

EXPLORING CHILD'S LEGITIMACY AND LEGITIMATION IN THE NIGERIAN LEGAL SYSTEM: A COMPREHENSIVE ANALYSIS

Dr. Asaaju Olugbenga Hezekiah

ABSTRACT

In the intricate tapestry of Nigerian law, the concepts of child legitimacy and legitimation play a pivotal role in shaping the legal status and rights of children born within and beyond the boundaries of recognized marital unions. This research delved into the intricacies of these concepts, examining their historical development and practical implications within the Nigerian legal system. The research employed a qualitative approach, utilizing primary and secondary data sources. Primary sources included Nigerian statutes and case laws, while secondary sources consisted of scholarly articles, books, and reports. The research embarked on a conceptual journey for a proper understanding of child legitimacy and legitimation, defining key terms, and tracing their historical evolution and theoretical framework. The study comprehensively analyzed the legitimacy of children under Nigerian customary law, Islamic law, and statute law. It examined the recognition of legitimate and illegitimate children, the conditions for establishing child legitimacy, the implications of child legitimacy, and the challenges and limitations associated with these concepts. Furthermore, the research delved into the process of legitimation, outlining the methods of legitimizing children under Nigerian law, the legal effects of legitimation, and the challenges and limitations of legitimation procedures. It also examined the role of the judiciary in determining child legitimacy and legitimation, emphasizing its importance in ensuring fairness and upholding the rights of children. In conclusion, the research summarized the key findings and provided recommendations for legal reforms.

Keywords: Child Legitimacy, Child Legitimation, Nigerian Law, Legal Implications, Legal Reforms

1. INTRODUCTION

Within the legal domain, a child's legal status with their parents is determined by terms such as legitimacy and legitimation.¹ Traditionally, the term "legitimacy" refers to a child's status as an offspring, which includes the right to inheritance and parental responsibility, provided the child is born into married life.² Legitimation, on the other hand, is the process by which a child born outside of marriage is granted the same legal rights as a child born within, usually through the parents' subsequent marriage or by a judicial decree.³ Despite being universal, these ideas are subject to subtle differences in culture, religion, and the law in various societies.⁴

Determining a child's legitimacy and the legitimation process can be difficult in Nigeria, a multiethnic and multireligious country where English Common Law, Customary Law, and Islamic Law have a significant influence on the legal system. A complex environment for child legitimacy and legitimation has been produced by the interaction of multiple legal systems, as well as a wide range of cultures and traditions.

The importance of child legitimacy and legitimation in the Nigerian legal system cannot be overstated. Legitimacy and legitimation bear significant implications on a child's rights, including rights to familial relationships, maintenance, and inheritance. Moreover, it affects societal perceptions of the child and the family, which may further influence the child's psychological, emotional, and social development. Ultimately, these issues tie into larger themes of child welfare, social justice, and human rights, all of which are central to the Nigerian legal system and society at large.⁵

Despite the significance of child legitimacy and legitimation, there are prevailing challenges in the Nigerian legal system. Several legal ambiguities, cultural biases, and inconsistencies across various legal regimes pose difficulties in the uniform application of laws concerning child legitimacy and legitimation. These predicaments have often resulted in the marginalization of children born out of wedlock, creating a disparity in the enforcement of their rights. Beyond the legal sphere, the issues of child legitimacy and legitimation have far-

¹ OM Ryhina, "Legal Status of the Child", 'Rights of the Child', 'Needs of the Child', 'Interests of the Child': Theoretical and Legal Characteristics" (2021) *Juridical Scientific and Electronic Journal* 28

² SA Afolabi, LO Aboderin and DI Aboderin, 'Overview of the Concepts of Legitimacy and Legitimation under the Nigerian Laws' (2023) 3 *Journal of Advanced Research and Multidisciplinary Studies* 58

³ *Ibid.*

⁴ Ali Abubakar, Juliana Juliana and Maisyarah Rahmi Hasan, 'The Right of a Child Outside the Legal Marriage of a Biological Father: The Analysis of Hifz Al-Nafs as Law 'Illat'' (2021) 5 *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 153

⁵ MO Izzi and CD LongJohn, 'An Analysis of the Concepts of Legitimacy and Legitimation Under Nigerian Family Law' (2017) 5(1) *The Journal of Property Law and Contemporary Issues* 180

reaching socio-economic implications. The societal stigma associated with illegitimacy often translates into discrimination, affecting access to education, healthcare, and other social amenities. Moreover, issues of illegitimacy may lead to economic hardships, particularly in cases where illegitimate children are denied rights to parental support or inheritance. These socio-economic aspects underline the urgency of addressing the challenges associated with child legitimacy and legitimation.⁶

