



## Comparative Analysis of Spousal Rights Within Nigeria's Pluralist Legal System: A Desk-Based Study with Focus on Zamfara State

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### ABSTRACT

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The tripartite legal system of Nigeria, which consists of Sharia law, customary law, and statutes, has produced a sophisticated framework for controlling family relationships. This complexity is most apparent in the determination and safeguarding of spousal rights, particularly in areas such as Zamfara where Islamic law is officially enforced. This study conducts a rigorous, desk-based examination of the definition, interpretation, and enforcement of spousal rights and obligations within various concurrent legal systems. This study examines the conceptual underpinnings and practical ramifications of legal pluralism on marital relationships in Zamfara State, relying exclusively on secondary sources including as legal documents, scholarly commentaries, court rulings, and human rights reports. Special focus is placed on fundamental matters including maintenance, marital relations, spousal consent, and divorce. The comparative study shows not only where the laws are similar, but also where they are at odds, which makes it harder for women to get justice and preserve their marriages. This study argues that Nigeria's fragmented legal system needs to be clearer and more consistent so that it can be more fair and uphold a more consistent vision of justice in marriages.

### KEYWORDS:

Legal pluralism, spousal rights, Zamfara State, Sharia law, Gender justice

### INTRODUCTION

Nigerian family law is governed by a highly pluralist legal system that has been influenced by the nation's colonial past, religious beliefs, and native customs. The confluence of statutory law, customary law, and Islamic (Sharia) law creates a complicated legal environment where the rights and duties of spouses are often interpreted differently depending on the legal forum engaged (Oba, 2002). While legal diversity is widespread in many post-colonial African states, Nigeria is notable for the formal and frequently competing coexistence of different systems, particularly in personal status concerns such as marriage, divorce, maintenance, and inheritance (Ostien, 2007).

The difficulty becomes more apparent in places like Zamfara, which, since 1999, has introduced a full form of Sharia law that governs both civil and criminal concerns, including family law (Kendhammer, 2013). Different interpretations and enforcement criteria apply to spouses' rights in this

setting, especially in relation to subjects like divorce, conjugal relations, and marital maintenance (nafaqah). For example, under Sharia, a husband is expected to maintain his wife financially and is permitted to announce divorce (talaq) unilaterally, whereas the wife's rights to separation (khul') are more restricted (Yadudu, 2000). On the other hand, both couples have equal rights to file for divorce under the Matrimonial Causes Act (MCA), which regulates statutory marriages. The court also decides who is responsible for what, including maintenance, custody, and property (Ezejiogor, 1964).

These legal discrepancies pose serious problems regarding gender equity, access to justice, and the integrity of family law jurisprudence. According to Ibhawoh (2014), women in particular frequently have to deal with a legal system that imposes inconsistent standards and conflicting norms based on their marital registration and the court they approach. Furthermore, most studies tend to investigate each legal system in isolation, rarely presenting a comparative analysis that explores how spousal rights are formed and challenged across Nigeria's pluralist legal architecture, especially in Sharia-implementing states.

This study tries to fill that vacuum by presenting a comparative, desk-based examination of spousal rights as conceptualized under statute, customary, and Sharia law,

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utilising Zamfara State as a case focus. The analysis draws entirely on secondary data sources, including legal documents, scholarly papers, judicial rulings, and human rights reports. By using this method, it seeks to pinpoint areas where spousal rights are treated differently and similarly by the law, analyse the effects of these differences on gender justice and legal certainty, and make the case for harmonisation tactics that uphold legal diversity while defend fundamental rights. The study focusses especially on important spousal rights like reciprocal duties, divorce, marriage support, and sexual rights—topics that are not only legally significant but also profoundly cultural and religious.

### Conceptual Clarification

The main ideas that underpin this study such as spousal rights, legal pluralism, marriage (in its legal-religious forms), and gender justice—need to be precisely defined in order to comprehend the rights of spouses in a pluralist legal system. These conceptions are not merely legal categories but also socio-cultural constructs formed by religious doctrine, colonial legacies, and evolving notions of human rights (Griffiths, 1986; Banda, 2005; Ekhtor, 2020).

