

LEGAL APPRAISAL OF DOUBLE - DECKER MARRIAGE AMONG THE YORUBA ETHNIC GROUP

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Abstract

This study examines the concept of Double- Decker marriage in Yoruba Land, exploring the conflict between customary and statutory law. Double - Decker marriage refers to the practice where a couple is married under both customary and statutory laws, creating complexities in marital dissolution and inheritance. This study employs a doctrinal research approach, analyzing relevant laws, judicial decisions, and cultural norms. Both primary and secondary sources were used in gathering information. Primary sources include Yoruba customary law, Nigerian statutory laws, and judicial decisions. Secondary sources comprise academic literature, policy documents, and expert opinions. This research investigates the implications of Double- Decker marriage on women's rights, inheritance, and family dynamics in Yoruba Land. The study reveals that customary law prioritizes family interests over individual rights, while statutory law emphasizes equality and human rights. Findings indicate that Double- Decker marriage often leads to conflicting claims, disputes, and injustices, particularly against women. This research analyzed Yoruba customary law, Nigerian statutory laws (Matrimonial Causes Act, Marriage Act), and judicial decisions. The study findings provide valuable insights into the complexities of Double - Decker marriage, informing policy reforms and community initiatives aimed at promoting social justice and human rights. This research concludes that legislative reforms are needed to reconcile customary and statutory laws, and it recommends the establishment of specialized courts for marital disputes, sensitization programs for communities, and the empowerment of women through education and economic independence. Ultimately, this study contributes to the discourse on legal pluralism, cultural diversity, and human rights in Nigeria, advocating for a harmonized legal framework that protects individual rights and promotes social justice

Keywords: Double - Decker, Marriage, Customary law, Statutory Marriage, Yoruba Land

Introduction

The institution of marriage is a fundamental aspect of human society, transcending cultural, social, and economic boundaries. In Nigeria, particularly among the Yoruba people, marriage is a revered tradition that unites individuals and families.

However, the intersection of customary and statutory laws has created complexities in marital practices, leading to the phenomenon of Double Decker marriage. (Oba, 2025) In

Yoruba Land, Double Decker marriage is prevalent, and this has led to conflict between customary and statutory law, and it has implications on women's rights, inheritance, and family dynamics.

Double Decker marriage refers to the practice where a couple is married under both customary and statutory laws, resulting in dual marital regimes. (Adejare, 2021) This phenomenon has become increasingly prevalent in Yoruba Land, driven by factors such as cultural identity, social status, and economic security. (Ajibola, 2010) Customary law, which governs traditional Yoruba marriage, prioritizes family interests and communal harmony over individual rights. In contrast, statutory law, as enshrined in the Nigerian Constitution and relevant legislation, emphasizes equality, human rights, and individual freedoms. (Fadipe, 1970)

The coexistence of customary and statutory laws has created tensions and conflicts, particularly in marital dissolution and inheritance. Women, in particular, are vulnerable to exploitation and injustice due to the patriarchal nature of Yoruba customary law. The Matrimonial Causes Act (1990) and Marriage Act (1990) provide statutory frameworks for marriage and divorce, but their application is often hindered by cultural and social norms. (Awe, 1992)

The concept of double-decker marriage has significant implications under Nigerian law, particularly in a legal system that recognizes multiple forms of marriage, each with its distinct legal consequences. The dual nature of these marriages can lead to legal ambiguities and conflicts, especially in matters related to marital rights, inheritance, divorce, and child custody. These challenges are further compounded by Nigeria's plural legal system, which includes statutory law, customary law, and religious law, each operating simultaneously and sometimes in conflict with one another.

The term "double-decker marriage" is not formally recognized in Nigerian legislation but has become a colloquial term used to describe the dual ceremony practice that many Nigerian couples undertake.

Double Decker marriage has implications on women's rights, inheritance, and family dynamics in Yoruba Land. It has led to legal pluralism, cultural diversity, among the Yoruba people. (Adebayo, 2023)

Historical analysis of Marriage among the Yoruba Ethnic Group.

In pre-colonial Yoruba society, marriage was a vital institution that united

families and solidified social bonds. The Yoruba people placed great emphasis on family involvement, with parents, elders, and even Ifá priests often consulted in mate selection. This ensured that marriages aligned with family interests and maintained social harmony.