The purpose of this research paper is to examine the idea of child legitimacy and legitimation in light of the complex Nigerian legal system. It aims to conduct a critical analysis of the current legal frameworks, pinpoint contradictions and legal difficulties, and investigate how they affect Nigerian children's rights. The paper aims to improve the legal system's ability to safeguard children's rights by bringing these issues to light and adding to the conversation about child rights, especially in Nigeria. Creating a more equal legal environment for all children, irrespective of their birth circumstances, is the ultimate goal.

2. HISTORICAL DEVELOPMENT OF CHILD LEGITIMACY AND LEGITIMATION IN NIGERIA

Understanding Nigeria's historical background is helpful to properly appreciate the dynamics of child legitimacy and legitimation there. Nigeria, with its many ethnic and cultural groupings, has a rich tapestry of traditions and practices that have a big impact on how people see and treat children born outside of marriage. The impact of colonial laws, these cultural values, and the later absorption of English common law have produced the legal landscape that exists today.⁷

Furthermore, the development of laws about the legitimacy and legitimation of children has been greatly influenced by religion, especially Christianity and Islam. Therefore, a vital component of our investigation, the historical foundations of these problems paint a fuller image of the complexity of today's concerns.⁸

⁶ DT Achi and JO Akaunde, 'The Legal Status of Children Born out of Wedlock in Nigeria: Is the Concept of Illegitimacy in Decline?' (2021) 1 UCC Law Journal 445

⁷ Isochukwu, 'Family Law 2.7 Legitimacy and Legitimation' (*Isochukwu Ltd*, 31 December 2017) <<https://isochukwu.com/2017/12/31/family-law-2-7-legitimacy-and-legitimation/>> accessed 15 January 2024

⁸ PO Itua, 'Legitimacy, legitimation and succession in Nigeria: An appraisal of Section 42 (2) of the constitution of the Federal Republic of Nigeria 1999 as amended on the rights of inheritance' (2012) 4(3) Journal of law and Conflict Resolution 31

The concept of child legitimacy, in Nigeria and beyond, has been a complex and evolving one, deeply intertwined with societal values, legal frameworks, and cultural norms. Understanding its historical development in Nigeria requires examining the interplay between pre-colonial customary practices, the influence of British colonialism and its legal system, and the ongoing quest for a more equitable society that protects all children's rights.

Before the arrival of British colonial rule, diverse customary laws governed child legitimacy across Nigeria's numerous ethnic groups. These laws generally emphasized lineage and familial belonging rather than the marital status of the parents. In many communities, children born outside of marriage could be readily integrated into their father's lineage through acknowledgment or adoption, enjoying inheritance rights and social acceptance. For instance, among the Yoruba people, children born to unmarried parents could be legitimated through a ceremony called "Imole," while the Igbo tradition of "Ikwu Uwa" allowed for the formal integration of such children into their father's family. These practices ensured that children, regardless of their birth circumstances, were not left without familial support and social standing.⁹

The introduction of British colonial power in the late 19th century brought with it a new legal system based on English common law. Due to this system's strict definition of validity, which was based only on the parents' marital status, children born outside of marriage were stigmatised as "illegitimate" and faced severe social and legal repercussions. Limited inheritance rights, trouble proving paternity, and possible shame and discrimination were some of these drawbacks. The introduction of this foreign framework raised concerns about the new system's cultural appropriateness and inherent justice because it contrasted sharply with the varied and frequently more inclusive pre-colonial customs.¹⁰

Following Nigeria's independence in 1960, the legal system inherited from the colonial era remained in place. However, efforts to reform and adapt the law to better reflect Nigerian realities began to emerge. One significant development was the Legitimacy Act of 1929, which allowed for the legitimation of children born outside of marriage through the subsequent marriage of their parents. However, the Act's scope was limited, and customary laws continued to hold sway in many parts of the country. This led to a heterogeneous legal

⁹ Y Olomjobi and J Onuoha, Public perception on illegitimacy and succession rights in South Western Nigeria. Available at SSRN 2940847

¹⁰ A Musa, B Yahaya and N Theresa Samu, 'Customary Law in Nigeria and Parental Perception of Right of the Child' (2021) 9 International Journal of Advanced Research 488

landscape where the status of illegitimate children varied depending on their location and the applicable legal system.¹¹

The last decades of the 20th century and the beginning of the 21st century have seen an increase in understanding of how discriminatory laws and practices that are based only on a child's birth status are. In Nigeria, the push for equality and anti-discrimination has gained traction, resulting in several significant legislative and societal changes.

