# OBNOXIOUS IGBO CULTURAL PRACTICES AND PANACEA OF THE LAW IN NIGERIA

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**Abstract**
*Cultural practices in Africa date back to antiquity and vary from place to place within the same continent, country or community. Nigeria as a multi-cultural nation has about 350 ethnic groups including the Igbo society with diverse cultures and traditions. Culture which generally depicts the totality of the way of life of people has been found to be an integral part of the human race. Due to their indispensable influence on the existence, growth and development of its subjects, a need to constantly examine and where necessary review the contents of the cultural practices arises. Though these practices have been beneficial to the society in moulding the character of individuals, in the course of time, it has been discovered that some of them are obnoxious in nature. This paper aims at identifying: these obnoxious practices in the Igbo culture, how they hinder growth and development in the Society, economically and otherwise and the need to check them through instrumentality of the law. The methodology adopted in the paper is the doctrinal method of legal research approach. The paper found that there are extant laws prohibiting these obnoxious practices which have been underutilized and recommended the establishment of more viable institutions for proper implementation of these laws.*

**Key Words:** Law, Culture, Obnoxious Practices and Society,

## 1. Introduction

The Nigerian legal framework consists of customary law, legislations, received English law, case law and ratified international legal instruments. Customary law is usually a product of accepted cultural practices of people within a particular ethnic group which have been recognized as binding on them. Some of these cultural practices have however been rejected as being obnoxious due to their barbaric nature. In Nigeria, customary law may be divided into two classes: (i) ethnic or non-Moslem customary law and (ii) Moslem law. Moslem law is religious law based on the Moslem faith and applicable to members of the faith or those under the influence of Islamic civilization. It is principally in written form and is comparatively inflexible. Ethnic customary law, on the other hand, is unwritten and varies from one ethnic group to another. The diversity of customs is a major obstacle to uniformity of customary law systems in Nigeria – especially in the Southern states. This multiplicity is complicated by superstitions, which make proof and judicial notice very difficult. It was against this background that the British subjected our customary law to tests to remove superstitious and harsh elements – and to conform it to more universal standards of morality.

In Igbo land certain cultural practices which violate human rights such as ostracism, banishment, fine, seizure of valuable property, caricature in the public and soon have been found to be obnoxious thus necessitating calls for total eradication through the instrumentality of law. Law being an instrument for social engineering acts as a means of controlling human behavior and

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predicting the action of people in relation to committing crime hence the need for sanctions to serve as a deterrent to others. The *corpus* of our human rights[1] and criminal laws has played a major role in this regard. This study is geared towards examining the propriety of these laws in outlawing some Igbo cultural practices which form part of the *lex lata*.

## 2. The Igbo Cultural Heritage and Practices

The term Igbo is used as a double signifier. On the one hand, it refers to one of the three major ethnic groups in Nigeria. On the other hand, it is used to designate the language of this group, the Igbo people of Nigeria.[2] In terms of location, the Igbo occupy the bulk of the South-eastern parts of Nigeria.[3] Igbo people are characterized by their culture which is orally transmissible from one generation to another through stories, proverbs, folktales, myths and traditions that are primarily face to face interaction.[4]

Culture as a concept defies a consensus definition. The term has been used both broadly and narrowly. Tylor attempted a wide definition of culture as that "complex whole which includes knowledge, beliefs, art, law, morals, customs, and all other capabilities and habits acquired by man as a member of society."[5] It is the totality of the human activities considered to afford individuals the possibility to cultivate, to actualize and to develop their human potentialities, mental and physical. It is the totality of human efforts, achievements in the course of man's struggle for existence.[6] Culture signifies material and non-material identities of a people. The material culture consists of all that man produces or makes through his ingenuity (science and technology). On the other hand, the non-material segment of culture refers to the values, ideas, religious beliefs, literary and artistic output and philosophy of a people which influences their lives significantly.[7] The survival of people is a survival of their culture. Different cultures have different moral codes.[8] These are usually learned, sustained and reinforced through socialization. Certain salient features of culture can be easily identified. They include among other things, the fact that:[9]