Yoruba marriage customs varied across regions, but common practices included dowry and bride price payment with elaborate ceremonies. The groom's family would present gifts to the bride's family, symbolizing respect and commitment. These customs underscored the importance of mutual respect and cooperation between families. (Adeyemo, 2005)

Polygamy was a mark of wealth and prestige among Yoruba elites, with multiple wives signifying prosperity and high social standing. The first wife (Iyale) held a position of authority, overseeing household affairs and supporting her husband. This practice reflected the complex social hierarchies within Yoruba society (Oyewunmi, 1977)

The arrival of colonial powers brought significant changes to Yoruba marriage practices. European colonizers introduced new laws and regulations, often undermining traditional customs and patriarchal structures. This led to a shift towards monogamy and altered the dynamics of Yoruba marriage, as Western values and Christianity spread throughout the region.

Today, Yoruba marriage customs continue to evolve, blending traditional practices with modern influences. While some couples opt for traditional ceremonies, others incorporate Western elements or choose alternative arrangements. The legacy of Yoruba marriage traditions remains strong, emphasizing community, respect, and family ties (Fadipe, 1970)

Yoruba marriage historically united families, emphasized social harmony, and reflected social hierarchies. Polygamy was a status symbol, while colonialism introduced changes. Today, traditions blend with modern influences, prioritizing community and respect.

Pre-Colonial Era

In pre-colonial Yoruba society, marriage was a complex and multifaceted institution that involved not just the union of two individuals but also the union of two families. (Awe, 1992). Marriage was typically arranged by families, with the bride's family receiving brides' price in the form of goods, services, or money. The Yoruba people believed in the importance of family and community, and marriage was seen as a structure of Yoruba society, with its deep roots in an organized extended family system, it forms

the cornerstone of a communal living arrangement that fosters an environment where multiple generations coexist harmoniously under a single roof. This unique setup creates a vibrant atmosphere, characterized by a wealth of shared experiences and collective responsibilities that bind families together in a close-knit communal life (Fadipe, 1970). One of the most prominent features of this rich societal organization is the practice of polygyny, which is a cultural custom that permits men to have multiple wives simultaneously. This practice is especially prevalent among the Yoruba people and reflects the social norms and cultural values that not only condone, but also celebrate such arrangements, highlighting the importance of family expansion and support within their community.

The significance of marriage within this intricate social structure cannot be overstated, as the rituals and ceremonies surrounding marriage are performed with meticulous attention to detail, honouring time-honoured traditions and cultural customs, that ensure each union is sanctioned and socially recognized. (Law, 1995). Among the various marriage customs, the engagement ceremony, locally referred to as "idana," stands out for its meaningful interactions. During this event, prospective grooms thoughtfully present a curated selection of gifts to the bride's family, an action that symbolizes not only respect but also the groom's deep commitment to the union ahead. Following this heartfelt display is the main marriage ceremony, celebrated as "igbeyawo," where the couple exchanges vows, thereby solidifying their union in the presence of family and friends. This ceremony typically involves additional presentations of gifts that both honour and celebrate the newly formed bond, ensuring that the joyous occasion is marked by generosity and good will.

Once the marriage ceremony has concluded, it is customary for the newlywed couple to engage in a series of post-marriage ceremonies, which encompass visits to the husband's family, among other traditional obligations aimed at facilitating the bride's seamless integration into her new family. (Biobaku opcit). Furthermore, the institution of marriage within Yoruba culture is often intricately linked to the concepts of wealth and social status, as families that possess substantial financial resources, traditionally have the means to pay a higher bride price. This practice enhances their standing within the community, making it a significant element of social dynamics. The economic aspects of marriage are crucial, as they not only reflect the individual fortunes of families but also serve to strengthen family ties, and secure beneficial alliances between different families,

ultimately reinforcing the social fabric that holds Yoruba society together (Mann, 1985). Thus, marriage is not merely a personal union, but a vital social contract that impacts the economic and social landscape of the community at large, and a way to strengthen ties between families and communities. (Biobaku,1955).

Colonial Era

During the colonial era, Christian missionaries and British colonial authorities introduced new laws and customs that significantly impacted Yoruba marriage practices. The colonial authorities introduced the concept of monogamy, which was unfamiliar to the Yoruba people, who had traditionally practiced polygyny. (Afolayan,2015). The colonial authorities also introduced new laws governing marriage, divorce, and inheritance, which often conflicted with traditional Yoruba customs. (Afolayan, opcit)

Christian missionaries introduced Western-style marriage ceremonies and encouraged monogamy. Also western education led to increased literacy rates, enabling Yoruba people to read and understand Western-style marriage laws.

Marriage Ordinance of 1884 introduced Western-style marriage registration and prohibited polygyny. The Native Marriage Ordinance of 1923 recognized customary marriages but required couples to register their marriages with the colonial authorities. Brideprice became more commercialized, with prices increasing over time. (Fadipe, 1970). This era was marked not only by the legal and cultural upheaval but also by the remarkable adaptation of the Yoruba people as they navigated the complexities arising from the merging of their rich cultural heritage with the often-jarring impositions of colonial rule, leading to a redefinition of identity and social relations within their communities.