**Spousal rights:** are the moral and legal rights that spouses have when they are married. These include the right to maintenance, mutual respect, cohabitation, loyalty, marital relations, inheritance, and protection from damage (Yadudu, 2000; Akintayo, 2020). These rights are recognized and enforced to differing degrees across the diverse legal systems in Nigeria. Under statutory law, they are largely symmetrical and governed by codified rules such as the Matrimonial Causes Act, which promotes equality and shared duties between spouses (Ezejiofor, 1964; Ojo & Folarin, 2021). In contrast, customary law, which reflects deeply ingrained socio-cultural norms, tends to stress patriarchal ideals, often assigning unequal tasks and expectations to men and women within marriage (Oyelade, 2013; Okonkwo & Ogbodo, 2022). Although opinions on the reciprocity of these roles vary, spousal rights under Sharia law, as it is applied in Zamfara State, are based on Islamic jurisprudence (fiqh), where the husband is primarily responsible for providing for the family's financial needs (nafaqah) and the wife is expected to maintain obedience and sexual availability (Nasir, 2016; Peters, 2003).

**Legal pluralism** is used to describe how several legal systems function concurrently inside a single geographical entity. It generally involves the cohabitation of state law with religion and customary standards, sometimes resulting in overlapping jurisdictions and contradictory interpretations of rights (Griffiths, 1986; Nwauche, 2021). The formal application of statutory law (derived from British common law), customary law (derived from indigenous traditions), and Sharia law (mostly in the northern states) in Nigeria is an example of legal diversity. This structure has been preserved and institutionalized through the Nigerian Constitution,

which empowers each state to establish its own legal institutions in matters of personal law (Oba, 2002; Yusuf, 2019). In family law contexts where spouses' rights are disputed, legal pluralism can be a reflection of cultural inclusivity, but it also presents serious problems, including forum shopping, inconsistent legal outcomes, and unequal access to justice (Sanni & Uthman, 2023; Egbewole & Akanbi, 2023).

**Concept of Marriage:** The concept of marriage is regarded differently across Nigeria's legal systems. Statutory marriage, as controlled by the Marriage Act and Matrimonial Causes Act, is monogamous, institutionalised through court or registry procedures, and legally enforceable under state authority (Ezejiofor, 1964). Customary marriage, on the other hand, is informal, community-recognized, and frequently polygynous, with family elders playing significant roles and typically requiring the payment of a bride price (iwo iyawo) (Oyelade, 2013; Bennett, 2006). In addition to being contractual and based on mutual consent (ijab wa qabul), dower payment (mahr), and duties of cohabitation and respect, Islamic marriage (nikāḥ), which is governed by Sharia principles, also allows male-initiated divorce (talaq) with fewer procedural restrictions than statutory divorce (Peters, 2003; Nasir, 2016; Musa & Bala, 2022).

**Gender Justice:** is the fair and impartial treatment of people of all genders in both substantive and procedural aspects. According to Banda (2005) and Akinola (2019), gender justice in the legal environment focusses on getting rid of discriminatory laws, organisations, and practices that disproportionately harm women. It also mandates that all legal systems; customary, statutory, or religious—uphold values of fairness, dignity, and equal access to rights and remedies. Under the guise of cultural autonomy or religious tradition, legal pluralism can legitimise norms that perpetuate gender inequality, which can impede the attainment of gender justice (Ekhtor, 2020; Nwauche, 2021).

This conceptual underpinning provides a critical perspective for the ensuing comparative legal study. It examines how marital rights are established, understood, and challenged within Nigeria's pluralist legal context, with Zamfara State giving a unique lens into the interface between law, religion, and gender.

### Overview of Nigeria's Plural Legal Framework

The history of legal pluralism, in which several legal orders coexist in the same country, has a significant influence on Nigeria's legal system. This framework arose from colonial legal imposition over pre-existing indigenous systems, establishing a threefold structure that persists to this day: statutory law, customary law, and Islamic (Sharia) law (Oba, 2002; Yusuf, 2019). Each system applies diverse normative traditions to personal status issues like as marriage, divorce, inheritance, and family ties, resulting in overlapping

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jurisdictions and interpretive inconsistencies (Griffiths, 1986; Nwauche, 2021).

### **Statutory Law**

Statutory law is the official legal system formed during British colonial administration and maintained post-independence, containing codified laws enforced through the High Courts and other regular courts. The two key legislation covering spousal rights in Nigeria's statutory framework are the Marriage Act (1914, as amended), which controls marriage solemnization, and the Matrimonial Causes Act (1970), which rules divorce, custody, and maintenance. These statutes acknowledge marriage as a legal contract and promote concepts of equality, monogamy, and judicial protection of individual rights (Ezejiiofor, 1964). Spouses have equal rights to petition for divorce on grounds such as adultery, cruelty, desertion, or irretrievable dissolution of the marriage (Akintayo, 2020). Property settlement and maintenance are also judged based on fairness and contribution, with judges permitted to make discretionary rulings.

