



## OVERVIEW OF THE CONCEPTS OF LEGITIMACY AND LEGITIMATION UNDER THE NIGERIAN LAWS

Afolabi Saka Adebayo<sup>1</sup>, Aboderin Lawrence Omotose<sup>1</sup>  
and Aboderin Demilade Ifeoluwa<sup>2</sup>

<sup>1</sup>Directorate of General Studies, Osun State Polytechnic, Iree, Nigeria.

<sup>2</sup>Sociology Programme, College of Management and Social Sciences, Bowen University, Iwo, Osun State, Nigeria

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**ABSTRACT:** *This article examines the concepts of legitimacy and legitimation under the Nigerian Laws. It explains the two concepts that are similar in nature by discussing who is a legitimate child and who is an illegitimate child; it also discusses the legal implications of an illegitimate child and that of legitimate child. It discusses the rights and privileges of a legitimate child and also those of an illegitimate child. The article discusses the statuses of illegitimate child under Islamic law, statutory law, customary law, and under void marriage and voidable marriages. It goes further to discuss the provision of Section 42 (2) of the 1999 constitution of the Federal Republic of Nigeria (as amended) viz-a-viz the status of illegitimate children. The work reviews some relevant cases to the topic. It concludes by summarizing that it could be deduced that before a child could be regarded as legitimate, he or she must be a product of a valid marriage. However, the case of acknowledgement did not take this into consideration. The article recommends that the Legitimacy Act be made less stringent, that the date of legitimation should be made effective from the date of birth and not the date of legitimation and that the constitution should be amended to include punishment for whoever discriminates or make derogatory remarks about an illegitimate child, among others.*

**KEYWORDS:** Concepts, Legitimacy, Legitimation, Polygamy, Polygyny, Polyandry.



## INTRODUCTION

Legitimacy is the status of a child who is born to parents who are legally married to each other or who is born shortly after the parents' marriage ends through divorce. The opposite of legitimacy is the status of being illegitimate, that is, the status of a child born to a woman and a man who are not married to each other. In both cannon and civil law, the offspring of putative marriages are considered legitimate.

Legitimacy is of great importance, in that only legitimate children can inherit their father's estates and also enjoy the status incident to legitimate children, which includes the right to maintenance and custody amongst other rights. Legitimacy is an important topic and aspect of law owing to the growing number of illegitimate births that have been on the increase in recent times, where more than one-third of births in Nigeria are mostly of unmarried mothers.

Law in many societies has denied persons of illegitimate birth the right of inheritance and other rights which legitimate children enjoy, leaving them to bear the brunt and carry the social stigma incident to their status.

Legitimacy is the status acquired by a person who is born into lawful wedlock. Such a person is regarded as legitimate from birth<sup>1</sup>. Lawful wedlock in Nigeria refers, not only to statutory marriage, but includes customary and Islamic marriages. For a person to be legitimate at birth, his parents must be married to each other at the time of his birth, or within 280 days after his parents have been divorced. The later provision caters for the possibility that a couple might obtain a divorce soon after a child has been conceived. Under Islamic law, a child conceived during a marriage is legitimate, and becomes immaterial that he was born after his parent's divorce<sup>2</sup>.

The necessity to examine the law relating to illegitimacy arises from the fact that the rights of illegitimate children are controversial. The presumed rights of the illegitimate child may possibly conflict with the succession rights of legitimate children of the marriage, whether under the Acts or the customary law<sup>3</sup>. The problem is deepened by mothers of children born outside wedlock, who believe that though their children are born outside marriage, they have the same succession rights as legitimate children, which leads to endless litigation.

Ordinarily, any child born of a void marriage is illegitimate. But the position is not clear-cut where in Nigeria, the void marriage was celebrated under the Marriage Act. It is customary for Nigerians who desire to marry each other to be married first under customary law before contracting a marriage in accordance with the Marriage Act. If the subsequent statutory marriage is therefore void, it is submitted that the customary-law marriage remains valid and a child conceived or born after a statutory marriage will be legitimate at birth because of the subsumed customary-law marriage<sup>4</sup>.