The Child's Rights Act of 2003 is one of the legal advancements. This historic law forbids discrimination against children based on their birth circumstances, including single or unmarried births. It ensures that every child has equitable access to healthcare, education, and other necessities. The provisions of the Constitution are another development. Children's rights, such as the freedom from discrimination and the right to inherit from their parents, are also safeguarded under the 1999 Nigerian Constitution.¹²

Despite these advancements, challenges remain in ensuring that the legal framework and social attitudes fully embrace the principle of equality for all children. Some argue that the concept of "illegitimacy" itself should be abolished, as it perpetuates stigma and discrimination. Others call for further legal reforms to address specific disadvantages faced by children born outside of wedlock, such as difficulties in establishing paternity and inheritance rights.

The historical development of child legitimacy in Nigeria reflects a journey towards greater inclusivity and recognition of the rights of all children. As the country continues to grapple with the legacy of colonialism and evolve its legal and social frameworks, the ongoing debate surrounding child legitimacy is likely to remain a central one. The ultimate goal is to create a society where every child, regardless of their birth circumstances, is valued, protected, and afforded equal opportunities to thrive.

¹¹ F Lorretta and N Chizomam, 'Customary Law in Nigeria Favours Men over Children in Custody Cases' (*The Conversation*, 1 December 2023) <<https://theconversation.com/customary-law-in-nigeria-favours-men-over-children-in-custody-cases-154420>> accessed 15 January 2024

¹² Nhrc, 'NHRC' <<https://www.nigeriarights.gov.ng/focus-areas/child-rights.html>> accessed 15 January 2024; Chioma U, 'The Rights Of A Child In Nigeria' (*TheNigeriaLawyer*, January 17, 2022) <<https://thenigerialawyer.com/the-rights-of-a-child-in-nigeria/>> accessed 15 January 2024

3. THEORETICAL FRAMEWORK OF CHILD LEGITIMACY AND LEGITIMATION

The concept of child legitimacy and legitimation, while seemingly straightforward, carries significant theoretical weight across various disciplines. Examining these frameworks helps us analyze and critique the underlying justifications and potential consequences of these legal and social constructs.

The Social Contract Theory is applicable here. This framework views legitimacy as derived from a tacit agreement between individuals to abide by certain rules and institutions for the sake of social order and individual liberty. In this context, child legitimacy might be seen as ensuring continuity and stability within the institution of marriage, which is considered a cornerstone of social order. However, critics argue that this framing unfairly disadvantages children born outside of wedlock and reinforces traditional family structures at the expense of other family forms.¹³

Another theory is the Feminist Theory. This perspective challenges the male-dominated power structures embedded in traditional notions of legitimacy. It critiques how the concept often serves to marginalize women and children by linking their social status and rights to the marital status of the father. Additionally, it highlights the historical biases and patriarchal assumptions that underlie discriminatory practices against illegitimate children.¹⁴

Symbolic Interactionism is also a suitable framework here. This approach focuses on how meaning is constructed and negotiated through social interaction. Legitimacy, in this framework, is seen as a label or category that is attributed to children based on social norms and expectations. Critics argue that such labeling can create stigma and discrimination, even if it doesn't have a direct legal basis. They advocate for focusing on individual circumstances and needs rather than relying on rigid categories.¹⁵

This framework analysis applies to the Human Rights Framework. This viewpoint emphasises that every person has intrinsic dignity and equal rights, regardless of their

¹³ 'Social Contract Theory | Internet Encyclopedia of Philosophy' <<https://iep.utm.edu/soc-cont/>> accessed 15 January 2024

¹⁴ L Rosenbury, 'A feminist perspective on children and law' (2015) 1 International perspectives and empirical findings on child participation: From social exclusion to child-inclusive policies 17

¹⁵ MJ Carter and A Montes Alvarado, 'Symbolic interactionism as a methodological framework' (2019) Handbook of research methods in Health Social Sciences, (169-187). Singapore: Springer; Charlotte Nickerson, 'Symbolic Interactionism Theory & Examples' (*Simply Psychology*, October 16, 2023) <<https://www.simplypsychology.org/symbolic-interaction-theory.html>> accessed 15 January 2024

circumstances of birth. It makes the case that depriving children of rights because of their parent's marital status violates fundamental human rights like the right to family life and non-discrimination. This framework promotes social and legal reforms that guarantee every child has equitable access to opportunities and resources.