However, implementation issues exist. The cost and complexity of litigation deter many people, especially women, from seeking legal redress, and access to statutory courts is frequently restricted in rural areas (Ojo & Folarin, 2021). Additionally, a lot of Nigerians concurrently follow both statutory and customary traditions, which leads to misunderstandings about which legal system applies, particularly when weddings are not properly registered or are solemnised under both systems.

### **Customary Law**

Indigenous, unwritten customs and traditions that are accepted by particular ethnic and cultural groups make up customary law. It governs most marital relationships in rural and semi-urban settings, where community conventions frequently have higher authority than formal legislation. Customary law is deeply patriarchal and lays emphasis on kinship, bride price, lineage, and communal marriage traditions. According to this framework, spousal rights are usually asymmetrical: women's rights are frequently mediated through their relationships with male figures, such as fathers, husbands, or sons, whereas men are typically viewed as the heads of households with dominant authority over economic and reproductive decisions (Bennett, 2006; Oyelade, 2013). Polygyny is tolerated, and inheritance and custody rules normally benefit male descendants. The legitimacy of customary law is upheld by the Nigerian Constitution, which empowers customary courts to judge family concerns. Yet, the unwritten nature of customary rules means their interpretation can be inconsistent, context-specific, and occasionally arbitrary (Okonkwo & Ogbodo, 2022). In many circumstances, women endure discrimination while attempting to claim spousal rights, such as when seeking divorce or property following separation. Critics

contend that, despite constitutional guarantees for nondiscrimination, customary law practices sometimes go unchecked due to cultural sensitivity and judicial unwillingness to intervene in "community matters" (Egbewole & Akanbi, 2023).

### **Islamic (Sharia) Law**

In Nigeria, the third strand of legal diversity is Islamic law, or Sharia, which is applicable in 12 northern states, including Zamfara. It comes from divine sources, including the Qur'an, the Sunnah (the traditions of the prophets), and the Maliki school of Islamic law, which is the most prevalent in West Africa. Personal status matters including inheritance, maintenance (nafaqah), divorce (talāq, khul'), and marriage (nikāh) are governed by sharia law. In Zamfara State, Sharia was reinstated as a legitimate legal system in 1999 and works parallel to other legal systems, enforced through Sharia Courts and monitored by the Sharia Court of Appeal (Peters, 2003; Nasir, 2016).

Spousal rights under Sharia are gendered yet established clearly within the law scriptures. A husband is supposed to give financial upkeep and shelter to his wife, while the wife is expected to submit to his authority and perform conjugal obligations (Yadudu, 2000; Musa & Bala, 2022). Divorce methods differ from legislative norms: a male may unilaterally announce talāq, whereas a woman may request separation through khul' or court annulment (faskh), subject to tighter circumstances. While certain Sharia courts display sensitivity to women's claims especially regarding desertion or cruelty of structural gender imbalances and interpretation conservatism sometimes hinder women's capacity to express their rights fully (Sanni & Uthman, 2023).

Islamic law gets constitutional legitimacy under Section 277 of the 1999 Constitution, which empowers governments to establish Sharia Courts of Appeal. However, problems continue between Sharia standards and Nigeria's international human rights responsibilities, particularly over gender equality in marriage, divorce, and inheritance. Legal experts and human rights campaigners continue to argue the harmonisation of Islamic law with constitutional guarantees (Oba, 2002; Nwauche, 2021).

### **Spousal Rights under Statutory Law**

Spousal rights in Nigeria's statutory legal system are primarily regulated by the Matrimonial Causes Act and the Marriage Act, both of which are byproducts of the British colonial legal system. These laws presuppose formal equality between spouses and define rights and obligations, establishing marriage as a civil contract between two capable individuals. Statutory marriage, unlike customary or Islamic unions, is absolutely monogamous and legally binding only upon formal registration at a marriage register (Ezejiiofor, 1964; Ojo & Folarin, 2021).

