# AN ANALYSIS OF *IGIOGBE* CONCEPT UNDER THE BENIN CUSTOMARY LAW OF INHERITANCE IN NIGERIA

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## Abstract

*An Igiogbe is the house where a Benin man lived, died and usually in most cases is buried. It devolves absolutely without any contradiction on his eldest surviving son as soon as the burial rites are performed and completed by him (in rare instances supported by family members) in accordance with the Benin Customary burial rites. The work critically examines igiogbe as concept under the Benin customary law of inheritance, concept of igiogbe and its historical development, critical review of literature, the igiogbe as a concept, and definition of terms. The objective of the work is to bring out the original meaning of Igiogbe, through critical litereature review, changes in Igiogbe cultural practice and address the gender abuse related to this concept. The work examines the origin, status and constitutionality of customary law in Nigeria. Thereafter, it examines Igiogbe inheritance in Benin kingdom and all other issues and matters arising from, bothering on and relating to this concept. The work is concluded with recommendations on mass enlightenment campaigns being mounted by the Ministry of Women Affairs at both the Federal and State levels to enlighten the people about the hardship and injustice which discriminatory customary laws impose on women and that any customary law that is discriminatory against women should be declared invalid on the grounds that it is unconstitutional and repugnant to natural justice, equity and good conscience.*

**Keywords:** Igiogbe, Inheritance, Benin Custom and Success

## 1. Introduction

The theoretical foundation of the concept of *Igiogbe* takes its root from the primogeniture rule that was modeled by the monarch who from the reign of Oba Ewuare the Great (1440-1473 CE), laid down customary rules that it is the Oba's eldest surviving son that will succeed him to the throne and also inherit his estate exclusively provided he had performed the customary funeral rites of his father.[1] This practice was perceived to be fair and peaceable by the Benins and therefore became the custom till date.[2] Under this custom, the heir apparent to the throne is the *Edaiken N'Uselu* being the next of kin of the Oba. The property (which can also mean his *Igiogbe)* of the demised Oba is never shared. They vest in the *Edaiken N'Uselu*, the heir apparent to the throne. A reigning Oba can devise any gift or property to any of his children in his life time.[3]

*Igiogbe* is a Benin word, which literally means the house in which the deceased lived and died and usually, though not always is buried and that may as well contain the ancestral shrine including the

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[1] Okeaya-Inneh K. S., *Benin Native Law and Custom at a Glance,* (Gift-prints Associate, Benin, Nigeria, 2007), 28.
[2] *Ibid,* pp. 29-30.
[3] *Ibid.*

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*Ukhure* (or *Aro-Era*) of the family unit. It is a place where some customary activities are observed by the family. Examples include; the worshipping of deity, christening of new babies, traditional marriage ceremonies to mention, but a few. It must be noted and very importantly too that the principal dwelling house of a Benin man only becomes *Igiogbe* after his demise and can only be inherited after he has been properly buried by the eldest surviving son in accordance with the burial rites of the Benins.[4]

As in other parts of Nigeria, the Benins have multiple customs and traditions (customary laws). Examples of these are Benin Customary Law of Marriage, Benin Customary Land Tenure system and Benin Customary Law of Inheritance and Succession. Under Benin Customary Law of Inheritance and Succession, the *Igiogbe* has gained prominence and notoriety. These customs may be viewed as being complex and pose difficulty in determining an *Igiogbe* if the deceased had more than one house.

However, Per Belgore, J.S.C., (as he then was) in *Lawal-Osula v. Lawal-Osula*[5] confirmed that:

> The Benins like some other tribes in Nigeria, got some+ age long traditions and norms, some peculiar to them, others in common with the other races in the other parts of the world that cannot be written off by a mere legislation. To legislate to ban some of these native laws and customs, would lead to serious disorder that makes governance and obedience difficult. It is in the light of these that instead of entirely discarding a practice that has been tried and tested over centuries, legislations are carefully drafted to accommodate the laws and customs in question and to regulate their practice.[6]

Succession under Benin Customary Law in Nigeria is governed by the principles of primogeniture. In other words, the concept of male succession prevails with little modification among the Benins. This custom has been judicially recognized by the Nigerian Supreme Court.[7]

The Evidence Act[8] also gives weight and credence to this custom bothering on the concept of *Igiogbe* under the Benin Customary Law of Inheritance. It provides that: A custom may be judicially noticed when it has been adjudicated upon once by a superior court of record.[9]