Furthermore, the Postcolonial Theory is equally applicable. This framework examines the enduring influence of colonial legacies on legal and social structures in former colonies. In the context of child legitimacy, it criticizes how colonial legal systems were often imposed on diverse pre-colonial practices, leading to the marginalization of customary approaches and the creation of unfair disadvantages for children born outside of wedlock.¹⁶

And lastly, the Cultural Relativism is applicable. Cultural relativism recognizes the diversity of cultural practices and norms. The legitimacy of a child can vary significantly across cultures, and this theoretical framework encourages understanding and respecting different cultural perspectives on family and legitimacy.¹⁷

In summary, the theoretical framework of child legitimacy and legitimation encompasses legal, sociological, anthropological, feminist, children's rights, cultural relativist, evolutionary, and psychosocial perspectives. This interdisciplinary approach helps to unravel the complexities surrounding the recognition and treatment of children based on the circumstances of their birth within different cultural, legal, and social contexts.

4. CHILD LEGITIMACY

A child born to parents who are legally married to one another or who are married soon afterward due to a divorce is considered legitimate. The importance of legitimacy stems from the fact that only legally born children are entitled to inherit their father's estates and all other rights associated with being legally born children, such as maintenance and custody. According to the ruling in *Lawal v. Yunnam*,¹⁸ marriage under the Marriage Act, Islamic law, and customary law are all considered valid matrimony in Nigeria. Therefore, the parent of the

¹⁶ O Nieuwenhuys, 'Theorizing childhood (s): Why we need postcolonial perspectives' (2013) 20(1) *Childhood* 3; M Liebel, 'Childhoods from postcolonial perspectives' (2020) In *Decolonizing Childhoods*. Policy Press.

¹⁷ J Westwood, 'Childhood in different cultures' (2013) y IP address 192.168. 10.4 on 2022/08/18, p.9.

¹⁸ (1961) WNLR 197

child must have been lawfully married at the time of conception or at the time of delivery for them to be considered legitimate at birth.

Presumption of Legitimacy in Customary Law

In general, if a child is born into a valid marriage, they are accepted at birth. A child born during the maintenance and extension of a marriage under customary law is considered to be legitimate. According to *Mariyama v. Sadiku Ejo*,¹⁹ for example, under Igbirra customary law, any child born within ten calendar months of a divorce is considered the legitimate child of the former spouse even though he cannot possibly be the child's father. The presumption of legitimacy in customary law is typically accepted by customary courts as unquestionable. This criterion has the effect of applying the presumption even in cases when it is clear that the child does not belong to the spouse; higher courts have consistently viewed this as rebuttable. The court determined that the tradition in *Edet v. Essien*²⁰ was against natural justice, equity, and good conscience because the dowry, or bridal price, had not been reimbursed. The ruling in *Ezekiel v. Alabi*²¹ established that in cases where there is proof of a valid marriage, the court will refrain from asking which spouse—the husband or the woman's lover—is the father of a child born during cohabitation and born into matrimony, as this could potentially cause scandal.

According to *Lawal v. Younan*,²² offspring of customary law marriages in Nigeria are legally recognised as genuine. The concepts of paternity, marriage, and legitimacy do not necessarily have a connection in strict customary law. For example, a child may be considered legitimate even if their natural parents are not married to each other and the person who grants the child legitimacy is not the child's biological father.

According to Ibo custom, for example, a man without a male child may convince one of his daughters to remain single and bear a male child instead of marrying in order to preserve her father's lineage from extinction. Any male child born in this way is entitled to the grandfather's land and title. Similar to this, a barren wife may attempt to fulfill her marital duty of bearing children for her husband by "marrying" another woman. This involves paying the bride price for the union, and the children of this marriage to the other wife will be

¹⁹ (1961) NRNLR 81

²⁰ (1932) II NLR 47

²¹ (1964) 2 All NLR 43

²² (1961) WNLR 197

recognised as the husband's legal children. A child may be considered legitimate under customary law even if the mother never obtained the status of a lawful wife and even if the putative father is not the child's biological father.²³