According to statutory law, reciprocity is one of the fundamental tenets of spousal rights; each spouse has the

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right to companionship, consortium, faithfulness, and reciprocal care. The Matrimonial Causes Act (1970), particularly in Sections 15–20, outlines the reasons for dissolution of marriage and allows both spouses equal legal standing to seek for divorce. Acceptable grounds include adultery, abuse, abandonment, persistent intoxication, imprisonment, or the irretrievable breakup of the marriage (Akintayo, 2020). Crucially, under the Act, either party may seek custody of children and maintenance (financial support), with the best interests of the child serving as the court's direction in custody disputes (Federal Republic of Nigeria, 1970, ss. 70–71).

Gender equality is a major, though often contentious, facet of statutory family law. The theory of equal rights was affirmed in various Nigerian appellate cases like as *Edet v. Essien* (1953) and *Williams v. Williams* (1987), where judges recognised that both spouses should have equal access to marital rights, including property ownership, child custody, and maintenance claims. In the more recent case of *Mbakwe v. Mbakwe* (2017), the Nigerian Court of Appeal reaffirmed that, contrary to what some customary or religious frameworks assume, spousal responsibilities are shared and not only the husband's responsibility (Ojo & Folarin, 2021). However, implementation gaps remain between the statutory goals and actual realities, especially in northern regions like Zamfara, where statutory law coexists uneasily with Islamic and customary systems. Many couples negotiate statutory weddings alongside customary or religious procedures, causing to ambiguity in legal recognition and enforcement (Oba, 2002; Nwauche, 2021). Additionally, many women are discouraged from pursuing redress through statutory courts due to the expense, delays, and technicalities of formal litigation, especially in rural communities where informal dispute resolution procedures are more accessible but frequently less equitable (Egbewole & Akanbi, 2023). Nigeria's international commitments under treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which Nigeria is a signatory, and its statutory family laws are not in harmony, which is another problem. Although Section 42 of the 1999 Constitution outlaws discrimination based on sex, no comprehensive statutory family law reform has yet completely integrated this constitutional norm (Yusuf, 2019; Ekhat, 2020). In this aspect, statutory law remains a source of legal potential that provides greater protection in theory but is hampered in practice by cultural resistance, legal heterogeneity, and administrative inefficiencies.

In conclusion, spousal rights under statute law in Nigeria are established upon ideas of equality, consent, and joint responsibility. Yet, in pluralist environments like Zamfara State, statutory norms typically lack the social legitimacy and practical reach essential for effective enforcement. This contradiction invites more investigation into how statutory

frameworks might be better aligned with other legal systems to provide substantive justice, especially for women.

### **Spousal Rights under Customary Law**

In Nigeria, customary law continues to be one of the most significant frameworks governing marriages, especially in rural areas and among traditional households. It refers to the body of unwritten standards, customs, and behaviours accepted by a society as binding, handed down generations (Bennett, 2006). In areas of marriage and spousal rights, customary law often operates beyond official state codification and stresses collective norms, kinship relationships, and patriarchal authority (Oyelade, 2013; Okonkwo & Ogbodo, 2022).

Marriage under customary law is not considered simply as a contract between persons but as an alliance between families. Key rites such as bride payment (*iwo iyawo*), libations, and witness ceremonies authenticate the relationship. The spousal privileges acquired from customary marriages are often asymmetrical: the husband is considered as the head of the family with considerable authority, while the wife is expected to be obedient, fruitful, and subservient (Ojo & Folarin, 2021). Traditional norms rarely grant women proprietary rights over marital property or independent inheritance claims, unless approved by the husband's family or local custom (Bennett, 2006; Egbewole & Akanbi, 2023).

The courts have accepted the patriarchal nature of customary law. According to Igbo traditional law, a widow could not inherit her husband's property and could only stay in the marital residence when the family so desired, the Supreme Court ruled in *Nezianya v. Okagbue* (1963) 1 All NLR 352. This view was reinforced in *Ejiamike v. Ejiamike* (1972) ECCLR 11, further confirming the gendered limitation of spousal rights under this framework. Though some communities have tried to change these practices through experience, the absence of codification means revisions are sluggish and very localized (Adewoye, 2018).

Polygyny is also permitted under customary law, which has an impact on the distribution and quality of marital privileges. In polygynous households, elder wives may wield social power, but the allocation of affection, work, and resources is frequently uneven and the husband maintains legal control over all spouses (Akintayo, 2020). Customary courts, where they exist, support such norms until challenged directly under constitutional law or through formal litigation.