A child that is illegitimate has no right to their father's property and has no succession or other rights which children are entitled to have. Some of such other rights include the right to education, maintenance, a stable home and other ancillary rights which are suitable for the

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<sup>1</sup>Kasumu & Salacuse, *Nigerian Family Law* (1996), p. 207.

<sup>2</sup>SagayItsey, *Nigerian Law of Succession*, Lagos, Malthouse, (2006), p.3

<sup>3</sup> See footnote 2.

<sup>4</sup> Ibid see footnote 3



proper development of the child. The situation is not the same in the case of children to their mothers. A child is entitled to all the rights that flow from mother to child, the reason being that a child is only illegitimate as regards his father and to his mother it is not contestable, as a child cannot be precluded from those rights because of illegitimacy. This is even more evident as children who are precluded from their father's estate are so supposed to inherit from their matrilineal line or his matrilineal ancestors.

### **Legitimacy and Legitimation in Nigeria**

Osborne Concise Law Dictionary<sup>5</sup> defines legitimacy as 'a condition of being born in lawful wedlock.' Legitimation is the process by which a child who has not been legitimate acquires a legitimate status; the process of legitimation may be achieved by the subsequent marriage of the parents of the child or acknowledgement by its natural father, that is, the recognition of paternity by its natural father. The term 'legitimation' presupposes that the child was not legitimate at birth; it is therefore the process whereby such a child can acquire the status of a legitimate person. In Nigeria, the process is either by the subsequent marriage of the child parents or the acknowledgement of paternity by the father of such a child. It is a means of protecting an illegitimate child so as to safeguard his right and benefit in relation to the society.

Black Law Dictionary<sup>6</sup> defines it as 'the making legitimate or lawful that which was not originally so, especially the statutory procedure of legalizing (legitimizing) the status of an illegitimate child.' It is a way of eliminating the social stigma and discrimination attached to a child as a result of the circumstances surrounding his birth and giving a child a legitimate status. To acquire a legitimate status by legitimation, the parents of the child must have been married under the marriage Act, and in some customary law by recognition of paternity by the father of the child and by the subsequent customary law marriage of such a child's parents. The conditions to be fulfilled before a child can be said to have been legitimated are provided for under the Legitimacy Act<sup>7</sup> as obtainable and practicable under the Marriage Act.

In *Lawal v. Younam*<sup>8</sup>, it was held that in Nigeria, lawful wedlock includes not only marriage under the Marriage Act, but also customary law marriage and Islamic law marriage. Generally, the relationship between a child and his parents depends on the status of the child, that is, whether or not he is legitimate, as the rights and duties imposed on his parents depend on it. Black's Law Dictionary defines legitimacy as lawful birth, that is, the condition of being born in wedlock; the opposite is illegitimacy or bastardy. It also refers to the status acquired by a person who is born in lawful wedlock; such a child is recognized as legitimate from birth<sup>9</sup>.

Statutory marriage is the type of marriage celebrated under the act, and it is said to be good and valid for all intents and purposes provided they have complied with the provisions and requirements of the act in respect of a valid statutory marriage. This type of marriage is

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<sup>5</sup> Leslie Rutherford and Sheila Bone, Sweet and Maxwell (1993) 8th ed. page 198

<sup>6</sup> St. Paul Minn. West Publishing Co 6th ed. (1990) page 901

<sup>7</sup> Section 3 of the Legitimacy Act, 1929, Cap 519 LFN 1990.

<sup>8</sup> (1961) WNLR 197.

<sup>9</sup> St. Paul Minn. West Publishing Co, 6th edition (1990) page 901.



monogamous in nature, and it is the union for life of one man and woman to the exclusion of others<sup>10</sup>; therefore, the issues of such marriages are legitimate.

