precarious situation and to condemn and decline that this obnoxious customary law of our people which disentitle widows and women from inheriting the diseased estate is repugnant to natural justice, equity and good conscience. It may be surprising to some of us. However, it is true. In the aftermath of our independence, the federal Supreme Court declined to follow the generally accepted rule of customary law of inheritance in the succession to land of an Igbo man in the case of *Uka v Nkama*<sup>33</sup> The Federal Supreme Court in this case supported and encouraged female inheritance and succession to real property in Igbo land wholly and entirely. There is no doubt that in reaching this decision, Taylor, C.J. was highly influenced by the Yoruba customary rule of inheritance and succession. It will be very difficult to know whether a justice of Igbo origin being in the shoes of Taylor, C.J. will reach the same conclusion in that case. My view is informed by the fact that the supreme court in the case of *Nezianya vs. Okagbue*<sup>34</sup> which came up after Uka's case did not follow it.

However, the appellate courts have added their voice in no mean way and refused to be left behind. The pronouncement on the Igbo customary law of inheritance and succession which is very illuminating was made in the case of *Muojekwu vs. Muojekwu*<sup>35</sup>. The Court of Appeal Per Tobi, J.C.A. held that the "Oli-ekpe" custom of Nnewi, is repugnant to natural justice, equity and good conscience. The case of *Mojekwu vMojekwu*<sup>36</sup> went to the Supreme Court as *Mojekwu v Iwuchkwu*<sup>37</sup> the Supreme Court agreed with the decision of Court of Appeal.

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<sup>30</sup>(1957) 2 FSC, 23.

<sup>31</sup>(1972)2UILR, 313, 10 CCHCJ II

<sup>32</sup>*Supra* (n. 25).

<sup>33</sup> (1963) F.S.C 184.

<sup>34</sup>*Ibid.*

<sup>35</sup>[1997] 7NWLR (pt 512) 283.

<sup>36</sup>*Supra.*

<sup>37</sup> [2004] 11 NWLR (pt. 883) 196.

This is buttressed from the fact that subsequent decisions of the appellate courts had drawn support from the decision in *Mojekwu v Mojekwu*<sup>38</sup> supra. A clear example is the case of *Muojekwu v Ejikeme*<sup>39</sup>. Here customary practices that discriminate on basis of sex were declared repugnant, and affront to God himself. In 2008, the Court of Appeal reiterated their position on the issue in the case of *Asika v Atuanya*<sup>40</sup>. It was held that the women appellants are entitled to right of inheritance. The justices of the Court of Appeal Enugu Division, in the case of *Motoh v Motoh*<sup>41</sup> also relied heavily on the case of *Mojekwu v Mojekwu*<sup>42</sup> in reaching their decision on the repugnancy of native law and custom which discriminate against female child on inheritance. More than 10 years after the decision in *Mojekwu v Mojekwu* (Supra), the Court of Appeal was confronted with similar issue in *Timothy v Oforka*<sup>43</sup> and referred to sections 42 and 43 of the 1999 Constitution and held that any custom that violates the constitution shall not be upheld by the court. However, researcher will want to stress here that the learned trial judge was not only right in his ruling and judgment, but he adequately took the bull by the horn and upheld the Constitution. The constitutional provisions are quite clear and unambiguous on the issue. In spite of the lack of ambiguity in the 1999 Constitution, women in Igbo land are not entitled to inherit any real property from their parents and husbands.<sup>44</sup> For purposes of development, property rights must be enjoyed by all and sundry, and without any exception as propelled by any law, customs or culture. It must always be remembered that States parties to CEDAW are mandated to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary, and all other practices which are based on the idea of inferiority, or superiority of either of the sexes, or on stereotyped roles for men and women”.<sup>45</sup>

### 5. Widowhood and Trial by Ordeal

Widow's ordeal is another form of sexual politics. It brings to light the level of sexual discrimination in our society. The pleasant and unpleasant experience the widows undergo at the death of their husbands show the patriarchal nature of our society and the question that comes to mind is why widowers do not suffer the ordeal at the demise of their wives. An ordeal according to Longman Dictionary of Contemporary English<sup>46</sup> is a terrible or painful experience. It has also been defined as a difficult or unpleasant experience<sup>47</sup>. An ordeal is an ancient form of referring a disputed question to the judgment of God by using any hot object, fire, water or any severe trial or examination.<sup>48</sup> Trial by ordeal therefore is a primitive judicial practice by which guilty or innocent of the accused is determined by subjecting him/her to an unpleasant usually dangerous experience.

<sup>38</sup>Supra (n. 69).

<sup>39</sup> (2000) 5 NWLR (pt. 657) 402.

<sup>40</sup>[2008] 17 NWLR (pt. 1117) 484.