Colonialism disrupted traditional marriage practices, leading to a decline in customary marriages. Western-style individualism emphasized the importance of individual choice in marriage. Colonialism also led to changes in family structure, with increased emphasis on nuclear families. (Ogunyemi, 2015) Though many Yoruba people resisted Western-style marriages, preferring to maintain their traditional customs. Others adapted their traditional practices to accommodate colonial laws and customs. (Ogunyemi. Opcit)

Marriage in Yoruba land during the colonial era underwent significant changes driven by the introduction of Christianity, Western education, and colonial laws. While some Yoruba people resisted these changes, others adapted their traditional practices to accommodate

the new colonial reality. (Afolayan op.cit)

Post-Colonial Era

In the post-colonial era, Yoruba marriage practices have continued to evolve, with many couples adopting Western-style wedding ceremonies and incorporating elements of traditional Yoruba culture. However, traditional Yoruba marriage customs, such as the payment of the bride price and the importance of family and community, continue to play an important role in Yoruba society. (Biobaku, 1955).

Overall, the historical background of marriage in Yoruba land reflects the complex and dynamic nature of Yoruba culture and society, which has been shaped by traditional customs, colonialism, and modernization. Also, the double-decker marriage has become a popular practice in Yoruba Land. The practice of double-decker marriages is rooted in Nigeria's colonial history, when British colonizers introduced the Marriage Ordinance (now the Marriage Act) as part of the legal system. Prior to this, marriages in Nigeria were governed primarily by customary law. After the introduction of statutory law, the coexistence of both legal systems was established, creating room for individuals to marry under both systems. This dual legal system has continued post-independence, with customary and statutory laws operating side by side, though statutory law often takes precedence in legal disputes.

Thus, double-decker marriages embody the intersection of traditional customs and modern legal systems in Nigeria, reflecting the country's diverse social fabric and the complex interaction between its plural legal systems.

A double-decker marriage refers to the practice in Nigeria where a couple undergoes both customary marriage and a statutory marriage, typically within a short period. This dual approach is a reflection of the plural legal system in Nigeria, which allows individuals to contract marriages under customary law, statutory law, or religious law. (Adewale, 2020) The term "double-decker" highlights the layered nature of such marriages, where both legal systems overlap but operate with different rules and consequences. Couples who engage in double-decker marriages typically begin with a customary marriage, honouring their cultural or family traditions. This may involve ceremonies that have great social significance, including the presence of extended family and the exchange of gifts or bride prices. Shortly after, the couple may opt to undergo a statutory marriage, which is formalized in a registry or licensed place of worship (Nwogogu, 2014) This confers additional legal protections, and the practice allows couples to enjoy the best of both

marriages, i.e the social legitimacy of a customary marriage, and the legal security of a statutory marriage.

However, this dual approach can lead to confusion and legal conflicts, especially when the customs governing the customary marriage conflict with the requirements of statutory law. (Ajibola, in 2010) For example, if a man enters into a statutory marriage, the monogamy requirement under statutory law overrides any polygamous rights he may have under customary law. This has caused disputes in cases of inheritance and property division, as statutory law would invalidate subsequent customary marriages, leaving wives and children from those unions with limited legal standing.

A customary marriage is a marriage conducted in accordance with the traditions, customs, and practices of the couple's ethnic community. It typically involves the payment of bride price or dowry, and in many Nigerian communities, including the Yoruba Land, it permits polygamy. Customary marriage is seen as a legitimate and binding union within the community, providing couples with social recognition and fulfilling cultural expectations. (Awe, 1992)

However, one of the limitations of customary marriages is that they are often not recognized internationally, nor do they offer the full range of legal protections afforded by statutory marriages, particularly concerning inheritance rights and the legal standing of women and children in the marriage. For example, women in customary marriages may face discriminatory inheritance practices, where customary laws favour male heirs. This has led many couples to contract a statutory marriage in addition to their customary union to ensure stronger legal protections. (Ajibola opcit)

A statutory marriage is one conducted under the Marriage Act, which follows the Western model of monogamy. (Nwogogu, 2014) Statutory marriages offer greater legal security, ensuring that the couple is protected by Nigeria's modern legal framework and has access to divorce, inheritance, and property rights under statutory law. (Matrimonial Causes Act. (1990) The statutory marriage also overrides the ability of a man to marry multiple wives, as is allowed under customary law. (Hyde v. Hyde. {L.R.} 1 P. & D. 130) Statutory marriage is widely recognized in Nigeria, and because it is regulated by the Marriage Act, it is universally recognized, including in international contexts, giving it an added advantage for couples who may need to prove their marital status in foreign countries or in dealings with non-customary institutions.