Importantly, customary marriage affords minimal protection for women upon marital dissolution. Divorce processes are often informal and managed by family elders or community heads. Women who seek divorce sometimes lose custody of their children and are obliged to refund the bride price, regardless of the reason for their separation (Oyelade, 2013; Oyewunmi, 2022). In *Mojekwu v. Mojekwu* (1997) 7 NWLR (Pt. 512) 283, the Court of Appeal denounced the discriminatory “*Oli-ekpe*” custom (which barred women

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from inheritance), labelling it a “repugnant” practice. However, the same court later explained in *Mojekwu v. Iwuchukwu* (2004) 11 NWLR (Pt. 883) 196 that courts must be cautious when invalidating traditions without fully grasping their context.

Nigeria's constitutional pledge to prohibit discrimination (Section 42, CFRN 1999) notwithstanding, customary law is still applied with little judicial supervision. Attempts to harmonise customary family practices with constitutional norms and international human rights conventions, such as CEDAW, have been met with hostility due to their deep cultural roots (Yusuf, 2019; Nwauche, 2021). Reform continues to be a lengthy, community-driven process that necessitates not just legislative reform but also social re-education and alternative dispute resolution models that respect both rights and traditions.

### Spousal Rights under Islamic (Sharia) Law

In Nigeria, spousal rights are governed by Islamic law, or Sharia, which is the third most structured legal framework. This is particularly true in northern states like Zamfara State, which fully implemented Sharia in 1999. Sharia in Nigeria is principally derived from the Qur'an, the Sunnah (Prophetic tradition), and the Maliki school of Islamic law, which is dominant across West Africa (Nasir, 2016; Oba, 2002). In contrast to customary law, Sharia is a codified and theologically based legal system. Sharia Courts, which are empowered by the constitution, administer Sharia law in cases involving marriage, divorce, maintenance, and inheritance (FRN, 1999, s. 277).

Marriage (*nikāh*) under Islamic law is both a civil transaction and a religious responsibility. A legitimate marriage needs an offer and acceptance (*ijab and qabul*), presence of witnesses, and payment of a wedding gift (*mahr*) from the groom to the bride (Nasir, 2016). Spousal rights are well-articulated within this paradigm. The husband is responsible for providing maintenance (*nafaqah*), which includes shelter, food, and clothing, whilst the wife is entitled to respect, protection, and sexual fulfilment. In return, the wife is supposed to remain obedient (*ta'ah*) and refrain from activities that damage the marriage (Yadudu, 2000; Musa & Bala, 2022).

Sharia law recognizes unique methods for marital dissolution, which differ from both customary and statute law. A husband may unilaterally begin divorce by saying *ṭalāq* (repudiation), however disapproved if used frivolously. However, a woman may request a divorce on the grounds of cruelty, impotence, or non-maintenance through *faskh* (judicial annulment) or *khul'* (mutual consent with compensation) (Peters, 2003). Courts have maintained that *faskh* must be adjudicated by a Qadi, and not merely invoked unilaterally by a woman, providing procedural balance while often limiting female autonomy (Ostien, 2007).

In actuality, however, women confront systemic hurdles in exerting their rights under Sharia. In situations where men

predominate, many people are either ignorant of their legal rights or lack the resources and support system necessary to file a lawsuit. The rights of women to maintenance and post-divorce advantages like as child custody and *iddah* maintenance are supported by doctrinal rules; nonetheless, court rulings have not always been consistent or pro-woman (Musa & Bala, 2022; Sanni & Uthman, 2023). In *Kawu v. Kawu* (2001) Unreported, the Sharia Court of Appeal upheld a wife's entitlement to *faskh* based on abandonment and non-maintenance, suggesting a progressive application of Islamic rules, albeit such verdicts remain unusual.

Polygamy is permitted under Sharia, letting a man to marry up to four wives if he can treat them equitably, as stipulated in Qur'an 4:3. However, the subjective nature of “equal treatment” and economic inequalities often leave co-wives in hierarchical and emotionally unstable situations. Although Islamic jurisprudence emphasises the right to have numerous wives, it also imposes rigorous requirements of justice, fairness, and economic accountability, which are routinely disregarded in practice (Yadudu, 2000; Nasir, 2016). The Sharia Court system in Zamfara is institutionalized and hierarchical, encompassing Area Courts, Upper Sharia Courts, and the Sharia Court of Appeal. These courts are constitutionally recognized and empowered to judge family disputes, including divorce, maintenance, and child custody (FRN, 1999, s. 277). While formalization has expanded access to justice in some ways, procedural delays, paucity of female judicial officers, and conservative interpretations often hamper the achievement of gender-balanced outcomes (Egbewole & Akanbi, 2023; Yusuf, 2019).