<sup>41</sup> [2011] 16 NWLR (Pt. 1274) 474.

<sup>42</sup>Supra.

<sup>43</sup> [2008] 9 NWLR (pt. 1091) 204.

<sup>44</sup>I Ogu *op cit* p.26.

<sup>45</sup>Art. 5(a).

<sup>46</sup>P Longman, *Dictionary of Contemporary English*, 5th edn, (England: Pearson Education Limited, 2009) p.1230.

<sup>47</sup> A Hornby (n. 1) p.1035.

<sup>48</sup> E Kirkpatrick (ed) *Chambers 20<sup>th</sup> Century Dictionary* (Britain: the Chaucer Press Ltd, 1985) p. 890.

It was however a universal phenomenon and its existence are not peculiar to the Continent of Africa before now. That is why a renowned legal scholar; Elias has this to say, all human societies have at one stages or the other of their legal development employed the ordeal for the judicial determination of guilt<sup>49</sup>. According to Peter lesson, <sup>50</sup>trial by ordeal was surprisingly effective at sorting the guilty from the innocent. Trials by ordeal became rare over the late middle ages. When it was replaced by confessions under torture, and was discontinued the following ordeals were practiced in Europe; ordeal of fire, water,<sup>51</sup>boiling water, ingestion,<sup>52</sup> poison and boiling oil.

## **6. Trial by Ordeal in Nigeria**

Trial by ordeal as judicial methods for the ascertainment of the truth and discovery of an unknown criminal was very common during the pre-colonial epoch in Nigeria varying from one community to another. In criminal cases, especially on witchcraft allegations, an accused could be asked to swim across a creek full of crocodile. He was judged innocent if he came out alive.<sup>53</sup>Trial by ordeal in all ramifications is manifestly uncivilized and primitive and the modern day trial by ordeal in the south east of Nigeria is gender bias. It is targeted towards female, and that is why it found expression in the widowhood rituals or rites.<sup>54</sup>

Widows are made to suffer double jeopardy of losing their husbands, sometimes even at the early period of their marriages, and going through some excruciating cultural rites of proving their innocence in the death of their husband<sup>55</sup>.This is because no sooner than a man dies his widow is accused of being responsible for his death by the man's relatives. Customarily therefore she is expected to pass through some ordeals in other to prove her innocence.<sup>56</sup>

## **7. Trial by Ordeal; a Fundamental Breach**

It is pertinent to note however, that legislative apparatus has made unlawful the practices of trails by ordeal in Nigeria. But against the background of the imposed sanction, this obnoxious practice still thrives among the native people in the rural areas of southern Nigeria, done mainly against women. It is an act that infringes on several fundamental rights of the victim as is enshrined in the Constitution, and other Inter-Nationals Human Rights Instruments.

The Constitution<sup>57</sup> is the supreme law of the land and it guarantees several human rights which trial by ordeal infringes. It guarantees right to life to every citizen of Nigeria,<sup>58</sup> and only in execution of a court sentence can any person's life be taken after the person has been found guilty of a criminal charge. But in trial by ordeal, women (widows) are the target and their lives have severally been jeopardized through, the ingestion of poison. The researcher did not find a

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<sup>49</sup> TO Elias, *Nature of African Customary Law* (Oxford: Manchester University Press, 1952) P. 234.

<sup>50</sup> P Leeson, 'Justice Medieval style, Boston Sunday Globe', [www.peterleeson.com/ordeal.pdf](http://www.peterleeson.com/ordeal.pdf) accessed on 11 January 2022.

<sup>51</sup> DC Douglas, *The Assize of Clarendon* (published in English Historical Docs vii 1012-1180), (London, Oxford University Press).

<sup>52</sup>J M Gigg 'Germanic Tribe' (2009) germanic tribe- web en.edu/kwheeler/trial.ordeal.html accessed on 12 January 2022.

<sup>53</sup>O B Adewoye, *The Judicial System in Southern Nigeria* (London: Longman, 1977) p. 8.

<sup>54</sup>Ibid.

<sup>55</sup>C Arinze-Umobi (n. 7) p. 97.

<sup>56</sup>Ibid p. 101.

<sup>57</sup>Constitution of Federal Republic of Nigeria 1999.