Customary law marriage in Nigeria is polygamous in nature; there is however no uniform system of marriage under customary marriage as marriage custom differs from place to place and locality to locality. The term therefore covers a multitude of systems of law which are different from one community to another. Customary law marriage which is polygamous in nature means marriage of one man to more than one woman. One essential feature of polygamous marriage is that there is no limit to the number of wives a man can marry as this normally depends on his affluence.

Anthropologically, polygamy is known to exist in several forms: Polygyny, where a man is married to several women and Polyandry, where one woman is married to several men. Other forms, which also involve group marriage between several men and women are rare. There is Siamese Polygamy which is very rare. However, Polygyny is the most common form, which includes a situation where a person is formally monogamous but socially polygamous, maintaining additional relationships. Polygamy becomes political and tends to attract undue attention when minorities, such as fundamentalist groups claim the practice as a religious or cultural right in monogamous societies<sup>11</sup>.

Islamic law marriage allows a man to marry more than one wife, but unlike customary law marriage where there is no limit to the number of wives a man can marry, Islamic law marriage limits the numbers of wives to a maximum of four. In essence, the incidences of Islamic and Customary Law marriage are valid and the issues thereof are legitimate and are entitled to rights of a legitimate child.

### **Legitimacy under Nigerian Customary Law**

A child born during the subsistence and continuance of a Customary Law Marriage is presumed to be legitimate. In *Ezekiel v. Alabi*<sup>12</sup>, it was held that where evidence of a lawful marriage exists, the court will not inquire into whether it is the husband or the wife's lover that is the father of the child born in lawful wedlock and conceived during marital cohabitation; as such, an inquiry could be scandalous. In *Maryam v. SadikuEjo*<sup>13</sup>, it was held that a child born within ten calendar months of a divorce in Igbira customary law is regarded as legitimate. Generally, a child is legitimate at birth if born in lawful wedlock, which also includes in Nigeria, customary law marriages, as our customary law is also a part and parcel of our law in this country. Therefore, customary law marriages are by law legal and the children of such marriages are legitimate, as was held in *Lawal v Younan*<sup>14</sup>. In strict customary law, the concepts of paternity, marriage and legitimacy do not and may not have necessary connection. For instance, a child can be seen and regarded as legitimate if the natural parents are not married to each other and the person with respect to whom the child is legitimate is not the natural father.

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<sup>10</sup> The traditional definition of marriage in *Hyde v Hyde* (1886 CR IPD 130), however with the legalization of same sex, transsexual, bisexual, transgender, bestiality and all sorts of alien marriages the decision of the court in *Hyde* is been threatened.

<sup>11</sup> Mariam Koktvedgaard Zeitzen, 2008. *Polygamy: A cross cultural Analysis*. Oxford: Berg.

<sup>12</sup>(1964) 2 All NLR 43.

<sup>13</sup>(1961) NRNLR 81.

<sup>14</sup>(1961) WNLR 1197.



In Ibo custom, for instance, a man who has no male child may persuade one of his daughters to stay behind and not marry, for the purpose of producing a male child, who will succeed her father, thereby saving the father's lineage from threatened extinction, and any male child produced in that manner has full rights of succession to the grandfather's land and title.

Similarly, a barren wife may in a bid to fulfill her marital obligation of bearing children for her husband 'marry' another wife for her husband, which means to provide the bride price for the marriage. Children of such a marriage to the other wife will be regarded as the legitimate children of the husband. It is evident that under customary law, a child may be regarded as legitimate even if the mother never acquired the status of a lawful wife and also if the putative father is not the natural father of the child.

Legitimacy under customary law differs from community to community. For instance, a child born within ten calendar months of a divorce in *Igbira* customary law is regarded as a legitimate child of the former husband, even though he cannot logically be the father of the child. In *Yoruba* customary setting, a child is legitimate from birth; even if not born in lawful customary law marriage, they are still regarded as legitimate, under special circumstances. This however does not defeat the illegitimate status of children born from illicit affairs which the *Yoruba* indigenes call '**Omo-Ale**', meaning an illegitimate or a bastard child.