- culture is shared by members of a society (both young and old);
- culture is not genetically transmitted (culture is not inborn but socially acquired);
- it is historically derived and therefore transmitted from one generation to another;
- culture is created by man through the process of adjustment to the social setting;
- culture is universal (found in every human society on general and specific terms);
- culture is dynamic (receptive to changes and influences)

[1] Such as the Chapter IV provisions of the Constitution of Federal Republic of Nigeria 1999(as amended); African Charter on Human and Peoples' Rights

[2] CMA Nwoye, 'Igbo Cultural and Religious Worldview: An insider's perspective',(2011), 3(9) *International Journal of Sociology and Anthropology*, 305

[3] *Ibid*.

[4] A E Okoro ,H Eze, & F Ofoegbu , 'Cultural Rationality and the Igbo Society',(2017), 5(3) *Journal of Research in Humanities and Social Science*, 88

[5] E Tylor, *Primitive Culture: Researches into the Development of Mythology, Philosophy, Religion, Art, and Custom*, Vol.1, (London: Cambridge University Press, 2012), p 1.

[6] A E Okoro *et.al, op.cit*,

[7] C MA Nwoye, *op.cit*.

[8] A E Okoro *et.al, op.cit.*

[9] OO Nwaubani, *Concept of Cultural and Citizenship Education (*Lagos , T-Excel Publishers, 2000) p.2

"Culture unites people, integrates them, and ensures their strength as a community. Unfortunately, in our country, some subcultures oppose each other which has led to the spread of cultural differences in Nigeria. Cultural conflicts can arise within large communities as a result. To prevent this, it is important to control the formation of cultural values in a society. This is one of the tools used by the government to create a more conducive and secured environment."[10]

The Igbo's from their origin have a cultural heritage transferred from one generation to another. The Igbos believe in family life and communal living which propels their insistence on good upbringing of their children by inculcating values such as reverence to their "*Chi*," maximum respect for parents, elders and those in positions of authority; fidelity in marriage particularly by women; chastity (there is always a celebration held in honour of a girl who marries as a virgin), ability to discharge his responsibility where a man is taught to take up the responsibility of providing his family. Infact a man's responsibility is tested by his wife's outward appearance and a wife taught to be submissive to the husband.

An Igbo man is usually born and nurtured along traditional beliefs, values, norms and life styles. There is no gainsaying the fact that a person's behaviour is a product of their culture. In Nigeria an individual usually becomes a part of an ethnic group upon birth and is immersed in the cultural practices operational in his environment. He is trained in the language, values, forms and traditions of that environment which forms part of his development in life. These values are inculcated in the individual in the process of socialization.

Some of the cultural practices common to the Igbo people include *Igọ ofọ or Igo oji (*ritual or libation) *Ọmụgwọ (*maternity care after childbirth*)*, *ibi ugwu* (Circumcision), *Ohu na Osu* (slaves and caste system), *ikwa ala* (traditional land cleansing), *iwa akwa* (initiation into adulthood), *inu iyi* (oath taking), *ibu uzo* (sanitation), trial by ordeal and others in the form of sanctions which include ostracism, banishment, widowhood rituals etc.

### 3. Obnoxious Igbo Cultural Practices and their Impacts on the Society

Despite their positive roles in the behavioural system, some of the Igbo cultural practices have been found obnoxious due to their harmful effects on mankind which has calls for a regular examination of these practices with a view to eradicating such practices without destroying the existence of culture in its entirety. The term obnoxious means "extremely unpleasant, especially in a way that offends people."[11] Obnoxious practices are acts that are highly objectionable, offensive, odious, annoying; archaic, exposed or liable to harm, evil, liable to punishment or censure and reprehensible[12]. The term is used interchangeably with harmful practices. These practices which include female genital mutilation, *osu* caste system, harmful widowhood practices, disinheritance of women, ostracism, banishment, cannibalism, human sacrifice, early and forced marriage have therefore been subjected to the laws of the larger society in order to check their excesses.