<sup>58</sup>Ibid, sec. 33 (1).

community in the South East where a widower was subjected to trial by ordeal due to suspicion of being responsible for the death of their wives. This further shows serious discrimination against women which the 1999 Constitution of the Federal Republic of Nigeria prohibits<sup>59</sup>. It also provides that every individual (women inclusive) is entitled to respect for the dignity of his person,<sup>60</sup> and accordingly no person shall be subjected to torture or to inhuman or degrading treatment... the question is what could be more inhuman and degrading than for a woman to be suffering the emotional trauma of the husband's death, and then labouring under heavy allegation of being responsible for his death and then being subjected to an ordeal that is capable of claiming her own life. She is subjected to public ridicule and may eventually be ostracized in the face of her refusal to pass through the ordeal or any of the widowhood rites. The Constitution states that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases enumerated in this section and in accordance with a procedure permitted by law.<sup>61</sup> Confinement of widows, it must be stated does not fall within the exceptions provided in paragraphs (i-f) of the above section. Therefore it is an infringement of the right of widows. It also guarantees Right to fair hearing<sup>62</sup>, trial by ordeal is totally in breach of this provision for fair hearing which the Constitution has given to every accused person. In trial by ordeal, the accused is subjected to punishment even before trial; or rather the punishment constitutes the trial. The Constitution also guarantees Right to freedom of thought, consciences and religion.<sup>63</sup> Even some Christians are forced to pass through these ordeals, against their belief this practice is highly discriminatory against women, as in most cases only widows are subjected to it.

Trial by ordeal also infringes on the provision of many International Human Rights Laws which are also in consonance with the rights provided by the Constitution. Trial by ordeal infringes upon the Universal Declaration of Human Rights (UDHR)<sup>64</sup> The following rights are tampered with as opposed to the provisions of international law: Right to life, liberty and security of person<sup>65</sup> No one shall be subjected to torture or to cruel, inhuman or degrading treatment<sup>66</sup>, Equality before the law<sup>67</sup>, Right to fair hearing<sup>68</sup>, Right to freedom of movement.<sup>69</sup>

The Convention on the Elimination of All forms of Discrimination against Women (CEDAW)<sup>70</sup> prohibits against trial in its provisions. It prohibits against all forms of discrimination against women<sup>71</sup> and as well enjoins states parties to take appropriate measures to modify or abolish existing laws, regulate customs and practices which constitute discrimination against women<sup>72</sup>. State parties are mandated to modify social and cultural

<sup>59</sup>Ibid, s. 42 (1) a and (2).

<sup>60</sup>Ibid, s. 34 (1).

<sup>61</sup>Ibid, s. 35 (1).

<sup>62</sup>Ibid, s. 36 (4) (5) b (a-e).

<sup>63</sup>Ibid, s. 38 (1).

<sup>64</sup>Universal Declaration on Human Rights 1948.

<sup>65</sup>Ibid, Art. 3.

<sup>66</sup>Ibid, Art. 5.

<sup>67</sup>Ibid, Art. 7.

<sup>68</sup>Ibid, Art. 10-11.

<sup>69</sup>Ibid, Art. 13.

<sup>70</sup>Convention on the Elimination of All Forms Discrimination against Women (CEDAW) 1979.

<sup>71</sup>Ibid.

<sup>72</sup>Ibid, Art. 2(f).



conducts of men and women so as eliminate customs and practices on inferiority or superiority of the sex<sup>73</sup> and further guarantees equality of men and women before the law<sup>74</sup>,

Trial by ordeal is in breach of all these provisions. The African Charter on Human and Peoples Rights, (ACHPR)<sup>75</sup> provides these human right which trial by ordeal violates: every individual shall be equal before the law<sup>76</sup>, right to life and integrity of human person<sup>77</sup>, right to dignity of human person<sup>78</sup>, right to liberty and security of human person<sup>79</sup>, right to fair hearing<sup>80</sup>, right to freedom of religion<sup>81</sup>, right to freedom of expression<sup>82</sup>, right to freedom of association<sup>83</sup>, right to freedom of movement<sup>84</sup> and Freedom from discrimination against women<sup>85</sup>. The Protocol to African Charter on Human and Peoples Rights (Pro ASCHPR) 2005<sup>86</sup> provides these human rights which trial by ordeal violates. Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.<sup>87</sup>

Every woman shall be entitled to respect for her life and the integrity and security of her person.<sup>88</sup> Elimination of Human practices which negatively affect the human rights of women and are contrary to recognized international standards<sup>89</sup>, States parties to ensure that widows are not subjected to inhuman, humiliating or degrading treatment<sup>90</sup> but trial by ordeal subjects an innocent widow to an act that can even claim her life just for the fact that she lost her husband. Other international Human Rights instruments that specifically deal with attempt to stop violence against women to which Nigeria is a signatory include: Beijing platform for Action 1995, Millennium Development Goal 2000, Nairobi Forward Looking Strategies 1985 and Solemn Declaration on Gender Equality in Africa, 2004 and so on.