The eldest son of a deceased Benin man is entitled to inherit the *Igiogbe* only after the completion of the *Ukomwen*.[10] The completion is marked by a ceremony by members of the family. Subject to any Customary Law relating thereto, it shall be lawful for every person to devise, bequeath or dispose of, by his will executed in a manner hereinafter required, all real and all personal estate which he shall be entitled to, either in law or in equity, at the time of his death and which if not so

[4] Ibid
[5] (1995) 9 N.W.L.R. (pt. 419) 259.
[6] (1995) 9 N.W.L.R. (pt. 419) 259, 274.
[7] *Arase v. Arase* (1981) N.S.C.C. 101.
[8] Cap. E14, LFN, 2004 (as amended).
[9] *Ibid,* Section 17.
[10] Ibid note 1, K. S. Okeaya-Inneh., Benin Native Law and Custom at a Glance, (Gift-prints Associate, Benin, Nigeria, 2007), p. 38.

devised, bequeathed and disposed of would devolve upon the heir at law of him or if he became entitled by descent, of his ancestor, or upon his executor or administrator. Therefore, a testator cannot make a will and disinherit the eldest son of his customary entitlement to the *Igiogbe* for any reason. This customary principle has also received legislative approval.[11]

However, in *Idehen v. Idehen*[12] the same Supreme Court modified the definition of the *Igiogbe* under Benin Customary Law by introducing the concept of multiple *Igiogbes* which was totally at variance with the hitherto acknowledged customary law definition of *Igiogbe*. The decision has caused a lot of anxiety and confusion within the traditional society.

## 2. Concept of Igiogbe and Historical Development

In other to understand the background of this work, it is apt to understand the coming into being of the Benins. Many years ago, the Benins came from Egypt and were able to secure shelter in the present day Benin kingdom after a short stay in Sudan and Ile-Ife.[13] Benin-City is the present day capital of Edo-State in the South-South geo-political Zone of Nigeria. Benin-City is the traditional headquarters of Benin kingdom with the Oba of Benin as the traditional head.[14] The traditional name is Edo. They speak Edo as their native language and English as second language. Nigeria Pidgin English is mostly spoken by all. The name 'Edo' or Oredo for the capital of Benin kingdom is also claimed in Benin tradition to have originated through royal proclamation by Oba Ewuare the Great who reigned in the second half of the fifteenth century.[15] Edo and Benin mean the same thing. According to Osemwowa,[16] 'Benin is Edo and Edo is Benin'. It is famous for handicrafts in bronze, ivory and wood.[17] Apart from being famous for handicrafts, a visit to Benin reveals their cultural identity; everything about the Benins is culture. The Benins are tied to the apron strings of their culture and culture is part of the Benins' ways of life.[18] When compared to other ethnic groups in Nigeria, the Benins are more attached to their culture.[19] The Edo speaking people occupy seven local Government Areas in Edo-state namely; *Oredo, Ikpoba-Okha, Egor, Orhiowon,*

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[11] Section 3(1) of the Wills Law of Bendel–State, Cap 172, Laws of Bendel-State, 1976, (now applicable to Edo and Delta States).

[12] (1991) 6 N.W.L.R. (Pt.198) 382.

[13] J.U. Egharevba., A Short History of Benin (Fifth Edition, Fortune and Temperance Publishing Co. Benin–City, 2005), p. 1.

[14] V. O. Edo, 'The Changing Phases of Power and Civil Administration in Benin: From Inception to 1987' available at https://www.google.com.ng/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CCwQFjADahUKEwiS2cvmj9XHAhVomtsKHTyCAJE&url=http%3A%2F%2Fwww.nobleworld.biz%2Fimages%2FEdo2.pdf&ei=TDrlVZKDI-i07ga8hIKICQ&usg=AFQjCNHEyz5y7mAd78VIZ08DdpwsRq2S4g accessed on 1st September, 2015 and Osadolor B. O., 'The Military System of Benin Kingdom C. 1440-1897' available at https://www.google.com.ng/search?newwindow=1&site=&source=hp&q=Osadolor+B.+O.%2C+The+Military+System+of+Benin+Kingdom+C.+1440-1897&oq=Osadolor+B.+O.%2C+The+Military+System+of+Benin+Kingdom+C.+1440-1897&gs_l=hp.3...2613.4235.0.4756.2.2.0.0.0.0.900.900.6-1.1.0....0...1c.1.64.hp..2.0.0.t8d2SiRSYQ8 accessed on 01st September, 2021.

