

# Polygamy and Marital Property Rights: An Examination of Legal Gaps and Judicial Interpretations in Northern Nigeria

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## Abstract

## Original Research Article

Islamic, customary and statutory law all impact the way marriages work in Northern Nigeria where polygamy is still the most common type of marriage. Polygamous marriages are tolerated in some cultures but they create complicated problems with the rights of spouses to marital property especially for women. This study looks at the laws that govern polygamous marriages and how property rights are understood and enforced in statutory, Islamic and customary settings. The study adopts a doctrinal approach to look at statutory provisions, Shariah principles, customary norms and court decisions to show important legal gaps and contradictions that make it harder for spouses especially women, to settle property disputes. The study also looks into how formal law and traditional practices interact with each other, showing how these tensions make property claims more difficult in polygamous homes. It says that spouses in polygamous marriages will still have weak property rights until there are major changes to the law and better ways to enforce it. The report ends by suggesting legal changes that take into account cultural differences and try to balance protecting property rights with respecting religious and cultural traditions. The results add to the continuing debates in Northern Nigeria concerning family law reform, gender justice and legal pluralism.

**Keywords:** Polygamy, Marital Property Rights, Family Law, Islamic Law, Customary Law, Gender Justice.

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## INTRODUCTION

Polygamy or having more than one spouse at the same time, is a deeply ingrained social and legal practice in Northern Nigeria. Polygamy is still common in the region especially in towns where Muslims make up the majority (Ostien, 2007). This is because of Islamic religious rules, social norms and laws. Polygamy is deeply rooted in some cultures and is typically seen as a valid way to be married. However, it creates complicated legal problems especially when it comes to dividing and protecting marital property rights amongst spouses. Islamic law (Shariah) is supposed to give clear rules about marriage, property ownership and inheritance. Its goal is to balance the rights and duties of everyone involved (Qutb, 2000). Customary law also recognises property relations within polygamous families, though there are big differences amongst ethnic groups such the Hausa, Fulani and Kanuri, and it is often biased towards men (Kukah, 1993). However, statutory provisions like the Marriage Act and the Matrimonial Causes Act were originally written with monogamous marriages in mind and do not provide much direction for polygamous relationships which leaves big legal gaps (Ewelukwa,

2002).

When these three legal systems; statutory, Islamic and customary come together, it might be hard to know how to enforce marital property rights fairly. In family law matters, judges have had a hard time making sure that spouses especially women are always protected in property conflicts that come up in polygamous marriages (Ostien, 2007). When a woman gets divorced or her husband dies she is often left open to losing her property or having financial problems since courts switch between different legal concepts and community norms (Tahir, 2003). Because of all these factors, this study aims to critically look at the current legal frameworks that control property rights in polygamous marriages in Northern Nigeria. The study uses a doctrinal research method that looks at statutes, case law, Islamic jurisprudence and scholarly commentary. The goal of the study is to find the most important legal loopholes, point out anomalies in how judges handle cases and suggest changes that will better safeguard the property rights of married people while still respecting the region's cultural and religious norms.

This study provides to the deeper discussions on gender

justice, family law reform and the problems that come with having more than one legal system in Africa by focussing on Northern Nigeria. It also shows how traditional and religious traditions can be made to work with the changing needs for fairness and human rights in family relationships.

## Statement of the Research Problem

Even though polygamy is common in Northern Nigeria, the laws that govern property rights in these kinds of marriages are still not fully evolved and do not always make sense. The Marriage Act and the Matrimonial Causes Act do not give much help to polygamous marriages. Islamic and customary laws are more comprehensive but they are sometimes not implemented the same way in all communities and courts. This broken legal system makes it very hard for spouses especially women to claim their rights to marital property during divorce, separation or inheritance processes. Judges' interpretations often change between formal legal rules, religious rules and social norms which can lead to conclusions that are not always fair and not always predictable. Many people especially women in polygamous relationships are economically and socially vulnerable because there are not clear consistent legal rules. The goal of this study is to look closely at these legal gaps and inconsistencies and suggest changes that may help preserve marital property rights more fairly in Northern Nigeria's multiple legal system.