Legal Framework governing Double-Decker Marriage.

Double-decker marriages refer to the phenomenon where an individual enters into both customary and statutory marriages, thereby engaging two distinct legal systems, which are the customary law system, and the statutory law system. The legal framework governing these marriages are complex and involves various statutes, judicial decisions, and constitutional provisions. The legal framework governing double-decker marriages, focus on relevant laws, including the 1999 Constitution of Nigeria (as amended 2023), the Marriage Act, the Matrimonial Causes Act, the Matrimonial Causes Rules, and the Same-Sex Marriage (Prohibition) Act. The implications of these laws are also discussed, highlighting the legal challenges and conflicts arising from double-decker marriages in Nigeria.

1. 1999 Constitution of Nigeria (As Amended 2023)

The 1999 Constitution of the Federal Republic of Nigeria (as amended in 2023) is the supreme law of the land and serves as the foundation for all legal processes, including marriage. While the Constitution does not explicitly address marriage laws, it provides a broad framework for the protection of fundamental rights, including equality, non-discrimination, and personal liberty, which indirectly affect marriage practices in Nigeria.

Section 42 of the Constitution prohibits discrimination on the grounds of gender, ethnicity, or religion, relevant in cases where customary marriage practices may discriminate against women. Issues of inheritance, property rights, and custody are often subject to conflicts between customary law, which may favor the man and statutory law, which tends to offer more equitable protection, especially for women and children.

Section 1(3) of the Constitution states that if any law is inconsistent with the Constitution, the Constitution shall prevail, and the law shall be void to the extent of the inconsistency. This implies that customary marriage laws that contradict constitutional provisions, particularly those related to fundamental rights, may be subject to judicial challenge. (*Mojekwu v. Mojekwu*)

2. Marriage Act Cap M6 LFN 2004

The Marriage Act is the primary legislation governing statutory marriages in Nigeria. The Act sets out the formal requirements for contracting a monogamous marriage, including the need for a licensed official, the issuance of a marriage certificate, and the formal registration of the marriage. Once a statutory marriage is contracted, it is legally binding and supersedes any subsequent customary marriages.

Section 33 of the Marriage Act expressly prohibits polygamy in statutory marriages. This creates a direct conflict with customary law, which allows for polygamous marriages. Under the statutory system, once a person is married under the Marriage Act, they cannot validly marry another person under customary law without dissolving the statutory marriage.

Section 35 of the Marriage Act outlines the penalties for bigamy, making it a criminal offense for a person who is already married under the Act to enter into another marriage, whether under customary law or any other system. This reinforces the monogamous nature of statutory marriages and highlights the legal consequences of engaging in a double-decker marriage where a customary marriage follows a statutory one.

3. Matrimonial Causes Act Cap M7 LFN 2004

The Matrimonial Causes Act governs the dissolution of marriages, including statutory marriages contracted under the Marriage Act. The Act outlines the grounds for divorce, custody, maintenance, and property division following the dissolution of a statutory marriage. The Act also provides the legal framework for resolving conflicts that arise from double-decker marriages, particularly where statutory and customary laws collide.

Section 15 of the Act outlines the grounds for the dissolution of a marriage, including adultery, desertion, and irretrievable breakdown of the marriage. Once a statutory marriage is dissolved under the Act, any subsequent customary marriage involving the same parties may also be legally affected.

Section 72 of the Act deals with the distribution of property and maintenance after a divorce. Under the statutory framework, the court may make orders for the equitable division of marital property, which often conflicts with customary practices where property typically belongs to the man's family.

4. Matrimonial Causes Rules 1983

The Matrimonial Causes Rules provide procedural guidelines for the conduct of matrimonial proceedings in Nigeria. These rules are instrumental in double-decker marriage cases, where the complexities of dissolving statutory marriages and dealing with the implications of customary marriages often arise.

Order 1, Rule 2 of the Matrimonial Causes Rules specifies that proceedings for divorce, custody, and other matrimonial matters must follow specific legal procedures, ensuring that statutory marriages are dissolved in a formal court process. This contrasts with the informal dissolution procedures under customary law, which typically involve the return

of the bride price or community-based processes.

Order 5, Rule 2 provides that in making decisions about custody or property division, the court should prioritize the best interests of the children and the fairness of property division, often overriding customary practices may favor the man or his extended family. (*Mojekwu v. Mojekwu*.)