Presumption of Legitimacy under Statutory Law

Under the former Section 147 of the Evidence Act of 2011, there exists a statutory presumption of legitimacy for children born during the continuation of a statutory marriage or within two hundred and eighty days following the dissolution of said marriage. But since the Matrimonial Causes Act of 1970 came into effect, the law has changed to reflect it. Section 115(3) states that, in cases where a person was born while their mother was still married to a man or within two hundred and eighty days of the marriage ending with the mother still single, the court will assume that the person is the man's legitimate son, as decided in *Akparanta v. Akparanta*.²⁴

Both spouses are qualified witnesses under section 84 of the Act to testify that the parties did not engage in sexual intercourse at any relevant time. In light of this, any party may present evidence to refute the presumed legality of a child born during the marriage, but spouses are not compelled to do so if doing so would defame a child born to the woman during the marriage.

Legitimacy of Children of Void Marriage

Ordinarily, any child born of a void marriage is illegitimate, the 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 by 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.

Legitimacy of Children of a Voidable Marriage

²³ Ka-Admin and Ka-Admin, 'Understanding Gender Complementarity in Igbo Society: The Role of *Umuada* and *Umunna* in Peacebuilding' (*Kujenga Amani*, October 24, 2023) <<https://kujenga-amani.ssrc.org/2021/07/21/understanding-gender-complementarity-in-igbo-society-the-role-of-umuada-and-umunna-in-peacebuilding/>> accessed 15 January 2024

²⁴ (1972)2 ECSLR 779

A nullity ruling about voidable statutory marriages was applied retroactively under common law, which dehumanised the marriage's offspring. However, the Matrimonial Causes Act of 1970 brought about a significant alteration in this regard. Section 38(1) of the Act states that a decision of nullity regarding a voidable marriage is only valid as of the decree's absolute date. Furthermore, contrary to S38(2) MCA 1970, such a decision of nullity does not deem the child of the parties born after or legitimated during the marriage to be illegitimate. 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.

Presumption of Legitimacy under Islamic Law

According to Nigerian Islamic law, the marital status of the parents at the time of the child's birth determines the child's validity. A child is considered legitimate if they were born into lawful wedlock, which refers to any marriage that is accepted by the law, regardless of whether it is Islamic, customary, or statutory. If a child is conceived and born outside of a legally recognised marriage, they are considered illegitimate. Under Nigerian Islamic law, the marital status of the parents at the moment of conception affects the presumption of legitimacy. A child born inside the legal framework of a marriage is regarded as the legitimate offspring of the husband and wife. However, if the child is born outside of a valid marriage, the presumption of legitimacy does not apply. It is significant to remember that there are situations in which the presumption of legitimacy can be refuted. For instance, the child born to the husband's wife is not considered to be his biological child if the husband is sterile or impotent. In a similar vein, a child born to a husband who is away from his spouse for an extended period is not considered to be his biological child.²⁵

Presumption of Legitimacy under English Law

According to common law, a child must be born into a valid marriage for them to be considered legitimate; as a result, an unmarried child is considered and will always be treated as an illegitimate child. According to the ruling in *Egwunwoke v. Egwunwoke* (1966) 2 All

²⁵ M Lawan, 'Islamic law and legal hybridity in Nigeria' (2014) 58(2) *Journal of African Law* 303; PO Itua, 'Legitimacy, legitimation, and succession in Nigeria: An appraisal of Section 42 (2) of the constitution of the Federal Republic of Nigeria 1999 as amended on the rights of inheritance' (2012) 4(3) *Journal of Law and Conflict Resolution* 31

NLR 1, (1966) NMLR 147, a child born into a valid marriage is considered legitimate at common law unless and until the opposite is demonstrated.

5. CHILD LEGITIMATION

Legitimation is the process by which a child who has not been born 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.²⁶

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 parents.²⁷

The conditions to be fulfilled before a child can be said to have been legitimated are provided for under section 3 Legitimacy Act as obtainable and practicable under the Marriage Act. The modes of legitimation as it has been discussed in the subsequent heading are legitimation by subsequent marriage, either statutory or customary marriage, and acknowledgment of the child's paternity as a means under customary law.

Legitimation of Children Born Out of Wedlock

Despite the detrimental consequences that illegitimacy has on impacted children, there are legal remedies available. These children can be given legal status. In Nigeria, illegitimacy can be recognised by the customary law-based acknowledgment process or by the subsequent official marriage of the illegitimate child's parents. The Legitimacy Act of 192950, which was in effect at the time nationwide, was the legislation that initially made it possible for someone to become legitimate by a future marriage.