## OBJECTIVES OF THE STUDY

1. To examine the legal frameworks and judicial interpretations of marital property rights in polygamous marriages in Northern Nigeria.
2. To identify legal gaps and propose reforms to enhance the protection of spouses' property rights within the region's plural legal system.

## METHODOLOGY

This study utilises a doctrinal research technique that mostly uses secondary sources to look at the legal frameworks that govern marital property rights in polygamous marriages in Northern Nigeria. The study looks closely at statutory laws such as the Marriage Act and the Matrimonial Causes Act, as well as important parts of Islamic law and common practices in the area. It also look at court decisions from Sharia, customary and statutory courts to see how they have understood and used property rights in polygamous situations. The study's main sources of data are scholarly articles, textbooks, law reports and reports from institutions. Minimal primary material such court records and legal opinion that are available to the public is used to back up doctrinal results as appropriate. The study employs a qualitative analytical technique to find gaps, inconsistencies and areas that need to be changed. It focusses on making sure that legal safeguards are the same across Northern Nigeria's multiple legal system.

## Conceptual Review

**Polygamy:** is a type of marriage in which a person has

more than one spouse at the same time. It is still a common practice in many African societies especially in Northern Nigeria. Islamic and customary law are the main places where it is practiced and it is typically considered as a social and religious norm. The Qur'an states that polygamy is permitted under certain conditions, such as treating all wives fairly. However, different people have different ideas on what these requirements are (Esposito, 2018). In Northern Nigeria, the practice is very common, especially among the Hausa, Fulani, and Kanuri ethnic groups, each of which has its own regulations and customs for polygamous marriages (Abubakar, 2020).

**Marital Property Rights:** are the legal rights of married people to own, divide and inherit property during and after their marriage. In many legal systems, marital property is divided into joint and separate property, with each spouse having different rights to it. In polygamous marriages, on the other hand, dividing up property is harder because there are more spouses which sometimes leads to fights and unfair results especially for women (Suleiman, 2021). In Northern Nigeria where Islamic and customary law control property relations in polygamous marriages, women's rights to property are generally less important than men's rights to inherit property. This causes legal and social stress (Ostien, 2007).

**Legal pluralism:** This is when more than one legal system works in the same area. This is especially common in Northern Nigeria where statutory law, Islamic law and customary law all work together. This plurality makes it harder to administer justice especially when it comes to family law. For example, judges have to deal with the confluence of many different systems when they settle property issues in polygamous marriages. It is hard to make sure that all spouses are treated fairly because Islamic law which often has specific rules for property rights in polygamous unions and statutory law which was mostly written with monogamous marriages in mind do not always agree (Kukah, 1993; Ewelukwa, 2002). Customary law makes things even more complex because different ethnic groups have distinct ways of doing things and property rights may not always be applied the same way (Suleiman, 2021).

Polygamy, marital property rights and legal pluralism all come together to provide a complicated legal situation that needs to be carefully looked at in order to fill in the gaps and fix the problems with how property rights are protected for spouses in polygamous marriages in Northern Nigeria.

## LEGAL FRAMEWORK

### Statutory Law

Colonial English legal traditions, which solely recognised monogamous marriages under the law are the main source of Nigeria's statute law on marriage and property. The Marriage Act of 1914 sets the rules for weddings that are legal but it does not allow polygamous marriages. According to this law, a lawful marriage must be between one man and one woman. If someone gets married again while they are still married, that marriage is not valid (Marriage Act, Section 33). Because of this,

polygamous marriages which are common under Islamic and customary law are not protected by the law. The Matrimonial Causes Act (1970) also covers divorce, child support and property settlements for legal marriages. It does not, however, offer any direct ways to settle property conflicts between spouses in polygamous marriages that are legal under Islamic or customary law (Ewelukwa, 2002). Because of this, spouses in polygamous marriages can not get most of the legal protections that monogamous spouses may, like fair property division when they get divorced. The gap in the law makes people especially women are more vulnerable when their marriage ends or when their spouse dies. Judges have tried to close these gaps but they often fail to apply statutory principles to non-statutory marriages which keeps spouses in polygamous partnerships unequal and unsafe (Oba, 2002). The fact that statutory law does not apply very well to polygamous marriages shows how important it is to have a legal structure that is more open and represents the realities of marriage in Northern Nigeria.