5. Same-Sex Marriage (Prohibition) Act 2013

The Same-Sex Marriage (Prohibition) Act criminalizes same-sex marriages and unions in Nigeria. Although this Act does not directly impact double-decker marriages, it is part of the broader legal framework that governs marriage in Nigeria. The Act enforces the traditional and statutory definitions of marriage as being between a man and a woman.

Section 1 of the Act prohibits the solemnization of a marriage contract or civil union between persons of the same sex, while Section 5 prescribes penalties for persons involved in the contracting or witnessing of same-sex marriages

Implications of the Legal Framework on Double-Decker Marriages

1. Conflict of Laws and Legal Supremacy

One of the most significant implications of the legal framework for double-decker marriages is the conflict of laws between statutory and customary marriage systems. Statutory law, through the Marriage Act and the Matrimonial Causes Act, enforces monogamy and formal legal processes for marriage and divorce. Customary law, on the other hand, allows for polygamy and informal marriage and divorce procedures, often rooted in cultural and community norms. In *Labinjo v. Abake* [(1924) 5 NLR 33.] the court held that once a statutory marriage is contracted, it overrides any customary marriage. This case illustrates the legal supremacy of statutory law in cases of conflicting marriage systems.

2. Inheritance and Property Rights

Double-decker marriages often lead to disputes over inheritance and property rights. Under statutory law, the legal wife and children of a statutory marriage have a primary claim to the deceased's estate, while customary law may distribute property among multiple wives and children. In *Cole v. Cole* [(1898) NLR 15.], the court affirmed that property distribution must follow statutory law where there is a valid statutory marriage, even if there are other wives under customary law, except the man dies as a testator, leaving a valid will.

Dissolution of Marriage

Double-decker marriages create complications when it comes to dissolving marriages. Under the statutory system, divorce must follow formal legal procedures, but customary marriages may be dissolved informally. This dual process creates uncertainty, particularly where individuals attempt to remarry under customary law while still legally bound to a statutory marriage. In *Glynn v. Glynn* [(1970) 1 All NLR 141], the court emphasized that statutory marriages must be dissolved through formal legal proceedings, even if the parties had previously contracted a customary marriage. The case of *Labinjo v Abake* (1924) 5 NLR highlighted conflict between statutory and customary marriages. The court ruled that once a statutory marriage has been contracted, any subsequent customary marriage is legally invalid. This ruling underscores the legal supremacy of statutory law over customary law, particularly regarding monogamy and property rights. and local customs. (Ajibola, O. (2023)

In the case of *Glynn v Glynn* (1970) 1 All NLR 142 the court held that a statutory marriage must be formally dissolved through legal proceedings, even if the couple had previously contracted a customary marriage. The court's ruling reinforced the notion that statutory marriages are subject to strict legal processes for dissolution, in contrast to the informal procedures often associated with customary marriages.

The case of *Alake v Pratt* (1955) 15 WACA 20, a landmark decision where the court ruled that a man who contracts a statutory marriage cannot legally engage in a customary marriage with another woman. The court reinforced the exclusive nature of statutory marriages, emphasizing the illegality of polygamy once a statutory marriage is in place.

Legal effects of double - decker marriage among the Yoruba ethnic group.

Double-decker marriage refers to a situation, where a couple conducts both customary and statutory marriage, which presents a unique legal scenario with significant implications for both the couple and the legal system. (Akinyemi, 2018) This dual marriage system raises questions regarding the supremacy of one marriage type over the other, particularly when conflicts arise. Some of the legal effects of double decker marriage include the following:

1. Supremacy of Statutory Marriage over Customary Marriage

One of the most significant legal effects of double-decker marriage is the supremacy of statutory marriage over customary marriage. The Nigerian legal system recognizes the Marriage Act, which governs statutory marriages, as the superior legal framework when

conflicts arise between customary and statutory marriages. This was clearly established in *Labinjo v. Abake* (1924 5 NLR 33) where the court ruled that a statutory marriage supersedes any prior customary marriage.

The practical implication is that once a couple has undergone a statutory marriage, the legal system recognizes this marriage as the governing framework, even if they initially married under customary law. Statutory marriage, therefore, negates any potential polygamous rights granted under customary law. This legal effect safeguards the couple, especially the wife, from the introduction of additional wives, which would be permitted under some customary systems but is prohibited under the statutory regime

Statutory marriage in Nigeria is monogamous by nature, meaning that a person married under statutory law cannot legally contract another marriage while the statutory marriage remains valid. In contrast, customary marriages, depending on the ethnic group, may allow for polygamy. However, once a statutory marriage is performed, the monogamous nature of this marriage prevails, making it illegal for either spouse to engage in another customary marriage. This was further upheld in *Alake v. Pratt*, (1955) 15 W.A.C.A. 20, where the court affirmed that statutory marriage enforces a strict monogamous regime.