[10]"*Importance of culture in Nigeria",* https://www.legit.ng/1126816-importance-culture-nigeria.html accessed 5/8/2019

[11] AS Hornby,A Sidney, *Oxford Advanced Learner's Dictionary*,( 9th Edn, England: Oxford University Press, 1995) p.1062

[12] http.www.dictionary.com accessed 5/6/19

**Female genital mutilation** (FGM) otherwise known as female genital cutting or female circumcision, is defined as 'all procedures that involve the partial or total removal of the external female genitalia, or any other injury to the female genital organs for non-medical reasons.'[13] Several reasons have been advanced for FGM, many of which border on tradition and culture such as ensuring better marriage prospects for the women, protection of their virginity, preventing promiscuity by reducing a woman's sexual desire and increasing her faithfulness to her husband etc.[14] The physical health effects of FGM include pain and hemorrhage, wound infection, difficulty and pain in passing urine and even death, limited to infertility, chronic pelvic pain, painful menstruation, cyst formation, vesicovaginal fistula(VVF), pain during sexual intercourse with the consequence of having a poor quality of sexual life, increased possibility of transmission of the Human Immunodeficiency Virus has also been documented, prolonged labour during childbirth and post-partum hemorrhage amongst others.[15] Psychologically, FGM is often a very traumatic experience for victims. Traditional circumcisers typically use crude implements with questionable levels of sterility such as knives, razor blades, scissors and shards of broken glass. There have been reports of inhumane treatment such as being held down and cut without any form of anaesthesia and having the legs and thighs of the circumcised bound for a long time to ensure proper healing of the wound. Low Self-esteem is manifested by a 'feeling of incompleteness.'[16]

***Osu* caste system:** Traditionally, there are two classes of people in Igboland – the *Nwadiala* and the *Osu*. The Nwadiala literally meaning 'sons of the soil' are the freeborn. They are the masters while the *Osu* are the slaves, the strangers, the outcasts and the untouchables. Chinua Achebe in his well-known book, *No Longer at Ease* asks: What is this thing called Osu? He answers: "Our fathers in their darkness and ignorance called an innocent man *Osu*, a thing given to the idols, and thereafter he became an outcast, and his children, and his children's children forever."[17] The *Osu* are treated as inferior human beings in a state of permanent and irreversible disability. They are subjected to various forms of abuse and discrimination. The *Osu* are made to live separately from the freeborn. In most cases they reside very close to shrines and marketplaces.[18]

**Widowhood Practices:** At the death of a woman's husband in the Igbo tradition, where she is suspected to have contributed to his death (which is often the case), she is usually compelled to drink the water used in washing the late husband's corpse in order to take an oath to prove her innocence. A widow's movement is restricted to her home until the husband is interred. She is forced to cut her hair and wear mourning clothes throughout the mourning period. Where she is suspected to have killed her husband she is subjected to battering and banishment sometimes in a state of nudity and in some cases, she is inherited by the husband's male relatives against her will. These practices lead to perpetual marital unhappiness and frustration, isolation,

[13]World Health Organization, "Female genital mutilation", A Joint WHO /UNICEF/ UNFPA Statement, Geneva, Switzerland: WHO, 1997

[14] UU Epundu, AL Ilika, CC Ibeh, AS Nwabueze, O F Emelumadu and CC Nnebue, 'The Epidemiology of Female Genital Mutilation in Nigeria', (2018) 6(1) *A Twelve Year Review Afrimedic Journal*,1-10.

[15]*Ibid.*

[16]*Ibid*.

[17] L Igwe, "The Osu Caste System", https://mm-gold.azureedge.net/Articles/Leo_Igwe/Osu_caste_system.html accessed on 6/8/2019

[18]*Ibid*.

confinement, grief, boredom, anger, mental torture and hallucination.[19] The advent of Christianity has, to a small extent, reduced the incidences of such practices.