### Islamic Law (Shariah)

Islamic law or Shariah, is a major source of personal status law in Northern Nigeria. Since the restoration of Shariah penal and civil codes in 1999, Shariah has been part of the state legal systems (Ostien, 2007). The Qur'an says that a man can have up to four wives as long as he respects them all the same (Qur'an 4:3). Islamic law says that property rights in polygamous marriages are based on the idea of distinct ownership. This means that each spouse keeps ownership of any property they buy or receive as a gift during the marriage. Islamic law does not automatically assume that spouses own property together but they can choose to do so. Islamic inheritance rules (fara'id) decide how a person's estate is divided after they die or are divorced. If a man has more than one wife, each wife is entitled to a certain share of his inheritance. If there are children that share is normally one-eighth; if there are no children, it is one-fourth (Esposito, 2018). If the guy has more than one wife they all get this part equally.

Islamic law is clear about what it says but how it is carried out in Northern Nigeria is very different since Islamic scholars and judges (ulama and qadis) interpret it in different ways (Suleiman, 2021). Some interpretations are better at protecting women's property rights while others support patriarchal norms that limit women's economic rights. Also, societal, economic, and gender restrictions sometimes make it hard for women to get to Shariah courts which makes it harder for them to defend their property rights.

### Customary Law

In Northern Nigeria, customary law, which is made up of the practices and rules that communities recognise as binding is still an important source of rules for marriage and property. Different ethnic groups have quite different customary rules yet they all have some things in common when it comes to property ownership and polygamous marriages. In polygamous marriages, men are usually seen as the main owners of family property while

wives only have secondary or usufructuary rights. This means that wives can use property throughout marriage but do not have full ownership or inheritance rights (Kukah, 1993).

Under customary law, inheritance tends to favour male descendants leaving widows and daughters out or on the fringes. Widows in some ethnic groups can still live on the family property but they lose ownership of it when they remarry or when their male heirs turn 18 (Abubakar, 2020). These traditional ways of doing things often put women in dangerous situations especially when a husband dies and there are property disputes amongst co-wives or between wives and other family members. Also, most customary rules are not written down and traditional authorities make decisions based on what has happened before and their own judgement. Because property rights are not clearly defined, they are applied in different ways which makes things even more unclear for women in polygamous marriages. Even though customary courts are there to settle conflicts the decisions they make typically reflect social norms rather than consistent ideas of fairness or gender equality (Oba, 2002). In Northern Nigeria, regulating marital property rights is even harder because communities combine Islamic and traditional practices in different ways. Sometimes, they reinforce the most conservative interpretations which hurts women's rights.

### Polygamy in Practice: Customary and Islamic Perspectives

Polygamy is allowed in both Islamic and traditional systems in Northern Nigeria, although the way it is done varies based on social, cultural and religious factors. Islamic teachings set rules for polygamy like requiring fair treatment of all women. However, customary practices are frequently more flexible and depend on local traditions. Islamic law allows a man to have up to four wives but only if he can treat all of them properly when it comes to housing, upkeep and emotional support (Qur'an 4:3). The Prophet Muhammad (SAW) taught that spouses who are unfair to one other could suffer spiritually which is why people should think carefully before becoming married to more than one person (Esposito, 2018). But in real life, a lot of polygamous marriages in Northern Nigeria fail to adhere to these rules. Common problems include lack of money, favouritism and fights between co-wives. Islamic courts do offer some ways for wives to get help for neglect or unfair treatment but social constraints typically stop women from going through the legal system (Suleiman, 2021).

In many Northern Nigerian societies, polygamy has been around longer than Islam. For example, among the Hausa, Fulani and Kanuri ethnic groups, polygamy used to serve social and economic purposes such as pooling wealth, strengthening family ties and making sure there was enough labour for farming (Abubakar, 2020). Customary polygamous marriages are often less formal than Islamic ones with fewer legal obligations to treat everyone fairly. The husband is usually seen as the head of the extended family and co-wives are expected to work together on household and business tasks. The husband usually owns



all the property and disputes between co-wives are settled by family elders or traditional rulers instead of formal courts (Kukah, 1993).

