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THE LEGAL REGIME OF SINGLE PARENTHOOD IN NIGERIA

BY

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INTRODUCTION

1.1 BACKGROUND OF STUDY

In Nigeria today, there is a growing phenomenon of single parenting caused by many factors ranging from divorce, separation, cohabitation in various forms that do not constitute marriage i.e. trial marriage, cohabitation, boyfriends and girlfriends, concubinage, sugar daddies, sugar mummies, prostitution, rape, campus couples, live-in-lovers etc.[1] These relationships have led to procreation of one or more children while parents are living apart because the marriage broke down or there was no marriage at all.[2] This phenomenon which was initially viewed as deviant and dishonorable is gaining acceptance of the society.[3] The phenomenon has also raised several legal issues bordering on the legal status of the single parent, the child of the single parent, whether legitimate or illegitimate? In whose custody should such child be or who has paternity of the child? Who may train the child and what is the inheritance right of the child, testate or intestate?

More fundamental problems are the succession right of the child, maintenance of the child and the right of the child to education, food, shelter, health, security, and other essentials of life. Nigeria being a country with plural legal system where customary law, Islamic law, and English law by virtue of colonialism hold sway has not provided solution to these nagging problems. It is in the light of this, that this researcher wants look at the law in Nigeria including constitutional provision in order to reveal the inherent inadequacies of our law on these salient issues which are rights of single parent, right of child of single parenthood, his/her inheritance and legitimacy. Nigeria as a state has a crucial role to play in policy formulation and implementation on the issues while the National Assembly also has crucial role to play in restoring order and equitable social change in the area of single parenthood especially single mother which had been acclaimed to be over whelmingly higher than single fathers globally.[4]

1.2 STATEMENT OF THE PROBLEM

The problem of single parenting is pervasive of all culture, nations and creed.[5] It is also reflected in the three types of marriages we have in Nigeria. Under customary law marriage, divorce and separation is common. Under Islamic law, divorce and separation is equally common while under the English law marriage that is even a bit complex and difficult to dissolve, divorce and separation is still prevalent apart from other factors that lead to single parenting.

This research work in view of the pluralism of our legal system(customary law, Islamic law and English law), will look at single parenting, illegitimacy and the attendant social stigma of illegitimacy and the constitutional remedy in section 42(2) of the 1999 Constitution of the Federal Republic of Nigeria as amended. We shall look at what is the effect of this constitutional provision on an illegitimate child under customary marriage, Islamic marriage and Christian marriage.

Since the issue of inheritance is always re current and revolves round legitimacy or illegitimacy of a child under single parenting,[6] the research work will look at paternity of a child, and proof of it by legal and medical evidence. Custody and maintenance of a child by a single parent will also be researched into. This research work shall also look at the causes and effect of single parenting on the child, on the spouses and the society at large and finally recommend strategy to reduce incidence of single parenting in Nigeria.

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[1] Nigeria single parent- Mindle 2. Com- All United States > minesota>Nigeria –15-3-13

[2] Lagos Nigeria single parent- mingle 2.com>All>kech tous tein>Balzers>Lagos Nigeria 15-3-13.

[3] Emergence of Single parenthood in Nigeria and its implication on child rearing.W.W.W acrodenia, edel/660340/eruergence>single parenting: Living with the trend W.W.W. this day live, com>Home>News

[4] Libertad Gonzalex the Determinants of the prevalence of single mother: A cross country Analysis IZA Documen t 2005 p8.

[5] Emergence of single parent in Nigeria and its implication on child rearing op cit.

[6] Okoli v Okoli NWLR (part 823) 565.

1.3 OBJECTIVE OF THE STUDY

The aim and objectives of the study is to look at the legal status of single parents under the municipal and international law. And since single parenting sometimes involves the legitimacy or otherwise of any child of the former husband or wife, this research work aims at showing clearly factors that can lead to single parenting and controversies that could emerge from single parenting such as paternity of the child of a former marriage or in non-marital child bearing, who is the father of the child?

The researcher also aims to bring out clearly how to prove paternity of a child under single parent debacle. And also to show clearly that once the issue of paternity is resolved or the father acknowledged paternity, the child can inherit both the father and the mother in the event of death of the parents irrespective of the fact that they were not living under the same roof.

The aims and objective of the research also include suggesting ways on how to fill the lacuna in the law on a child born out of wedlock, to suggest how the stigma also associated with illegitimacy can be eradicated in view of the fact that most non-marital child bearing are results of rape, incest and child sexual abuse and exploitation or forced prostitution and finally to suggest strategy to reduce single parenting and recommend state support for single parents resulting from rape, incest, forced prostitution, child marriage, child sexual abuse and exploitation.

1.4 SIGNIFICANCEOF THE STUDY

This research work intends to achieve the following significance.

To serve as a reference material for those who intend to carryout research on the topic or give meaning to it. This research work critically analyzes the position of illegitimate children as regards to succession.