### **Legitimacy under Statutory Law**

A legitimate child is born within lawful wedlock while a child who is born at a time when his parents, though alive, are not married to each other is an illegitimate child. This definition obviously follows the common law position, which is of the effect that for a child to be legitimate he or she must be born in lawful wedlock; therefore, a child born out of wedlock is deemed and will be regarded as an illegitimate child. In *Egwunwoke v. Egwunwoke*, it was held that<sup>15</sup> a child born in lawful wedlock is presumed legitimate at common law until the contrary is proven.

There is a statutory presumption in favour of legitimacy under statutory law. Under Section 147 of the Evidence Act, a child born during the continuance of a statutory marriage or within two hundred and eighty days after the dissolution of such marriage is presumed legitimate. But neither of the parents of such a child can testify or rebut this presumption<sup>16</sup>. However the law has now been altered by the Matrimonial Causes Act 1970; Section 115 (3) is of the effect that where a person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, the court shall presume that the person in question is the legitimate son of the man. Also, in Section 84 of the Act, both spouses are competent witnesses to give evidence or proof that the parties did not have sexual relations with each other at any material time. Consequently, any of the parties may adduce evidence to rebut the presumption of legitimacy of a child born during the marriage, but the spouses are not compellable, that is, cannot be forced to give such evidence if it will bastardize a child born to the wife during the marriage.

The Christian view is similar to the common law position and the Islamic law position in that it holds lawful marriage in high esteem. It also frowns at illicit and causal affairs begetting illegitimate children. The consequences are expressed in the following words in the Holy Bible:

<sup>15</sup> NMLR 147.

<sup>16</sup> CAP 62, LFN 1958.



‘A bastard shall not enter into the congregation of the LORD, even to his tenth generation.’<sup>17</sup> In essence, Christianity preaches and advocates one man one wife; therefore, any adulterous relation with a third party, leading to illegitimate children will be according to the above passage not be entitled to enter into the LORD’s assembly even to this tenth generation, and will be deprived the rights of a legitimate child. It should be noted that this is the old testament position.

### **Legitimacy of Children of Void Marriage**

Ordinarily, any child born of a void marriage is illegitimate. This position is not clear-cut in Nigeria where the void marriage was celebrated under the Marriage Act, as it is customary for Nigerians who desire to marry each other to be first married under customary law before contracting a marriage in accordance with the Marriage Act. If the subsequent statutory law marriage is therefore void, it is submitted that the customary law marriage remains valid and a child conceived or born after the statutory marriage will be legitimate at birth because of the subsumed and existing customary law marriage. In the absence of the preceding contention, there is no provision of Nigerian law whereby a child of a void statutory marriage may be regarded as legitimate. This situation may sometimes work hardship, for instance, where the parties reasonably believe that their marriage was valid; in some countries, the children of such marriages are regarded as legitimate. By virtue of Section 2 (1) of the English Legitimacy Act 1959, the child of a void marriage is considered legitimate if at the time of the act of intercourse resulting in its birth (or at the time of the celebration of the marriage), both or either of the parent reasonably believe that the marriage was valid.

A similar provision in Nigerian law if submitted will go a long way to alleviate the hardships of a void marriage. A void marriage is one that is considered never to have taken place, no matter the procedures that have been taken by the people concerned; they are just not married because they have not complied with the rules of the place of the celebration of marriage. The Matrimonial Causes Act 1970 states that a marriage is void if the partners are related to a forbidden degree, for example, a marriage between brother and sister would be void. It does not matter if the partners did not know they were related when the ceremony was carried out; although it sounds odd, it has happened in adoption cases. A marriage is void if:

- a. Either partner was under sixteen years of age
- b. The formal procedures of marriage were not followed, for example, the wedding may not have been in a registered building or open to the public.
- c. The partners are of the same gender at birth.