Moreover, the connection between Sharia and constitutional human rights rules remains disputed. Although Section 38 of the Constitution preserves freedom of religion, Section 42 forbids gender-based discrimination. When the judicial application of Islamic standards seems to go against Nigeria's commitments under international treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), or the equality sections of the Constitution, tensions occur (Nwauche, 2021; Akintayo, 2020). These tensions are yet to be reconciled through legislative or judicial intervention.

To sum up, Islamic law offers a thorough framework for governing spousal rights, complete with theological depth and procedural clarity. However, in practice, gendered interpretations, institutional impediments, and socio-cultural constraints have hampered its capacity for egalitarian justice. Since Sharia is state-sanctioned in Zamfara State, reform initiatives must concentrate on increasing access, addressing gender issues in adjudication, and aligning with constitutional norms.

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## **Comparative Analysis of Spousal Rights across the Three Legal Systems**

Nigeria's diverse legal system makes regulating spousal rights difficult and frequently inconsistent. Islamic (Sharia) law, customary law, and statutory law are the three main legal systems. Each of these systems takes a different stance on the rights and obligations of spouses. The main ideas, difficulties in putting them into practice, and consequences for gender justice are compared in this section using doctrinal and policy analysis, especially in Zamfara State, where all three legal systems are operational.

### **Marriage and Gender Equality**

Through the Matrimonial Causes Act and the Marriage Act, statutory law places a strong emphasis on mutual consent, equality, and monogamy. Both spouses enjoy equal status in regards of marriage creation, maintenance, and dissolution (Akintayo, 2020). In contrast, customary and Islamic rules reflect social and religious worldviews that give primacy to male authority, with the husband often viewed as the head of the household. Under customary law, women are expected to be submissive, with little rights over property, decision-making, or children post-divorce (Oyelade, 2013). Islamic law positions husbands in a leadership position and clearly expects wives to obey, even if it grants more defined spousal rights than customary law (Nasir, 2016; Yadudu, 2000). The principle of gender equality, established under Section 42 of the 1999 Constitution and international instruments like CEDAW, finds deeper expression in statutory legislation. However, legal diversity sometimes dilutes this goal. In reality, a lot of marriages in Zamfara and throughout northern Nigeria are performed according to Islamic or customary ceremonies, where these constitutional protections might not be specifically acknowledged or upheld (Nwauche, 2021; Yusuf, 2019).

### **Divorce and Marital Breakdown**

Under statutory law, either spouse may file for divorce on widely defined reasons, such as cruelty, infidelity, or irretrievable breakdown. Courts are empowered to give equitable reliefs such as custody, support, and property adjustment (Ezejiofor, 1964). Conversely, in customary and Islamic contexts, gendered barriers to divorce are more pronounced. Under customary law, a woman's right to divorce is usually dependent on family approval and the recovery of the bride price, which can lead to social disgrace and economic hardship (Ojo & Folarin, 2021). In Islamic law, although procedures like *khul'* and *faskh* exist, they are subject to court permission and frequently favor the husband in terms of procedural simplicity and post-divorce entitlements (Peters, 2003).

The impact of this mismatch is that women under customary and Islamic law suffer more hurdles in departing problematic marriages, especially when the law is construed conservatively or when society norms restrict female

autonomy. Even when courts are progressive, as evidenced in *Kawu v. Kawu* (2001), inconsistent application and inadequate access to legal assistance undermine substantive justice (Musa & Bala, 2022).

### **Maintenance, Custody, and Property Rights**

Regardless of gender, statutory courts evaluate property rights and spousal support based on equity and contribution. A wife who contributes to home income or unpaid care work may be awarded property or support upon divorce (Ojo & Folarin, 2021). In contrast, customary law rarely honours women's financial or non-financial contributions. Marital property traditionally goes to the husband or his lineage, and women are commonly prohibited from inheritance, as demonstrated in *Neziyanya v. Okagbue* (1963) and *Mojekwu v. Mojekwu* (1997).

Islamic law does allow for post-divorce sustenance during the *iddah* period and lists entitlements like the *mahr* (bridal gift). However, property sharing is not automatically equitable, as men are believed to be the providers and inheritors (Nasir, 2016). Though child custody may be awarded to women under Islamic principles, it is contingent to the child's age and religious upbringing, with dads often recovering custody after the kid reaches a particular age (Yadudu, 2000).