However, with the advent of federalism in Nigeria, the Legitimacy Act, also known as Law51, became a regional issue. The child becomes legitimate from the date of the marriage

²⁶ OD Peter, 'Legitimacy, Legitimation and Succession Under Nigerian Law' (Doctoral dissertation, Faculty of Law, Obafemi Awolowo University 2018).

²⁷ Ibid.

if the parents of an illegitimate child marry after the child is born, according to the aforementioned Act or Laws. However, if the marriage occurred before the Act's effective date, which is the date the Ordinance went into force, then the Act's or the law's effective date will be considered the date of legitimation. According to Section 3(1) of the Legitimacy Act, in cases where the parents of an illegitimate person get married or have already married, whether before or after the Act's start, the marriage will, if the illegitimate person's father was or is domiciled in Nigeria at the time of the marriage, render that person legitimate from the Act's start, or from the marriage's date, whichever comes first.

The operation of Section 3(1) is dependent on the satisfaction of several requirements, including that the illegitimate person's parents must have later gotten married, that the marriage must be a statutory one conducted in line with the Marriage Act rather than one governed by custom, that the illegitimate person's father must be a resident of a State in Nigeria at the time of the marriage, as specified in Section 2(3) of the MCA, and that the legitimated person must be alive on the day of the marriage.

According to Section 3(1), marriage has the effect of making the person who is living legitimate. If the parents subsequently marry, the illegitimate person will become legitimate as of the Act's commencement, which was October 17, 1929, whichever comes first. Consequently, if the marriage occurred before the Act's commencement, then the illegitimate person will become legitimate as of the Act's commencement. However, if the marriage was consummated after October 17, 1929, he would have legal status as of that day. According to the Legitimacy Act, a child of an adulterous union may be legitimated by its parents' future marriage.

The Legitimacy Act, Section 9(1), provides for the situation in which the father of an illegitimate person was living abroad. If, at the time of the illegitimate person's birth, the father resided in a nation whose legal system does not recognise legitimacy through subsequent matrimony, but at the time of his marriage to the mother of the illegitimate child, he did live in a nation where such legitimation is recognised, the illegitimate person will be recognised as legitimated in Nigeria. This recognition will come from the date of the marriage, whichever comes first

Effect of Legitimation

A person who is legitimised gains all the rights and obligations of a legitimate person, including all rights to claims for damages, compensation, allowances, or benefits that are vested in a legitimate person as specified in section 8 of the Legitimacy Act. This means that a legitimated person has the same rights and obligations regarding maintenance and support as if he had been born legitimate.

Such a person is both eligible to inherit from and successfully participate in the administration of his parent's estate. However, in cases where an illegitimate individual passed away after the Act went into effect but before his parent's marriage, which would have legitimised him, his surviving spouse, children, and closest living relative will inherit property and any interest as though the individual had been legitimated. A child born outside of marriage may be granted legal status under customary law by the putative father's acknowledgment of his existence. When Cole, J. decided in *Taylor v. Taylor*²⁸ that "the acknowledgment of paternity by the father ipso facto legitimises the children and there could not for succession be different degrees of legitimacy," he succinctly summed up the legal significance of acknowledgment.

Recognition of children born out of wedlock is also given for in other jurisdictions. For instance, all 50 states in the United States of America have enacted legislation granting legal status to children born outside of marriage.²⁹ Although these statutes vary in their overall framework, they all acknowledge children as the legitimate offspring of their natural parents; the natural parents of an illegitimate child may subsequently marry as a means of legitimization, provided that the natural father acknowledges the child's paternity; the natural father may also acknowledge the child as legitimate; and a court may declare a child to be legitimate.

Legalised children are entitled to child support and other benefits in countries like the USA where laws have lessened the strength of the illegitimacy principle. The court's ruling in *Trimble v. Gordon*³⁰ mandated that the state devise a mechanism for recognising and allowing children born outside of marriage to inherit. The ruling in this case implicitly acknowledges that illegitimacy persists as a problem that needs to be addressed, even in well-developed democracies.