Therefore, children born in a void marriage are illegitimate as the marriage is considered never to have happened.

### **Legitimacy of Children of a Voidable Marriage**

At common law, a decree of nullity in respect of voidable statutory marriages was retroactive, thereby bastardizing the children of the marriage. But a major change has been effected in this

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<sup>17</sup> Deuteronomy, chapter 23 v 2.



respect by the Matrimonial Causes Act 1970 in Section 38 (1): A decree of nullity in respect of a voidable marriage is effective only from the date in which the decree becomes absolute. Moreover, such decree of nullity does not render illegitimate the child of the parties born prior or legitimated during the marriage<sup>18</sup>. The child of a voidable customary law marriage is not regarded as born legitimate, but such a child may in some parts of the country be legitimated by the subsequent acknowledgment by its natural father. A voidable marriage is one that was not void from the outset, as may be the case with a marriage conducted illegally, but was declared void in the course of time. The Matrimonial Causes Act 1970 in Section 5 states that a marriage is voidable if:

- a. Either partner does not or cannot consummate the marriage
- b. Either partner did not consent to the marriage
- c. Either partner was not mentally competent to consent to the marriage
- d. Either partner was suffering from a sexually transmitted disease
- e. The woman was pregnant by another man.

A voidable marriage is assumed to be in effect until annulled by the court; this means that children born in a voidable marriage are legitimate.

### **Legitimacy and the Constitution**

The concept of “bastard” child is inoperative in Nigeria as Section 42 (2) of the 1999 Constitution unequivocally provides that no citizen of Nigeria should be subjected to any disability or deprivation merely by reason of the circumstances of his birth. The section was explained in the case of *Olubode v. Oviolu* where the court held that the purpose of Section 39 (2) of the 1979 Constitution, now Section 42 (2), is to abolish the status of illegitimacy and treat every Nigerian citizen whether born within wedlock or outside wedlock as having equal rights.

### **Legitimation**

The modes of legitimation that will be discussed are legitimation by subsequent marriage, either statutory or customary marriage and acknowledgment of the child’s paternity as a means under customary law.

### **Legitimation by Subsequent Statutory Law Marriage**

The legitimation of an illegitimate child through the subsequent marriage of its parents was first made possible in Nigeria by the enactment of the Legitimacy Act 1929<sup>19</sup>. This piece of legislation, though based substantially on the earlier English legitimacy Act 1926, contained some variations intended to suit local conditions. The 1929 enactment applied then to the whole country, with the introduction of federalism in Nigeria in 1954, legitimacy became a regional subject on which the various regional governments could legislate; fortunately, the regional government inherited and preserved the original enactment without alteration, and this

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<sup>18</sup> Section 38 (2) of the Matrimonial Causes Act 1970.

<sup>19</sup> Ordinance No 27 of 1929.



accounts for the fact that there is now uniformity in state laws on legitimacy. By Section 3 (1) of the Legitimacy Act where the parents of an illegitimate person marry or have married each other, whether before or after the commencement of this Act, the marriage shall, if the father of the illegitimate person was or is at the date of the marriage domiciled in Nigeria, render that person, if living, legitimate from the commencement of the Act or from the date of the marriage whenever that happens.

The operation of Section 3(1) is based on the fulfillment of certain prerequisites: First the parents of the illegitimate person must have subsequently married each other; the marriage must be a statutory one in accordance with the marriage Act and not marriage under customary law. Second, the father of the illegitimate person must be domiciled in a state in Nigeria at the time of the marriage; Section 2(3) of the Matrimonial Causes Act 1970 states that it is only for the purposes of matrimonial causes that there is one Nigerian domicile. Third, it is essential that the person to be legitimated must be alive at the date of the marriage; Section 3(1) states that the effect of the marriage is to render that person, if living, legitimate. The legal effect of the subsequent marriage is to render that person, if living, legitimate. The legal effect of the subsequent marriage of the parents is to make the illegitimate person legitimate from the commencement of the Act or from the date of the marriage, whichever happens last; thus, if the marriage took place before the commencement of the Act which was 17th October, 1929, the illegitimate person will become legitimate as from the commencement of the Act.