### **Enforcement and Accessibility**

Accessibility and enforcement are two areas where the legal systems diverge most significantly. Statutory law, while more rights-protective, has a limited reach, particularly in rural Zamfara, where customary and Islamic courts are more accessible, economical, and culturally legitimate (Oba, 2002; Ostien, 2007). However, these alternative venues typically lack procedural safeguards and may impose standards that disfavour women, notably in areas of divorce, custody, and property settlement.

Furthermore, legal issues may become more complex due to jurisdictional overlap and forum shopping. A marriage formed under customary law but litigated in statutory courts may pose questions of legal recognition and available remedies (Nwauche, 2021). In reality, a lot of spouses, particularly women, move between systems due to social expectations, legal expertise, and financial realities. In sum, the comparative research demonstrates a contradiction between equality and tradition, law and culture. While statute law has the greatest promise for gender equity, its effectiveness is hindered by limited access, low awareness, and institutional bias. Customary and Islamic rules, while culturally resonant and institutionally established in Zamfara, tend to sustain patriarchal power systems, frequently at the price of women's autonomy. A truly pluralist yet rights-sensitive strategy would involve harmonization, legal education, and reform initiatives that engage both the formal legal order and community norms.

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### ANALYSIS AND DISCUSSION

Nigeria's legal system is essentially pluralist, with Islamic, customary, and statutory legal systems coexisting and each having its own unique interpretation of spousal rights. This legal plurality, although reflecting Nigeria's cultural and theological variety, has caused enormous normative conflict, particularly in states like Zamfara where all three systems run simultaneously. Spousal rights are frequently challenged and inconsistently enforced in this setting, depending on the legal system that regulates the marriage.

Under statutory law, marriage is viewed as a civil contract built on equality, mutual agreement, and monogamy. The Marriage Act and Matrimonial Causes Act equip both spouses with reciprocal rights and duties. Fairness and the interests of the parties are protected by provisions pertaining to divorce, child custody, and property adjustment, such as Sections 15 to 20 of the Matrimonial Causes Act. Courts have construed these provisions to encourage gender equality. The non-discriminatory nature of statutory law was reinforced, for example, when the court upheld the equal right of either spouse to file for divorce in *Williams v. Williams* (1987) 2 NWLR (Pt. 54) 66. On the other hand, statutory family law has little effect in Zamfara and other northern region. State Legal understanding is inadequate, and many families continue to prefer religious or customary processes of marriage and dispute settlement, leaving statutory safeguards largely unused (Egbewole & Akanbi, 2023; Akintayo, 2020).

By contrast, customary law reflects indigenous social beliefs, where family systems are primarily patriarchal, and marriage is considered not simply as a union between individuals but as an alliance between kin groupings. Within this system, the husband is often seen as the head of the household, and the wife's legal and economic standing is commonly subjected to him. Rights to property, decision-making, and child custody are usually biased in favour of the male partner. The courts have at times upheld these rules, notably as in *Nezianya v. Okagbue* (1963) 1 All NLR 352, where the Supreme Court refused a widow's right to inherit her deceased husband's property under Igbo customary law. Although such interpretations have met criticism, they remain an indication of how firmly rooted patriarchy is in customary legal reasoning (Okonkwo & Ogbodo, 2022). In fact, customary marriage in Zamfara still emphasises male dominance, with divorce processes primarily informal and controlled by extended family members, frequently asking the woman to refund her bride price before separation is acknowledged (Oyelade, 2013).

Spousal rights are more methodically outlined in Islamic law, which draws from the teachings of the Maliki school of law, which is most prevalent in Northern Nigeria, as well as Qur'anic injunctions. According to Sharia law, a marriage (nikāh) necessitates an offer, acceptance, witnesses, and a bridal gift (mahr). It is also a religious act. The husband is

supposed to offer maintenance, protection, and respect, while the wife is expected to be obedient and faithful. Islamic law also offers procedures for ending a marriage, such as faskh (court annulment), khul' (divorce started by the wife with compensation), and talāq (repudiation). Despite this thorough framework, the practical enforcement of spousal rights under Sharia typically reflects conservative cultural interpretations rather than progressive doctrinal concepts. While examples such as *Kawu v. Kawu* (2001, unreported) illustrate a court's readiness to recognise a woman's right to judicial divorce owing to desertion, such decisions remain the exception rather than the norm (Musa & Bala, 2022; Yadudu, 2000).