²⁸ 1960) L.L.R. 286

²⁹ M. G. Hill, Jr. and S. Emanuel, *Family Law* 213

³⁰ (1977) 430 U. S. 762

The lesson in the aforementioned case, however, seems to be that the legislature must consciously move out of section 42(2) of the Constitution and enact suitable laws that will give the Constitution's intended meaning and impetus towards eradicating the phenomenon of illegitimacy in the nation more weight. This applies to both Nigeria and indeed all of Africa.

A parent's responsibilities to a legitimate child include providing for the child's needs, education, physical safety, and maintenance. The Child's Right Act contains several rights in sections 10(1)(2), 14(2), 15(1) (2), 16(1), and 17(2). Additionally, the CFRN 1999 as amended's chapter IV and provision 42(1) (2) established a constitutional framework for the rights of legitimate and legitimated children. A person with legal status will be entitled to a property stake. When a legitimated person participates with other children in the distribution of property according to seniority as provided for in section 5(2) of the Legitimacy Act, it allows the legitimated person and his children to take as from the date of legitimation from the deceased interest on intestate disposition occurring after that date, as if he had been born legitimate.

6. ESTABLISHING THE PATERNITY OF CHILDREN BORN OUT OF WEDLOCK

When a person born outside of marriage is entitled to benefits, it is equally required to prove their paternity in cases where that person's paternity is in doubt. A child born outside of marriage must prove his paternity by providing evidence of his relationship to the parent claiming to be his father to be eligible to receive a portion of his father's wealth. The court can safeguard an illegitimate child's welfare and interest in his parent's inheritance after the youngster satisfactorily establishes his paternity.

A birth certificate can be presented as one of the several ways to verify paternity. In *Ukeje v. Ukeje*,³¹ the court reached this conclusion after a birth certificate was submitted as evidence without any supporting documentation. It is argued that by establishing the notion that paternity can be established through a birth certificate provided by an individual born outside of marriage, the court's ruling in *Ukeje's Case* enlarged or expanded the law in this area.

³¹ (2014) 1 NWLR (Pt.1418) 384

Another method used in science to establish the paternity of an illegitimate child is the deoxyribonucleic acid (DNA) test. By section 63 of the Child Rights Act, this can be accomplished by comparing the blood sample of the individual whose paternity is in question with that of the putative father or any other person who is purported to be that individual's mother or father. Before collecting the sample, the consent of all individuals who may be impacted must be acquired, including minors up to the age of sixteen. In cases where a child is mentally incompetent, both the carer and the attending physician must agree that the sample collection will not negatively impact the child's care and treatment.³²

In Nigerian law, a High Court or Magistrate-Court has the authority to order a deoxyribonucleic acid (DNA) scientific test in situations where the child is attempting to establish paternity or maternity or where there are conflicting claims regarding the child's paternity or maternity⁷⁰. Note that the requirement for consent from the individuals whose samples are to be gathered is deemed irrelevant in cases where the court has ordered a DNA test.

7. CHALLENGES FACING THE LEGITIMACY OF CHILDREN BORN OUT OF WEDLOCK

In Nigeria, concerns over the validity and status of children born outside of marriage continue to provide significant ethical and legal challenges. The 1999 Constitution's provision 42(2) and the ongoing ambiguity surrounding the legal status of these children have left the law's stance unclear.³³ Without a doubt, a sober reading of the Federal Republic of Nigeria, 1999 (as amended) Constitution section 42(2) shows that the provision does not specifically forbid the discrimination against or deprivation of illegitimate people born out of lawful wedlock. This has made a tonne of debates possible.

³² Section 64 of the Child Right's Act, 2003. Also see MA Aja-Nwachukwu, 'Determination of Paternity of a Child or an Adult in Nigeria: Is there any Justification for the Distinction?' (2015) 44 Journal of Law, Policy and Globalization 115

³³ Lawyard Staff, 'Legitimacy, Illegitimacy and Legitimation: An Obstruction or Promotion of S.42 (2) of the 1999 Constitution?' (*Lawyard*, March 8, 2021) <<https://www.lawyard.org/opinions/legitimacy-illegitimacy-legitimation-an-obstruction-or-promotion-of-s-42-2-of-the-1999-constitution/>> accessed 15 January 2024

While some writers stated that the Constitution has not abolished the status of illegitimacy,³⁴ others writers have maintained that the law in practice has impliedly forbidden the status of illegitimacy.³⁵ This argument challenges the idea that illegitimacy should be abolished since it shows that there is a portion of Nigerian society that firmly believes that children produced outside of marriage should be considered illegitimate. This discussion will continue for some time as long as there is doubt over the status of unmarried individuals who want to utilise the aforementioned area.