[15] Ibid, B. O. Osadolor., 'The Military System of Benin Kingdom C. 1440-1897'.

[16] U. I. Osemwowa., *The Customary Law of the Benins*, (Myke Commercial Press, Benin–City, 2000), p. 3.

[17] Ibid, note 14, V. O. Edo, 'The Changing Phases of Power and Civil Administration in Benin: From Inception to 1987' and Osadolor B. O., 'The Military System of Benin Kingdom C. 1440-1897'.

[18] Interview with Barr. Kola S. Okeaya–Inneh, SAN, Chairman; Nigeria Bar Association, South–South Chapter and Principal Partner; Kola S. Okeaya–Inneh SAN & Co., (No. 66 Mission Road, Benin–City, Edo –State, 8th May 2015).

[19] Ibid

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*Uhuunmwode, Ovia North –East and Ovia South–West*. Of these seven Area Councils, *Oredo, Ikpoba-Okha and Egor* make up Benin-City which has a total of 1,086,882 inhabitants.[20]

## 3. **Critical Review of Literature on the Igiogbe as a Conpcept**

A lot of scholarly works have been carried out on the history of Benin kingdom and lots of books have also been written on customary laws of the Benins, but none of these authors have given any particular and worthy attention to the issue of *Igiogbe*, rather this concept of *Igiogbe* that goes to the root of the custom of the Benins is mentioned occasionally and only in passing remarks in their books.

Osemwowa[21] only treated *Igiogbe* as a sub-heading in two pages while referring to the cases concerning *Igiogbe*. He did not speak in details on the concept of *Igiogbe* to actually portray its true meaning. He also did not speak on the issue of the daughters' rights of the deceased Benin man to ascertain if they have any right or claim to the *Igiogbe*. As a Benin man, one would have expected that the author ought to have given an in dept knowledge of this concept.

Okeaya-Inneh[22] treated the concept of *Igiogbe* in not more than three pages. The learned SAN dealt extensively with Succession and Inheritance under Benin custom. He gave a well-defined meaning of an *Igiogbe* and also explained categorically and clearly the succession to a Benin woman's property. One must commend the learned SAN for a job well-done but his work however did not give an analytic critic of all issues relating to the concept of *Igiogbe* which includes, but not limited to recognizing what happens to the *Igiogbe* if the Benin man is survived by only female children. One would have reasoned that the learned SAN who has a five decades standing at the Bar would have laid to rest all issues bothering on this concept**.** This work does not only seek to answer all questions raised in the statement of problems contained herein but to also lay to rest all issues arising from and bothering on this concept.

Itua's article[23] is majorly based on the decision of the Supreme Court in *Idehen v. Idehen*[24] to the extent of criticizing the decision being that the Supreme Court modified the definition of *Igiogbe* under Benin Customary Law by introducing the concept of multiple *Igiogbes* which was totally at variance with the hitherto acknowledged customary law definition of *Igiogbe*. The decision has caused a lot of anxiety and confusion within the traditional society. In his later article,[25] much attention was not given to the subject under discourse.

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[20] National Population Commission, Nigeria census 2006 available at www.en.wikipedia.org/wik/nigeria and accessed on 8th May 2021.

[21] U. I. Osemwowa, The Customary Law of the Benins, (Myke Commercial Press, Benin-City, 2003), 59.

[22] K. S. Okeaya-Inneh., Benin Native Law and Custom at A Glance, (Gift-Prints Associate, Benin–City, Nigeria 2007), 36.

[23] P. O. Itua., 'Succession Under Benin Customary Law in Nigeria: *Igiogbe* Matters Arising'. Cited i*n Journal of Law and Conflict Resolution* Vol. 3(7), September, 2011.

[24] (1991) 4 N.W.L.R. (pt. 198) 382.

[25] P. O. Itua., 'Review 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', published in *Journal of Law and Conflict Resolution*, Volume 4(3), pp. 31-44, March 2012. Available at http://www.academicjournals.org/JLCR accessed on 28th June, 2020.