**Disinheritance of Women: T**his is a cultural belief that women (married and unmarried) do not have the traditional capacity to own land. This is mainly played out in very many cases instituted at the customary courts, where in tracing the root of title of a litigant from the founder of the land to himself, only men are reckoned with. An unmarried woman who lives in her late father's house is merely accommodated at the prerogative of her brothers and cannot share in her father's estate. A married woman can only make use of lands apportioned to her by her husband while the marriage subsists. Where the man dies, the ownership of his property reverts to brothers except where he had sons. This practice, though still prevalent has been abolished by the Supreme Court decision in *Ukeje v Ukeje*.[20]

**Ostracism and Banishment**: These are cultural sanctions meted out on defaulters of the norms and values of the Igbo society. Both involve rejection and exclusion of a person form the community or association and its activities. Banishment takes the offender out of the community usually in the most dehumanized manner until he is pardoned or the period of banishment elapses. In the case of ostracism, the offender stays within the community but is totally excommunicated from other members of the community. The torture associated with these practices are capable of making the victims commit suicide as man is by nature a social animal who cannot exist successfully in isolation.

No doubt, harmful traditional practices inflict emotional, economic and social hardship on their victims by subjecting them to unjustifiable inhuman treatment and loss of good life.[21] These practices have remained prevalent due to social factors such as peer pressure, societal acceptance and parental pressure borne out of fear of ostracism and family shame.[22]

## 4. Law as a Panacea to Eradicating Harmful Cultural Practices in Igbo Land

Culture is synonymous with the terms "custom" and tradition" applicable to a given people in the conduct of their affairs. This is evident in the definition of custom offered by Ndoma Egba, JCA in *Aku v Aneku*[23]as:

> …the unrecorded tradition and history of the people, practiced from the dim past and which has grown with the growth of the people to stability and eventually becomes an intrinsic part of their culture. It is a usage or practice of the people which by common adoption and acquiescence and by long and unvarying habit has become compulsory and has acquired the force of law with respect to the place or the subject matter to which it relates.

[19]O N Ihekwuaba and I AAmasiatu, 'Influence Of Widowhood Practices On The Psycho-Social And Physical Health Of Widows In Selected States Of South-Eastern, Nigeria' (2016) 4(6) *European Journal of Research and Reflection in Educational Sciences*,59

[20](2014)LPELR 22724 SC

[21] M Eseyin and S E Udoh, 'Cultural Re-Engineering: The Way Out Of Human Rights Subversion In Sub Saharan Africa, Nigeria A Case Study' (2015) 3(4) *Global Journal of Politics and Law Research*.71-84

[22]U UEpundu, *et. al, op.cit*.

[23] (1991) 8 NWLR (Pt. 209, p.280 at 292

As laws, these cultures/customs constitute organic norms of the people regulating their behaviour and transactions.[24] Law is a set of rules and regulations that guide human conduct in the society. It tells us what to do and what not to do. It also outlines our fundamental human rights and duties.[25] While customs regulate human affairs, they are also regulated by other legislations to ensure they are not used as objects of human rights violation.

The Constitution of the Federal Republic of Nigeria is the bedrock of the recognition and enforceability of any custom in Nigeria. Section 21 of the Constitution imposes a duty on the Nigerian State to protect, preserve and promote Nigerian cultures which enhance human dignity and are consistent with the fundamental objectives as provided in the Constitution. In achieving this cause, the Constitution has provided for the creation of courts specially empowered to deal with questions of customary law. Section 280 provides for the establishment of a Customary Court of Appeal for any State that requires it to decide questions of customary law referred to it on appeal[26] against the decisions of the customary court. By section 6(5)(k*)* of the Constitution, a State House of Assembly is empowered to make laws for the establishment of courts to adjudicate matters with respect to which the House can make laws. Customary courts are therefore creations of the States. To further demonstrate the recognition given to our culture, the Constitution provides for appointment of a legal practitioners to the Supreme Court and Court of Appeal who are knowledgeable in customary law.[27]