It is significant to note that there is no requirement that the parents of the illegitimate person must not be married to some other persons at the time the child is conceived or born; consequently, the child of an adulterous union may be legitimated by the subsequent marriage of its parents in accordance with the Legitimacy Act. Section 9(1) of the Legitimacy Act makes provision for the situation where the father of an illegitimate person was domiciled in a foreign country. If at the time of the birth of the illegitimate person, the father was domiciled in a country, the law does not permit legitimacy per subsequent matrimony. But if at the time of his marriage to the mother of the allegedly illegitimate child, he was domiciled in a country, the law of which such legitimation is recognized, the illegitimate person will be recognized as legitimate in Nigeria. The legitimation will be by virtue of the subsequent marriage and it takes effect from the commencement of the Act or the date of the marriage, whichever happens last. However, at common law, legitimation per subsequent matrimony by any foreign law is recognized if the father of the child was domiciled in a country recognizing legitimation at the time of the child's birth and at the time of marriage, as held in *Re Grove*<sup>20</sup>.

### **Legitimation by Subsequent Customary Law Marriage**

There is paucity if not absence of authority on the principle of legitimation by subsequent customary law marriage. A probable reason for this state of affair is the fact that some systems of customary law provide for legitimation by acknowledgment; it was therefore considered simpler to acknowledge an illegitimate child than to resort to legitimation by subsequent customary law marriage. The question of non-statutory legitimation including by subsequent customary law marriage was considered by Brett FJ in *Cole v. Akinleye*<sup>21</sup>, in which case the deceased married a wife under the Marriage Act; during the subsistence of the marriage, the

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<sup>20</sup> (188) 140 CH. B 261.

<sup>21</sup> (1960) 5 FSC. 84.



deceased formed an irregular association with the mother of the two appellants; one of the appellant was born during the deceased wife's lifetime and the other, six weeks after her death. In considering the legitimacy of the first appellant born during the continuance of the marriage, **Brett FJ** stated that he would regard it contrary to public policy for the deceased during his lifetime to confer the status of a legitimate child on the first appellant by any other method, other than that provided by the Legitimacy Act.

It is not easy to appreciate the basis on which **Brett FJ** rejected legitimation other than by the statute. In the Nigerian situation, it is not rational to reject other methods of legitimation as being contrary to public policy merely because of the existence of a statutory law marriage at the time the child was born. It has been pointed out that under the Legitimacy Act, an adulterous child may be legitimated by the subsequent marriage of its parents; public policy will not be more outraged if the child born during the subsistence of the statutory marriage is legitimated by acknowledgement or the subsequent marriage of the parents under customary law.

Attention should be drawn to the salient fact that the learned judge's remarks were directed at legitimation; otherwise, under the Legitimacy Act of an illegitimate child born during the subsistence of a statutory marriage, no reference was made therein to the instance where the child is born during the subsistence of a customary law union; it is submitted that there are no convincing reasons why legitimation by a subsequent customary law marriage should not have full legal effect. The basic question in the case considered above should be proof that the relevant customary law provides for legitimation by subsequent customary law marriage. Once this is satisfactorily established, the customary law rule as to legitimation should not be set aside on the ground of public policy. It has been indicated earlier that the provision of the Legitimacy Act will not apply if the subsequent marriage is one under customary or Islamic Law; the effect of a customary or Islamic law marriage has to be decided in accordance with customary and Islamic law respectively. Is legitimation per subsequent matrimony known under customary law? If it is known, can there be legitimation of a child born of an adulterous union?