Eghobamien[26] argued that the Supreme Court's judgment in *Idehen v Idehen*[27] in which the court held two houses of the deceased to constitute his *Igiogbe* was given *per incuriam*. However, he did not avert his mind to the pleadings in the proceedings where both plaintiffs and defendants agreed that the two houses in issue constitute their late father's *Igiogbe*. He submitted that the Supreme Court should revisit the question of more than one *Igiogbe* if and when the opportunity arises in order to rest the controversies generated by the judgment. He failed to deal extensively with the subject-matter but rather dealt more on criticizing the judgment of the apex court rather than stating his own view and dealing with the concept of *Igiogbe*. One would have expected more form his work being authored by a Benin man and a lawyer. This work would do more than justice in not only dealing extensively with the subject-matter, but also dealing with whatever issues relating to the subject-matter which is the crux of the work.

Aigbovo,[28] concluded that more judicial pronouncement will make the issue of *Igiogbe* clearer. This work finds it worrisome that a legal practitioner who doubles as a lecturer and a Benin man would conclude that it is the Supreme Court that should make more judicial pronouncements on this concept for the sake of clarity. His conclusion seems to suggest that the courts determines what the peoples' customs and traditions are and not the other way round which in reality is the actual fact. In the light of this, this work while criticizing the Supreme Court's decision in that case[29] and also agreeing that the decision was given *per incuriam,* will not fail to deal extensively with the concept of *Igiogbe*.

Nwabueze's work[30] is also centered on criticizing the decision of the Supreme Court in *Idehen v Idehen,*[31] to the extent that the decision is deemed to have been given *per incuriam*. Apart from this criticism, his work did not deal much on the subject matter in discourse.

Nwogugu[32] treated the subject of succession under customary law and threw light on the Benin system of intestate succession[33] but this concept of *Igiogbe* is alien in his work.

Amoloye-Adebayo[34] gave a detailed, critical and analytical appraisal of the regulation of inheritance rules and practices in Nigeria. Her work mentioned the concept of *Igiogbe* in passing, asked a few though very relevant and vital questions relating to the concept of *Igiogbe* but those questions were never answered in her work.

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[26] S. I. Eghobamien., Igiogbe and Miscellany in Benin Jurisprudence, (Seevon Prints, Benin–City, 2008), 45.
[27] (1991) 4 NWLR (pt. 198) 382.
[28] O. Y. Aigbovo., 'The Principal House in Benin Customary Law', Published in *University of Benin Law Journal*, Volume 8(1), 2005.
[29] *Idehen v. Idehen* (1991) 4 N.W.L.R. (pt. 198) 382.
[30] B. O. Nwabueze., 'Power of Testamentary Disposition in Bendel and the Western States of Nigeria', Published in *The Journal of Nigerian Law* (1992), 78.
[31] (1991) 4 N.W.L.R. (pt. 198) 382.
[32] E. I. Nwogugu., *Family Law in Nigeria,* (Heinamann Educational Books Nigeria Plc, Ibadan, 2011).
[33] *Ibid,* p. 412.
[34] A. O. Amoloye-Adebayo, 'The Regulation of Inheritance Rules and Practices in Nigeria: The Role of Sharīcah and International Human Rights Law' published in *University of Ilorin Journal*, Vol. 17, No. 1, pp. 105-128, available at https://www.google.com.ng/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CCoQFjAC&url=https%3A%2F%2Fwww.unilorin.edu.ng%2Fejournals%2Findex.php%2Fcp%2Farticle%2Fdownload%2F853%2F455&ei=MtqbVYuIJ8KUsgGEha7oCg&usg=AFQjCNGvoAI7d8ateixz466IoqiXgTDfpg accessed on 7th July, 2021.

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Kolajo[35] amongst others gave a detailed account of customary law of succession and acquisition of land under Benin Customary law. Apart from enunciating and expatiating on the limitations to power of testamentary dispositions by a testator as provided for by Section 3(1) of the Wills law of Bendel-State,[36] and as it relates to *Igiogbe*, his work did not say much about the concept in discourse. His work is however highly commendable for giving a compendium of cases bothering on customary law and a lot bothering on the subject/concept of *Igiogbe*.

Badaiki[37] examined critically the evolution and development of customary law in Nigeria and a well detailed explanation of the different developmental stages of almost all the customs in Nigeria. However, mention was never made to the concept of *Igiogbe*.