The inability of people born outside of marriage to sue and enforce their fundamental right to be free from discrimination, deprivation, and disability based on section 42 (2) of the Federal Republic of Nigeria, 1999 Constitution (as amended) presents another difficulty that is evident from the legal conflicts surrounding the status of these individuals. It's unclear whether this is even a matter that Nigerian courts have made a definitive ruling on because of this lack of clarity. This seems to be a kind of subtle restraint on the legislation, preventing it from being further developed or enlarged.

Again, as with many policies, there seems to be a clear lack of public knowledge and education about the rights enshrined in the Constitution, specifically section 42(2), which addresses the status of all children in general and out-of-wedlock children in particular. Discriminating against a child who had no say or involvement in their birth is both ethically repugnant and against the law. Even though morality and religion are not inherently bad, the man and woman who brought the child into the world together cannot also be held responsible, even if they made a conscious effort to do so. If anyone has to take the blame, it is society, as we must stop stigmatising these children.

8. RECOMMENDATIONS

In light of the aforementioned analysis and the difficulties or issues noted, the following comments and proposals are sincerely made:

It is recommended that section 42(2) of the Federal Republic of Nigeria, 1999 Constitution, as amended, be revised to forbid discrimination and deprivation against unmarried people

³⁴ MO Izzi and CD LongJohn, 'An Analysis of the Concepts of Legitimacy and Legitimation Under Nigerian Family Law' (2017) 5(1) *The Journal of Property Law and Contemporary Issues* 180

³⁵ IE Sagay, *Nigerian law of succession* (Malthouse Press 2007)

with disabilities. As it is, section 42(2) acknowledges that there is currently ambiguity regarding the legal standing of those born outside of marriage, leaving open the question of whether illegitimacy is outlawed or unconstitutional.

In addition, we support Nigeria's adopting the American policy, wherein every state has passed legislation making illegitimacy illegal. Common law definitions and notions of validity are antiquated in today's environment.

Once again, everyone should be entitled to the constitutionally guaranteed equality of birth. A violation of a fundamental human right should be the result of any deviation from this, and the individual whose right has been violated should be entitled to take legal action. Individuals whose basic right to freedom from all forms of handicap, deprivation, and discrimination is enshrined in section 42(2) of the Federal Republic of Nigeria, 1999 (as amended) ought to have the legal capacity to litigate for the enforcement of their right.

Additionally, it is advised that outmoded cultural and religious customs that have historically rendered some people disabled denied rights, and subjected them to discrimination due to their sex or perceived illegitimacy be completely abandoned because they are archaic, out of touch with modern society, and barbaric.

Lastly, given the conditions of Nigerian society, it is also advised that the English legal system's stance on legitimacy be relaxed. Preference should be given to the situation under customary law, including Islamic customary law, which offers more practical and accommodating means of legitimation⁷⁵. Customary law in this area is more in line with the letter and spirit of section 42(2) of the Constitution, which only aims to shield impacted children from deprivation or disability resulting from their unwed birth, rather than doing away with the common law concept of legitimacy.

9. CONCLUSION

Child legitimacy and legitimation are complex issues in the Nigerian legal system, with implications for a child's rights, social status, and access to inheritance. This research paper has delved into these concepts, examining their historical development, legal frameworks, and socio-cultural nuances. The paper highlighted the significance of child legitimacy and

legitimation in Nigeria, emphasizing their impact on children's rights and societal perceptions. It then explored the historical evolution of these concepts, tracing their roots in pre-colonial customary practices, the influence of British colonialism and its legal system, and the ongoing quest for a more equitable society that protects all children's rights. The challenges and limitations associated with child legitimacy and legitimation are also addressed. These include legal ambiguities, cultural biases, and inconsistencies across different legal regimes, which can disadvantage children born outside of wedlock. In conclusion, the paper underscores the importance of ongoing efforts to reform and refine the legal and social frameworks surrounding child legitimacy and legitimation in Nigeria. It emphasized the need for a system that upholds the rights and dignity of all children, regardless of the circumstances of their birth. By promoting inclusivity, equality, and non-discrimination, Nigeria can ensure a brighter future for all its children. Overall, this research paper provides a comprehensive and insightful analysis of child legitimacy and legitimation in the Nigerian context. It sheds light on the complexities of these issues while advocating for legal and social reforms that prioritize the well-being and rights of all children.