### **Legitimation by Acknowledgment**

This is an area in which there is little or no authority on what the position of customary law is. The absence of any authority is not surprising, since in Nigeria, one does not have to get married in order to have a legitimate child. If a person can make his illegitimate child legitimate by acknowledgement, why should he then bother himself about marrying the mother of his child to make such a child legitimate? However, since there are limits to the rights to acknowledge, it might still be necessary to show that under customary law, legitimation by a subsequent customary marriage is recognized; such occasion arose in *Cole v. Akinyele*<sup>22</sup>.

The act of acknowledgment is majorly done by the father who is willing to recognize or accept the paternity of the child; he must be subject to the customary law that permits acknowledgement as a way of legitimating an illegitimate child. In a case where the family prevailed on the man, and he accepted the pregnancy of a woman by naming such a child, all the acts done by the father in that regard are recognized acts of acknowledgement in the Yoruba customary law, per **Karibi-Whyte JSC in *Olarewaju v. Governor of Oyo State***<sup>23</sup>. Another

<sup>22</sup> (1960) 5 F.S.C. 84.

<sup>23</sup> (1992) 23 NSCC (pt 111) 389 at 400.



important point is, what constitutes an act of acknowledgment? In *Philip v. Philip*<sup>24</sup>, it was held that the act that constitutes acknowledgement needs not be formal, so far in appropriate circumstances, the informal act is deemed enough.

The right to acknowledge an otherwise illegitimate child, is personally attached to the natural father and cannot be exercised by a third person on his behalf<sup>25</sup>; if on the father's death a relative of the father acknowledges the paternity of a child, the act will have no legal consequence or significance. It can therefore be concluded that the natural father, who can legitimate his child by acknowledgement, must be a person subject to the customary law.

## CONCLUSION

As it can be deduced from the above discussion, a child must be either conceived or born during the subsistence of a valid marriage—which must either be a statutory, customary or Islamic law marriage as these are the types of marriages recognized as valid in Nigeria—in order to be regarded as legitimate, the absence of which the child will be said to be illegitimate with the attendant social discrimination that will be meted out on them by members of the larger society. Also, a child conceived or born during the subsistence of a void or voidable marriage is regarded as legitimate. This was not the position under the common law, but the position has changed, and a child of a void or voidable marriage will still be regarded as legitimate as it will be inequitable to hold otherwise.

## RECOMMENDATIONS

From the discussion in this work, the followings are hereby recommended as a way forward in sorting the problems associated with legitimacy and legitimation:

The provision of the Legitimacy Act, which is the sole means of legitimation now, is stringent as a result of the conditions that must be met before this is done. The conditions include the fact that the parents must be subsequently married, the father must be domiciled in Nigeria, and the child must be alive as at the date of legitimation. In a case where one of the parents is married to another person under statutory law, will they now have to be divorced in order to legitimate their illegitimate child, against the background of the fact that it is unhealthy for the society and the marriage institution itself? The provisions of the Act needs to be broadened to encompass other means of legitimation, which include making provisions for such a child in a will, formal acknowledgement, filling the birth certificate in the father's name, and agreement to maintain the child.

The provision that the date of legitimation should start counting from the date of legitimation is unfair; the act should be amended to make it start counting from the date of birth, so that in the distribution of estate, the actual ages of the children including the legitimated child should be the criteria to be used in the distribution of the estate of the parents.

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<sup>24</sup> (1946) 18 NLR 102.

<sup>25</sup>Nwogugu, 1999.



The constitution should be amended to include a new section which will expressly provide that no child should be discriminated upon by the virtue of the fact that he was born illegitimate. The new section should make provision for a specific penalty, when its provisions are violated.

Awareness programs mainly for teenagers and youths should be organized to inform them about the dangers and consequences of premarital sex and extra-marital sex, which of course are the major contributing factors to the problem at hand, in order to get rid of the problem of legitimation of children born outside wedlock which is rampant in our society.

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