Universal human rights also has respect for and facilitates the protection of cultural diversity and integrity as evidenced through the preservation of cultural rights as embodied in human rights instruments. These rights include the right to cultural participation, the right to conservation, development and diffusion of culture, the right to protection of cultural heritage, protection of persons belonging to ethnic, religious or linguistic minorities, and freedom from discrimination. The Vienna Declaration provides explicit consideration for culture in human rights promotion and protection, stating that "the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind"[28]

The fundamental right to engage in cultural practices is also guaranteed by Section 38(1) of the Constitution which provides that:

> Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

This right is however not absolute as it can be derogated from in the interest of defence, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedom or other persons.[29]

[24]*Oyewumi v Ogunsesan* (1990) NWLR P. 137, P. 182
[25] Law as an instrument of social engineering http**://** www.slideshare.net//Harshagraw 1996 accessed on 3/6/19
[26] Constitution of the Federal Republic of Nigeria 1999 as amended section 282
[27] *Ibid* S*ection 288(1)*& (2)(b)
[28]M Eseyin and S E Udoh, *op. cit*.
[29] *Op cit* section 45(1)

Despite the enormous Constitutional recognition given to culture/customary law, its applicability is not automatic; it is subject to rigorous test of validity known as the Repugnancy Test imported into our laws by the incidence of colonialism and the supremacy principle of the Constitution which is to the effect that no custom being a law shall be valid which is inconsistent with the provisions of the Constitution.[30]

The validity test of customary laws in Nigeria could be said to originate from the decision in the case of *Eleko v Government of Nigeria*[31] in which case, Lord Atkin said:

> The court cannot itself transform a barbarous custom into a milder one. If it stands in its barbarous character it must be rejected as repugnant to natural justice, equity and good conscience.

This position of the law is *in tandem* with the provisions of *section 16* of the Evidence Act[32] which clearly states that:

> Provided that in case of any custom relied upon in any judicial proceeding, it shall not be enforced as law if it is contrary to public policy and is not in accordance with natural justice, equity and good conscience.

The Courts saddled with the judicial responsibility of ensuring the observance of customary law of the people in the area of their jurisdiction must ensure that such customs pass the validity test as stated above. It was against this background that the British subjected our customary law to tests to remove superstitious and harsh elements – and to conform it to a more universal standard of morality. This explains why Elias has argued that the doctrine of repugnancy has positive effect on the development of our customary law by the elimination of gross injustice inherent in its application[33] Uwais, J. S. C. in *Okonkwo v Okagbue and Ors*[34] has argued that: 'equity in its broad sense, as used in the repugnancy doctrine is equivalent to the meaning of 'natural justice' and embraces almost all, if not all, the concept of good conscience. The logic here is that a good custom or law must conform to the universal concept of what is 'good, just and fair'.[35]

Where cultural practices become harmful, they constitute crimes punishable by law. By section 15 of the Violence against Persons (Prohibition) Act (VAP),[36] harmful traditional practices against a widow are prohibited. Section 20 of the Act further prohibits such harmful practices against any other person. *Section 6* prohibits female gender mutilation[37].

To further check mate the excesses of these traditional practices, the Constitution prohibits criminal trials under unwritten laws by persons or institutions other than the courts. Section 36(12) provides that:

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[30] *Ibid* section 1(3)
[31] [1931] A.C. 662, 673
[32] Cap 214 Laws of the Federation of Nigeria 2011
[33] B A Nkor, "The Validity of Customary Law as a Source of Nigerian Law" https://nigerianlawclass.wordpress.com/2014/07/26/the-validity-of-customary-law-as-a-source-of-nigerian-law-by-burabari-adule-nkor/ accessed on 5/8/2019
[34] (1994)9 NWLR (Pt.308)301
[35] *Ibid*
[36] 2015
[37] See also the Child's Right Act.

> Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law; and in this subjection, a written law refers to an Act of the National Assembly or a Law of a State, or any subsidiary legislation or instrument under the provisions of a law.