It is important to note that there is a lot of overlap between Islamic and traditional traditions. In a lot of places, Islamic marriage ceremonies are mixed with traditional ones which generates new kinds of polygamy. Islamic teachings may stress justice but cultural norms may support male supremacy and put the senior wife's rank above that of other wives. This mixing makes it harder to enforce marital rights and makes it even less clear how property will be divided after a divorce or death.

Overall, the facts of polygamy in Northern Nigeria show how different the law is from what people actually do. They show how hard it is for spouses especially women to stand up for their property rights in polygamous marriages that are governed by both religious and customary rules.

### **Marital Property Rights and Judicial Interpretation**

In Northern Nigeria, the issue of marital property rights in polygamous marriages is very complicated especially because of the way that statutory, Islamic and customary legal systems work together. When marriages are not covered by the law, courts typically have to decide who owns what property based on Islamic and customary law.

Islamic law says that property rights in marriage are based on the idea of separate ownership. Unless both spouses agree to share ownership, each spouse keeps control of the property they earn throughout the marriage (Esposito, 2018). When a couple gets divorced the wife only gets her own things plus any deferred dower (mahr) that was agreed upon at the time of marriage. Islamic law gives wives fixed portions in inheritance, however the part that a wife or co-wives gets may be smaller than the share that male heirs get (Ostien, 2007).

In customary law, property rights are usually held by men. Traditionally, men are in charge of family property and women's rights to land or assets are often usufructuary which means they can use property but not own it. When a spouse dies, his property usually goes to male heirs and widows are given temporary usage rights that are sometimes tied to their staying in the late husband's home (Abubakar, 2020). The Nigerian courts have tried a number of times to figure out property rights in marriages that are not legal. But there have been discrepancies because there is not a defined legal foundation for polygamous marriage property rights. When people get married in Islamic or customary law, courts have sometimes used fair principles like "constructive trust" or "resulting trust" to protect a spouse's stake in property that was bought during the marriage (Oba, 2002). These judicial interventions are not required and depend a lot on the individual facts of the case and the judge's willingness to try new things in the multiple legal system.

It is important to note that courts have been hesitant to make big changes to established property rules. Because their marriages didn't follow the law, many women in polygamous relationships have lost important property rights when they got divorced or became widows

(Ewelukwa, 2002). So, women's access to marital property rights in polygamous marriage depends a lot on informal family structures or customary norms which often work against them.

As a whole, the way the courts in Northern Nigeria interpret marital property rights shows both the shortcomings of the diverse legal system and the ongoing conflict between statutory, Islamic and customary norms. There is still a big difference between the legal protections that women in monogamous formal marriages have and the ones that women in customary or Islamic polygamous relationships have.

### **ANALYSIS AND DISCUSSION**

The rules of property rights in polygamous marriages in Northern Nigeria show how difficult it is to have a legal system with more than one set of rules. There are three types of law in the country: statutory law, Islamic law and customary law. These laws mostly work on their own which means that spouses especially women, do not always get the same protections. Firstly, the Marriage Act and the Matrimonial Causes Act, which are examples of statutory law, do not recognise polygamous marriages. Because of this, spouses in polygamous marriages do not have the same legal safeguards for dividing property and inheriting as spouses in monogamous marriages (Ewelukwa, 2002). This legal prohibition hurts women the most because they generally rely on their spouses for money and are vulnerable when their marriage ends or their husband dies.

Secondly, Islamic law gives an obvious framework to marital property and inheritance with a focus on distinct ownership and particular shares for wives. But in real life, these rules do not always follow the Qur'anic standards. Judges and traditional authorities may interpret Islamic principles in ways that support patriarchal norms which makes it harder for women to own property even though Islamic law is meant to be fair (Suleiman, 2021). Thirdly, customary law practices are very different from each other yet they usually show deeply embedded patriarchal views. In traditional polygamous marriages, women's property rights usually only include the right to utilise property, not to own it. Inheritance customs sometimes favour male heirs over widows and daughters (Abubakar, 2020). The fact that customary law is not written down makes things even worse because it leads to unfair and inconsistent decisions in marital property disputes.