This legal framework ensures the protection of the marital relationship, particularly in terms of spousal rights. By engaging in a statutory marriage, the spouses commit to a monogamous union, and any breach of this (such as contracting another customary marriage) would be considered bigamy under Nigerian law.

2. Property Rights and Inheritance

A key implication of double-decker marriages involves property rights and inheritance. Statutory marriage grants equal rights to both spouses, including rights to joint property ownership and equal shares in inheritance upon the death of a spouse. Customary marriages, however, may follow patriarchal inheritance systems, where a wife may not be entitled to an equal share of her husband's property. This discrepancy often leads to legal disputes after the death of a spouse, especially in regions where customary law dominates.

In *Idehen v. Idehen*, (1991 6 NWLR (Pt 98) 382, the Nigerian Supreme Court ruled in favor of the widow, emphasizing that the statutory marriage overrode any conflicting customary inheritance practices, thus protecting her right to the husband's estate. This case highlights the importance of statutory marriage in ensuring equal inheritance rights for

spouses, regardless of ethnic or customary practices.

3. Dissolution and Divorce Proceedings

The dissolution of a double-decker marriage follows the procedures outlined in the Matrimonial Causes Act (MCA), which governs statutory marriages. In cases where couples wish to dissolve their marriage, they must follow the legal procedures set forth in this Act, which ensures that both parties are treated fairly in matters such as alimony, custody, and property division. Customary marriages, on the other hand, often have different, less formalized dissolution processes, which may not provide the same level of legal protection, particularly for women.

In the foreign case of *Glynn v. Glynn* (2022) [Court of Appeals of Texas, Houston, 1st Dist.] a case of an appeal from a final divorce decree signed on February 7, 2020, where one Mr. Edward Glynn and Cynthia Glynn, agreed upon the terms of the divorce in a mediated settlement agreement. They both signed the terms of the agreement on December 16, 2019. On appeal, Edward contends that the trial court abused its discretion by signing a final divorce decree that exceeded the scope of the mediated settlement agreement. (accessed on <https://share.google/1j2ISZqsEMmSZEfY7>). It can be deduced from the case one of the complexities of dissolving a statutory marriage. (Olagunju, 2019) This underscores the legal certainty provided by statutory marriages in Nigeria, ensuring that the dissolution process is guided by formal legal principles. Double-decker marriages also impact the legal status of children born within the rather than customary practices, which can be ambiguous and unequal.

4. Legal Status of Children

Under statutory law, children born during the marriage are automatically recognized as legitimate, with full rights to inheritance and custody. In contrast, customary law may sometimes favour male heirs, or apply different standards for legitimacy, especially where the marriage involves multiple wives or stepchildren.

By conducting a statutory marriage, couples ensure that their children's legal status are clearly defined under the law, providing them with security in terms of parental responsibility, custody, and inheritance. This was reaffirmed in the case of *Cole v. Cole*, (1898) 1 NLR 15. where the court upheld the rights of children from a statutory marriage over those from a customary union in a property dispute.

Also, the maintenance and welfare of children and wife, in a statutory marriage is a germane factor. In the recent case of *UGBAH & ORS v. UGBAH (2025) LPELR - 81732(SC)* The Supreme Court has provided clarification regarding the rights of children and a wife to claim maintenance, welfare, and educational support, even while a marriage is still valid. Mrs. Veronica Ugbah filed a lawsuit against her husband, Mr. Patrick Ugbah, seeking financial support for the children's upkeep. Mr. Ugbah, through his legal counsel, objected to this claim. However, the court ruled in favour of Mrs. Veronica Ugbah.

In 2006, Mrs. Veronica initiated legal action in the High Court of Lagos State through a writ of summons under the High Court (Civil Procedure) Rules, seeking maintenance for herself and the children, as well as support for their education and accommodation. The respondent contended that the claims, being based on a marital relationship, could only be initiated by petition under the Matrimonial Causes Act (MCA). Although the High Court dismissed the objection, the Court of Appeal upheld it, declaring the action incompetent as it was not filed under the MCA.