There is no doubt that the immediate implication of the above constitutional provision for traditional Igbo criminal justice is that insofar as the Igbo criminal law and principles are not enacted into a written law by the appropriate legislative body, the continued implementation and administration of criminal justice would be clearly unconstitutional and illegal.[38] The Nigerian courts have had the opportunity to make pronouncement on the provision. Hence, in *Aoko v Fagbemi*,[39] the court declined jurisdiction on a charge of adultery because adultery is not one of the offences in Criminal Code in the Southern part of Nigeria. The court maintained the same attitude in *Udokwu v Onugha*.[40]

Secondly, by section 36(4) criminal trials must take place in a court or tribunal established by law. The effect is that since the courts in question are those recognized by the Constitution expressly or by implication, such fora as the village assembly, town unions, masquerade societies, *umunna*, age grade, and so on by which traditional criminal justice is dispensed can at best be described as kangaroo courts in the eye of Nigerian criminal justice system which views them as unconstitutional, illegal, and lack jurisdiction.[41]

More so, these obnoxious cultural practices have been outlawed in our Human Rights Law. Section 34 of the Constitution guarantees the right of every citizen to respect for dignity of his human person. No person is permitted to be subjected to any kind of torture or cruelty. The international legal instruments are not left out in placing a check on the practice of culture in Nigeria.

While there have been recent developments in the implementation of these laws like what we saw in the case of *Ukeje v Ukeje*[42] where the inheritance right of female children to share in their father's estate was affirmed, the progress in this regard has been slow. This is however not peculiar to Nigeria. In the United Kingdom, the first conviction for female genital mutilation came in 2019 after three decades the practice was banned. The mother of a young girl was found guilty in a London court of committing female genital mutilation. The 37-year-old woman, originally from Uganda, performed the procedure on her daughter in their north London home in 2017 when the child was three years old, according to the Crown Prosecution Services, which brought the case to trial.[43]

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[38] I K E Oraegbunam,'Crime And Punishment In Igbo Customary Law: The Challenge Of Nigerian Criminal Jurisprudence', https://www.ajol.info/index.php/og/article/view/57917/46285 accessed on 5/8/2019

[39](1961) ANLR 40

[40](1963) 7 ENLR 1

[41]I K E Oraegbunam, *ibid.*

[42] (2014)LPELR 22724 SC

[43] V Romo, "In UK First, Court Convicts Mother Of Female Genital Mutilation" https://www.npr.org/2019/02/01/690883335/in-uk-first-court-convicts-mother-of-female-genital-mutilation accessed on 5/8/2019

**Conclusion**

From the foregoing, it is indubitable that the Igbo man has so many cultural practices designed to advance his life, some of which are obnoxious in nature. Adequate Constitutional and statutory provisions for the preservation, promotion and regulation of such cultural practices have been found to exist. Regrettably, we are regularly confronted with practices that are utterly in gross violations of our laws without a commensurate prosecution. The *Osu* caste system, widowhood practices, female genital mutilation, etc. are still on the increase. We commend the judicial courage exhibited by our courts in recent times in stopping these practices but more work needs to be done as the progress is very slow. To curb these practices, massive sensitization of the public is recommended to educate them on the dangers of such practices and dissuade people from engaging in them. This is a veritable tool in achieving this purpose as use of force may be counter-productive. Such obnoxious acts are usually committed collectively by members of the community against an individual or a class of persons in the society. So, it is difficult to enforce these laws prohibiting the obnoxious acts against them. It is noticeable that cultural practices have force and are easier complied with than the legislations. This is because a child is taught his cultural practices from a tender age and at adulthood, he is rooted in them. A child can also be taught to avoid the obnoxious practices in the same manner, he is taught to practice them. It is recommended that a new form of socialization be adopted to unlearn the obnoxious practices.

Institutions charged with the responsibility of enforcing the legal regime should be revamped to be able to meet up with the demands of the law.