## **8. Trial by Ordeal and the Criminal/Penal Codes**

Trial by ordeal is a crime under the Nigeria Criminal Law and those present at trial by ordeal are liable to imprisonment for one year respectively while any person who directs or controls it is liable to ten years imprisonment. If trial by ordeal results in death, the person or persons controlling or directing it is liable to death sentences.<sup>91</sup> Also in the Penal Code, those presiding as well as those present at the trial by ordeal shall be liable to imprisonment, and if death occurs,

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<sup>73</sup>Ibid, Art. 5.

<sup>74</sup>Ibid, Art. 15.

<sup>75</sup>The African Charter on Human and Peoples Rights (ACHPR) 1981.

<sup>76</sup>Ibid, Art. 1.

<sup>77</sup>Ibid, Art. A.

<sup>78</sup> Ibid.

<sup>79</sup>Ibid, Art. 6.

<sup>80</sup>Ibid, Art. 7.

<sup>81</sup>Ibid, Art. 8.

<sup>82</sup>Ibid, Art. 9.

<sup>83</sup>Ibid, Art. 10.

<sup>84</sup>Ibid, Art. 12.

<sup>85</sup>Ibid, Art. 18 (3).

<sup>86</sup>The Protocol to African Charter on Human and Peoples Rights (PRO ACHPR) 2005.

<sup>87</sup>Ibid Art. 4 (1).

<sup>88</sup>Ibid, Art. 5.

<sup>89</sup>Ibid, Art. 20(a).

<sup>90</sup>The Protocol to African Charter on Human and Peoples Rights (PRO ACHPR) 2005.

<sup>91</sup>Criminal Code Act Cap 38 Laws of the Federation of Nigeria Chapter 20 particularly in secs 207-213.

those present at the trial by ordeal as well as those directing or controlling it shall be liable to death. Again the criminal procedure Act<sup>92</sup> provides that trial by ordeal is unlawful<sup>93</sup>.

### **9. Trial by Ordeal and State Laws**

Flowing from both International and National Legislations, some states in the South East like Enugu and Anambra states have legislated against all these obnoxious widowhood rites which also includes trial by ordeal. For examples; Anambra State Malpractices against Widow and Widowers (Prohibition) Law 2005<sup>94</sup> provides that “The fundamental human rights as enshrined in the Constitutions are inalienable and accrue to every widow and widower”. And so in section that created the offences under this law, subsection 1 proves that No person shall compel a widow or widower to do any of the things stipulated in paragraph (a-o) which include, to drink the water used in washing the corpse of the spouse or to perform any type of ritual in order to establish innocence causing the death of the late spouse (section 4(1) (b));<sup>95</sup> To sleep either alone on the same bed or to be locked in the same room with the corpse of late spouse or to remain in compulsory confinement after death of the spouse for any given period, and so on. Section 5 provides for a fine of twenty thousand naira (N 20,000.00) or a jail term not exceeding six months imprisonment or to both such fine and imprisonment. The researcher opines that this is grossly inadequate considering the weight of what widow’s pass through that may even cost their lives. A fine of twenty thousand naira is definitely not commensurate to the plight of widows. It is suggested this law should have toed the line of the Criminal and Penal codes.

### **10. Conclusion.**

The psychological trauma may be very devastating. There tends to be a higher rate of mental illness among widows as against remarried widows and single women. In most African setting, this could be as a result of personal grief of loss and other humiliating cultural practices that the widow has to undergo as rites of widowhood. Most widows also experience failing health due primarily to economic hardship, isolation, and stress they have to go through to provide for themselves and their children. Some obnoxious cultural practices are also most unhygienic. For instance, the practice that demands that the widow drink water that was used to wash her husband’s corpse as a swearing to oath that she was not responsible for his death is a very big health risk. This may have a resultant effect of the bereaved having disabling chronic conditions. Other health risk is apt to affect the widow and cause a long time or terminal disease on the widow. There is also a higher death rate among the widow than their married counterparts. There are several instances of widows dying while observing widowhood rites and many dying after the rites. This has a combination of psychological, mental, social, emotional, health, spiritual and physiological trauma that the widow had undergone. Social isolation is very obvious during the mourning period of one year and after the widowhood rite. From all that have been said so far, trial by ordeal is a canker worm that every person especially in the South East of Nigeria should rise up and fight for it is really dehumanizing. It could also be seen that there is a death of cases in this aspect of our social life. May be because ignorance of the provisions of the law on this, or poverty and illiteracy on the part of the victims to be able to fight for their rights in the law courts. But both the court and the legal practitioners should avail themselves of these legislations and fight this societal ill if the opportunity comes.

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<sup>92</sup>Criminal Procedure Act Cap 4 LFN 2004 Chapter 17.

<sup>93</sup>Ibid, section 207.

<sup>94</sup>Anambra State Malpractices against Widow and Widower (Prohibition) Law 2005.

<sup>95</sup>Ibid, section 4(1).