The courts have sometimes tried to make things fairer by using ideas like constructive or resultant trusts to give women credit for their work on marital property. But these kinds of interventions may not always be planned or methodical, and they often depend on the judgement of each judge (Oba, 2002). This lack of predictability makes many women less likely to go to court and keeps their property rights from being recognised.

The mixing of Islamic and traditional customs in Northern Nigeria makes the problem even bigger. Islamic law give wives' rights more structure than customary law but in fact, communities often mix parts of both systems in ways that favour old patriarchal views. Because of this, women who

are married according to Islamic law may have the same worries about property rights as women who are married according to conventional law.

Finally, these problems are made worse by the fact that there is no comprehensive legal reform that deals with polygamous marital property rights. Legislators have not done enough to deal with the realities of polygamous marriages which means that millions of women do not have clear legal options if they get divorced or become widows. Women in polygamous partnerships will keep being legally and financially weak until there are specific changes that bring together statutory, Islamic and customary rules.

## Problems and Gaps in the Law

When looking at the property rights of married people in polygamous partnerships in Northern Nigeria, a number of important problems and legal gaps were identified:

- i. The law does not recognise polygamous marriages, therefore spouses cannot get the protections of the Marriage Act and the Matrimonial Causes Act especially when it comes to dividing property after the marriage ends.
- ii. There has not been a clear way for courts to handle property disputes in polygamous marriages which has led to unpredictable results and little use of fair concepts like constructive trusts.
- iii. Customary traditions typically favour men when it comes to ownership and inheritance leaving women in secondary roles with few or no property rights especially after divorce or the death of a spouse.
- iv. Islamic law gives wives property rights but local interpretations often weaken these protections by mixing them with traditional practices that support male supremacy.
- v. There is no law that protects the property rights of women in polygamous marriages, which means millions of women are legally vulnerable and have no formalised ways to protect themselves.
- vi. Many women, especially those who live in rural areas do not know what their rights might be under Islamic law or fair concepts and they have trouble getting to the courts because of social and financial hurdles.
- vii. There is legal confusion since statutory, Islamic and customary rules all exist at the same time without clear ways to make them work together. This keeps systematic gender inequity going.

## RECOMMENDATIONS

To solve the problems with marital property rights in polygamous marriage in Northern Nigeria, it is necessary to make changes to the law, the courts and society as a whole. First, the situation requires the government to step in right away. The National Assembly and the appropriate State Assemblies should make laws that clearly recognise polygamous marriages and spell out

the property rights of spouses. This kind of law should take the best parts of Islamic law's separate property structure and make sure that women's contributions to property division both financial and non-financial are taken into account properly.

Second, it is important to train judges and enhance their skills. Judges and lawyers need to know more about fair principles like constructive and resultant trusts and how to apply them carefully to help vulnerable spouses without hurting the cultural and religious aspects of marriage.

Thirdly, there should be public awareness efforts to teach communities especially women, about their rights under Islamic law and the possibility of getting fair justice in court. Religious leaders, community leaders and non-governmental organisations all have important responsibilities to play in altering people's minds and making it easier for women to get justice.

Fourthly, customary and Islamic rules about marriage and property need to be made more compatible in ways that respect women's rights without going against cultural values. Talking to traditional leaders, religious experts and women's rights groups can assist make community-led changes that last longer and are more broadly accepted.

Lastly, legal aid programmes need to be expanded especially in rural areas so that women who want to protect their property rights can get help that is either free or cheap. Even the strongest reforms may not reach the women who need them most if they do not have access to legal representation.

## CONCLUSION

In Northern Nigeria, polygamous marriages have complicated rules on property rights. This is because there are three different types of law; statutory, Islamic and customary, that typically works against women. Islamic law has explicit rules and equality concepts suggest possible solutions yet many women are still at risk because there is no clear legal recognition and patriarchal customs have been in place. In certain circumstances, judicial interventions have proven useful but they are not enough on their own without major changes. To make a real difference, we need to pass laws, come up with new ideas in the courts, get people involved at the grassroots level and keep the community involved to make the system fairer and more just for all spouses in polygamous partnerships. If these measures are not made, women in these kinds of marriages will probably continue to feel unsafe in their jobs and in the law, which would hurt the bigger aims of justice and gender equality in Northern Nigeria.

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