Inconsistencies in the application and preservation of spousal rights, particularly for women, pose a substantial difficulty throughout various systems. For example, under statutory law, women have higher enforceable rights to maintenance and property, particularly if financial or non-financial contributions to the household can be demonstrated (Ojo & Folarin, 2021). This stands in contrast to customary law, where property is generally inherited along patrilineal lines, with women having no legal claim unless authorised by male relatives. The exclusionary "Oli-ekpe" inheritance custom was described as discriminatory by the Court of Appeal in *Mojekwu v. Mojekwu* (1997) 7 NWLR (Pt. 512) 283. However, the ruling was later qualified in *Mojekwu v. Iwuchukwu* (2004) 11 NWLR (Pt. 883) 196, demonstrating judicial caution in categorically invalidating customary norms.

Islamic law gives several protections during and after divorce, including maintenance throughout the iddah period and ongoing maternal custody of young children. However, enforcement varies based on judicial discretion and the litigants' comprehension of their rights. In many circumstances, particularly in rural Zamfara, women lack the financial means or courage to exercise their rights before Sharia courts, and when they do, prevailing interpretations typically reinforce rather than challenge gender hierarchy (Sanni & Uthman, 2023; Nasir, 2016).

These findings have the broader consequence that a woman's legal position in marriage in Zamfara State and in fact, in Nigeria more broadly as influenced by the interpretation and accessibility of the law in which she marries, in addition to the law itself. While the Constitution of the Federal Republic of Nigeria (1999, s. 42) guarantees freedom from discrimination, its reach is sometimes hindered by the prevalence of numerous normative systems, each with different norms for spousal rights. Due to the lack of domesticating legislation and the state's unwillingness to meddle with culturally sensitive personal laws, the adoption of agreements such as CEDAW has not significantly changed this dynamic (Nwauche, 2021; Yusuf, 2019).

Because different standards for spousal rights can coexist, Nigeria's pluralist legal system has unintentionally reinforced legal inequities, especially for women, despite its purpose to

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reflect societal variety. Without harmonised adjustments, the current system risks perpetuating a fragmented justice landscape in which access to marital rights is based on jurisdictional luck and cultural acceptance rather than universal legal principles.

### **CONCLUSION**

This study looked at how spousal rights are defined and enforced in Nigeria's diverse legal system, focussing on Zamfara State. Statutory law supports gender equality and makes things clearer legally, but its impact is still limited in Zamfara since people prefer Islamic and customary laws. Customary law still favours male power, and while Islamic law has more defined rules for marriage, it is generally harder for women to follow them. Because various systems work together, the results are not always the same, especially for women, whose rights change depending on the legal forum that is in charge. Spousal safeguards will remain scattered without coordinated legal improvements and increased understanding of rights. To make Zamfara's family law more just, we need more than simply changes to the legislation. We also need more people to get involved in society to make sure that different legal traditions are in line with constitutional rights and gender equality.

### **RECOMMENDATIONS**

1. Encourage Legal Literacy at the Community Level: Raising public awareness of spousal rights is critically needed, particularly among women in Zamfara State. Community-based awareness programs, provided through religious organisations, women's groups, and radio channels, should clarify the fundamental rights granted by all legal systems, including the Constitution. Legal rights must first be known before they may be asserted.
2. Promote Harmonisation of Legal Systems through Dialogue: The protective components of statutory, Islamic, and customary laws should be aligned through constructive communication between policymakers, religious leaders, and customary authorities rather than advocating for the replacement of one system with another. This can help to avoid contradictions and promote accepted norms for spousal rights that respect cultural values while maintaining gender justice.
3. Encourage the Gender-Sensitive Interpretation of Islamic and Customary rules: Traditional leaders and judges should receive training on how to implement Islamic and customary rules in a way that reflects compassion and justice. This involves acknowledging women's rights to maintenance, custody, and inheritance as based not merely on faith or custom, but also on justice. The spirit of the law should dictate its application, not merely its letter.

4. Increase Access to Justice by Female Representation and Legal Aid: Rural women frequently lack the financial resources to fight for their rights. Marital dispute resolution would be more equitable and less intimidating if legal aid services were expanded and more women officers and counsellors were present in courts, particularly Sharia and customary courts.
5. Promote the Documentation and Reform of Customary Practices: The majority of customary rules are unwritten and vary greatly. Attempts should be made to record Zamfara customs, especially those pertaining to inheritance, marriage, and divorce. This would make it easier to uncover discriminatory norms and propose improvements that protect cultural identity while promoting gender equality.

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