It equally analyzes the meaning of legitimacy and illegitimacy as abolished by the 1999 constitution as amended. This work also delves into meaning of single parenting, the causes, the effect and the stigma on the single parent.

It provides necessary recommendation in which the lacuna that still exists in spite of the constitutional provision can be addressed with a view to further enhancing the status of person born out of wedlock

1.5 SCOPE AND LIMITATION

This research covers the Legal Status of single parent and illegitimate children and the right to succession of an illegitimate child under the Islamic law, customary law and English law.

The work also extends to legitimacy under the provision of the 1999 constitution as amended, Child Right Act 2003, African Union Charter on Rights and Welfare of the Child and lastly the United Nation Convention on of Right of the Child.

1.6 RESEARCH METHODOLOGY

The method to be employed here in carrying out the research would be by means of doctrinal method which is mainly documentary. Information would be sourced from textbooks, internet, journals writings of jurists and public lectures delivered by various scholars.

1.7 ORGANIZATIONAL LAYOUT

This work has a total of five chapters. Chapter one is the introduction chapter, hence, it's concerned with issues as background study, statement of problem, objectives of the study, research methodology and the organization layout.

Chapter two has to do with the nature of single parenting which is further divided into meaning of single parent, the causes of single parenting, incidence of single parents globally, stigmatization of single mother in Africa, effects of the single on the single parent, effects of single parenting on the child, effects on the society at large and strategy to reduce incidence of single parenting.

Chapter three on its own is concerned with legitimate and illegitimate child, which is splinted to include meaning of legitimacy, who is a legitimate child and the paternity controversy; the use of DNA test to ascertain paternity, Legitimation under the common law, the rights of an illegitimate child, and succession right of a legitimated child and Legitimation under Islamic law.

that single parenthood and children born out of wedlock cannot be totally eradicated because of the various natural causes like war, widowhood, natural disasters, rape, prostitution, incest, sexual exploitation of women and children among others.

We curiously looked at illegitimacy of a child, causes of and effects and prevention strategy is also suggested with a view to reducing the incidence of illegitimate children. The process of legitimation of illegitimate child under common law, Islamic and customary law was discussed. We also discussed the effect of legitimation of succession to the estate of the father or the mother of the otherwise illegitimate child. We also x-rayed the effect of section 42(2) of the 1999 Constitution on illegitimate child and we raised the question whether that section of the Constitution has sufficiently solved the problem of legitimacy of an illegitimate child?

We have also looked at international and regional instruments on single parenthood and illegitimate children with a view to showing that the comity of nations have all agreed to raise the status of otherwise illegitimate child at par with other children without discrimination and deprivation, the states are enjoined to make laws to fall in line with the international standard by giving the same legal status to children born in wedlock and those born out of wedlock. The right to custody of the child and right to maintenance of the wife and the child is also considered in the work.

The work also researched into the paternity question as germain to maintenance of a mother by the earstyle husband. The paternity could be acknowledge by the father or by proofs in court or through DNA test in the hospital either by consent of the parties or ordered by the court. Single parenthood globally is also discussed.

Observations

It has been observed in this work that single parent is inevitable in the contemporary world and that single mother far outweighs single father.

It is also observed that most fathers care less for their children who are not in their custody and many more fathers do not pay maintenance allowance or alimony to their ex-wife even when one or more of their children are in the custody of the wives in contravention of section 70 of the Matrimonial causes Act. We have also observed that with the provisions of section 42(2) of the Constitution of Nigeria 1999 as amended, there is no disparity or legal disability between children born within wedlock and those born out of wedlock in Nigeria.

We also observed that the international and regional contentions are similar in content and effect like Section 42(2) of the 1999 Constitution of Nigeria on the legal status of legitimate or illegitimate children.

Furthermore, we observed also that even under Islamic Law where legitimation of illegitimate child is impossible or not allowed, the Constitution of Nigeria being the grund norm supersedes Islamic Law in so far as Nigeria is a secular state as stated in Section 10 of the `999 Constitution of Nigeria.

Finally, we also observed that, as at now in Nigeria, both legitimate and illegitimate children inherit their fathers both under common law, Islamic Law and customary law and that single parenthood is now a choice by the affluent in the society who may not want to subject themselves to the leadership of a man called husband.

RECOMMENDATIONS

Having discussed that single parenthood is inevitable, however, it could be reduce, only if government can provide good governance, reduction of poverty and creation of jobs so as to reduce war and widowhood. Good governance can also reduce prostitution, sexual exploitation, rape, ritual killing and incest.

Government should support single parents who became single parents as a result of natural disaster, war, rape, incest, sexual exploitation and sexual abuse. The affluent who became a single mother by choice may not need such support.

Section 42(2) of the 1999 Constitution that erased the disability of hitherto illegitimate child should be enforced judicially and by executive actions in Nigeria.