The Supreme Court's Decision: The Supreme Court unanimously overturned the Court of Appeal's decision, establishing three key principles:

1. **Enforceable Right to Maintenance:** The Court affirmed that both a wife and children have enforceable rights to maintenance, welfare, and education during the subsistence of marriage. These rights are independent of any filing for divorce, nullity, or judicial separation. (Adedigba, 2025)
2. **Substance over Procedure:** The Court held that whether such an action is commenced by writ or by petition is immaterial. Procedural rules exist to aid justice, not to obstruct it. In the absence of a miscarriage of justice, a case should not fail due to mere technicality.
3. **Children's Independent Rights:** The judgment emphasized that a father's duty to provide for his children is independent of the mother's rights and persists regardless of the marital status. To rule otherwise would, according to the Court, amount to permitting "paternal irresponsibility." Such may not be the case under customary law

Challenges and Controversies of Double-Decker Marriage in Nigeria

Double-decker marriage in Nigeria comes with several challenges and controversies. These issues arise from the intersection of two distinct legal systems: the

traditional or customary law, and the formal statutory law. The challenges often manifest in conflicts over the recognition of marriage types, inheritance rights, dissolution procedures, and spousal obligations, particularly in instances of polygamy and gender discrimination.

1. Legal Conflict and Confusion

One of the primary challenges of double-decker marriages is the legal confusion surrounding the relationship between customary and statutory law. While both systems are legally recognized, statutory marriages often supersede customary ones when conflicts arise. However, couples may find themselves entangled in legal battles when there is overlap or contradiction between the two systems. For example, in *Labinjo v. Abake* (op.cit) the court had to determine which marriage regime took precedence in a case where both customary and statutory marriages had been contracted.

The controversy here lies in the uncertainty couples face regarding which laws will apply in case of disputes. This creates legal instability and uncertainty, particularly for women, who may find that rights granted under one system (e.g., polygamous rights in customary law) are negated by statutory law's insistence on monogamy.

2. Inheritance and Property Rights Disputes

Double-decker marriages frequently give rise to inheritance disputes. Under customary law, inheritance rules can be patriarchal and biased against women, whereas statutory law generally promotes more equal inheritance rights between spouses. In many cases, a woman married under both customary and statutory systems may find herself at a legal disadvantage when customary law is invoked after the death of her husband, as it may favor male heirs or exclude her from inheriting significant portions of property.

In *Idehen v. Idehen* (op.cit) the Nigerian Supreme Court ruled in favor of a widow who had contracted both customary and statutory marriages, affirming that statutory law overruled customary inheritance practices, which sought to deprive her of her rightful inheritance. However, this ruling also highlights the confusion that can arise when customary laws are invoked in inheritance cases, especially when the deceased had married more than one wife under customary law.

3. Polygamy and Monogamy dichotomy.

The ongoing conflict between polygamy and monogamy presents a complex and multifaceted issue that delves deep into historical, cultural, and sociological dimensions. This discord arises from differing beliefs and values surrounding marriage

structures, with monogamy advocating for the union of two individuals forming an exclusive partnership, polygamy on the other hand embraces relationships that involve multiple spouses, often highlighting familial and societal bonds that vary across different civilizations. This divergence not only sparks debates regarding the legality and ethical implications of such marital arrangements but also reveals underlying tensions in gender roles, individual freedom, and cultural identity, making the discussion both rich and intricate.

The tension between the polygamous nature of customary marriage and the monogamous framework of statutory marriage presents another significant challenge. Under customary law, men are allowed to take multiple wives, but statutory law mandates a monogamous union. This difference creates legal contradictions, especially when a man married under customary law enters a statutory marriage. The Marriage Act renders any additional customary marriage after a statutory marriage as illegal, which often leads to allegations of bigamy.

This conflict was highlighted in *Ogunkoya v. Ogunkoya*, (op.cit) where the court had to decide whether a subsequent customary marriage was valid in light of an earlier statutory marriage. (Musa, 2020) The ruling underscored the supremacy of statutory law, but the case also illustrated the controversial nature of how Nigerian law balances these two systems, especially in societies where polygamy is a cultural norm.

4. Gender Bias and Spousal Rights

Another controversy in double-decker marriages involves the unequal treatment of spouses, particularly women, under customary law. Statutory marriage generally provides equal rights and obligations to both spouses, but customary law may impose gender-specific roles that disadvantage women, especially in matters of property ownership, inheritance, and divorce.

In *Cole v. Cole*, (op.cit) the court faced a situation where customary inheritance rules, which heavily favored male heirs, were challenged under statutory law, which emphasized equal rights between the spouses. Although the statutory marriage prevailed, the case highlighted how gender discrimination embedded in customary practices continues to affect women in double-decker marriages.

5. Dissolution and Procedural Complexity

The dissolution of double-decker marriages presents procedural challenges, as it involves navigating both customary and statutory legal systems. Couples who wish to dissolve a double-decker marriage must do so under the Matrimonial Causes Act (MCA), which

governs statutory marriages. However, customary law often has a different, less formalized dissolution process, leading to disputes over which procedure should be followed.

For instance, in *Glynn v. Glynn*, (op.cit) the procedural complexities of dissolving a double-decker marriage were evident, as the couple had to adhere to the more rigorous statutory divorce process despite having initially contracted a customary marriage. This legal friction between customary and statutory dissolution procedures often results in prolonged litigation and financial burdens for couples seeking divorce.

6. Religious and Cultural Tensions

Religious and cultural tensions also play a role in the controversies surrounding double-decker marriages. In communities where Islamic or Christian marriage practices are predominant, there can be significant resistance to the imposition of statutory marriage laws. These tensions are often exacerbated in cases where religious customs conflict with the statutory laws governing marriage, inheritance, and spousal rights.

For example, Islamic law permits polygamy, but this is incompatible with statutory law's monogamy requirement. Thus, individuals from religious backgrounds that accept polygamy may feel that statutory law infringes on their religious freedom and cultural practices. (Musa, 2020)

Conclusion

In conclusion, the study has thoroughly examined the intricate position that double-decker marriages hold within Nigeria's legal system, bridging the gap between customary and statutory frameworks. Customary marriages are deeply rooted in Nigerian culture and are widely acknowledged by various communities, whereas statutory marriages are formalized and governed by codified laws. The coexistence of these two systems results in substantial legal ambiguity for individuals in double-decker marriages, particularly concerning the validity of their marriages, inheritance rights, divorce proceedings, and the legitimacy of their offspring.

The discord between these two systems frequently leads to legal confusion, placing individuals in double-decker marriages at risk of forfeiting legal rights and protections. For example, inheritance laws under customary law may differ markedly from those under statutory law, leading to conflicts over property rights among surviving spouses and children. Moreover, divorce proceedings can be exceptionally complex when one marriage is recognized under customary law and the other under statutory law, resulting in

conflicting outcomes.

The study has also underscored the challenges faced by women and children in double-decker marriages. Given the patriarchal nature of many customary systems, women in such marriages often encounter discrimination, particularly concerning inheritance and divorce matters. The Nigerian legal system's inadequacy in addressing the legal status of these individuals contributes to ongoing legal uncertainties.

Consequently, the legal framework governing double-decker marriages in Nigeria is inadequate to resolve the challenges faced by those involved in such unions. Legislative reform is urgently needed to establish a more coherent and unified legal approach to marriage that respects both customary and statutory practices while providing clear legal protections for individuals, especially women and children.

Recommendations

Based on the findings and conclusions of this study, the following recommendations are proposed to address the legal and sociocultural challenges posed by double-decker marriages in Nigeria:

1. Comprehensive Legislative Reform to Harmonize Marriage Laws

The foremost recommendation is the necessity for comprehensive legislative reform to harmonize the recognition of both customary and statutory marriages in Nigeria. This reform should ensure equitable treatment of both types of marriages under the law, providing clear legal definitions and guidelines for individuals involved in double-decker marriages. A unified legal framework would clarify the legal status of such marriages, eliminating ambiguities in inheritance, divorce, and the legitimacy of children. The reform should also address marital property issues, ensuring that spouses in double-decker marriages are afforded similar rights under both customary and statutory systems.

2. Public Awareness and Education on Marital Rights

Given the prevalence of double-decker marriages in Nigeria, public awareness campaigns are essential to educate individuals about the legal implications of such marriages. Many Nigerians, particularly in rural areas, may not fully comprehend the legal risks associated with double-decker marriages or the complexities of navigating both legal systems. Educational initiatives could help individuals make informed decisions and avoid legal disputes. Furthermore, these campaigns should emphasize the importance of legal registration for both customary and statutory marriages, which could streamline legal

proceedings in cases of marital dissolution or inheritance disputes.

3. Protection of Women's Rights in Double-Decker Marriages

Women in double-decker marriages are particularly susceptible to legal inequalities. It is recommended that the legal system provide additional protections to safeguard the rights of women, especially in inheritance and divorce cases. Laws should be enacted to prevent the exploitation of women under customary marriage practices, ensuring they have equal access to legal rights regardless of whether their marriage is recognized under customary or statutory law. Special attention should be given to ensuring that women's rights to marital property and inheritance are not undermined by customary law.

Double-decker marriages represent a significant facet of Nigerian society, reflecting the intersection of traditional and modern legal frameworks. However, without adequate legal reform, they will continue to present challenges that undermine the rights of individuals, particularly women and children. Legal and institutional changes are crucial to resolving these issues and ensuring that the legal system protects the rights of all parties involved in such marriages.

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An abstract graphic design featuring a diagonal split. The upper-left portion is a light lavender color, while the rest of the image is a deep purple. A bright yellow arc, resembling a rising sun or a stylized 'D', is positioned in the upper-left quadrant. A thin, dark purple line follows the curve of the yellow arc. A horizontal yellow band at the bottom contains black text.

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