Osinbajo and Kalu in their work[38] dealt with issues relating to and bothering on customary laws. It provided in-depth knowledge relating to the definition of customary law, characteristics of customary law, determining whether Islamic law is customary in nature, ascertainment of customary law, proof of custom in customary and non – customary courts, testimonies of witnesses/expert opinions, judicial notice of customary law, validity of customary law; the natural justice test, the incompatibility test, the repugnancy test and even added another dimension to it which is the human right test. The work also discussed extensively the effect of an invalid customary law rule. In all of all these, mention was never made to the *Igiogbe* concept under Benin Customary Law of Inheritance.

Bradbury[39] also dealt with the concept of *Igiogbe* and Succession and Inheritance under Benin Custom. He gave a well-defined insight on a female child's stance to this concept. However, the discriminatory perspective was not treated.

Oyewo and Olaoba's work[40] though a survey of Africa Law and Custom did not consider the concept of *Igiogbe* as preference is given to the Yoruba speaking people of Nigeria.

Diala[41] mentioned the concept in this discourse only to the extent that it gives the eldest surviving son of the deceased Benin man the right to inherit the family home as overriding his father's testamentary wishes.

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[35] A. A. Kolajo., Customary Law in Nigeria through the cases, (Spectrum Books Limited, Ibadan, 2000), 32

[36] Cap. 172, Laws of Bendel-State, 1976, (now applicable to Edo and Delta States).

[37] A. D. Badaiki., Development of Customary Law, (Tiken publishers, Lagos, Nigeria, 1997).43

[38] Y. O. Osinbajo and Kalu U. A., 'Towards A Restatement Of Nigerian Customary Laws' available at http://martinslibrary.blogspot.com/2014/08/customary-law-characteristics.html and accessed on 22nd May, 2021.

[39] R. E. Bradbury, *The Benin Kingdom and the Edo Speaking People of Southern Nigeria* (International African Institute, London, 1970).

[40] A. T. Oyewo. and Olaoba O. B., *A survey of Africa Law and Custom with particular reference to the Yoruba speaking people of Nigeria*, (Jafor Publishers, Lagos, 1999). Also available at http://library.babcock.edu.ng/cgi-bin/koha/opac-detail.pl?biblionumber=38804 and accessed on 22nd May, 2021.

[41] A. C. Diala, 'Reform of the customary law of inheritance in Nigeria: Lessons from South Africa' published in *African Human Rights Law Journal* Volume 14 No. 2. Available on http://www.scielo.org.za/scielo.php?pid=S1996-20962014000200016&script=sci_arttext accessed on 31st August 2015.

Elias[42] dived into many concepts bothering on the nature of customary law and examined critically and extensively the customary judicial process. It is important to note that in all these, mention was never made to the subject under discussion.

Kehinde,[43] without more only gave a passing definition of the concept under review. His work must however be applauded for giving an account on how the discriminatory practices relating to women's inheritance rights have been criticized but no recommendation was given on how these discriminatory practices can be curbed.

Obi[44] and Okoro[45] laid more emphasis on the customary laws and rules of the Ibo speaking people of Eastern Nigeria. The concept under discourse was given insignificant attention in their works. Onuoha[46] and Osezua[47] gave the definition of an *Igiogbe,* acknowledged that the practice is discriminatory against women but did not provide any recommendation on how these discriminatory practices can be corrected.

Agbaje[48] gave an analytical appraisal on the discriminatory practice on the rights of women to properties inheritance but this concept under discourse which also discriminates against women was never mentioned in her work.

Ebhohimhen[49] apart from giving the definition of an *Igiogbe,* stating that it can be inherited by the eldest surviving son and that the *Igiogbe* cannot be willed to another child, his work was silent on all other issues relating to the concept.

Oghi[50] stated that upon the death of a Benin man, the eldest son performs the funeral ceremonies of the deceased father and it was upon this that he inherited the house traditionally known as *Igiogbe*

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[42] T. O. Elias., *The Nature of African Customary Law*, (Manchester University Press, 1972).

[43] A. Kehinde, 'Women and Inheritance: A Comparative Analysis of the African Law and the rest of the world' available at http://www.nigeriavillagesquare.com/articles/women-and-inheritance-a-comparative-analysis-of-the-african-law-and-the-rest-of-the-world.html accessed on 7th July, 2021.

[44] S. N. C Obi., The Customary Law Manual*,* (Government Printer, Enugu, 1977), 54.

[45] Okoro N., The Customary Law of Property, (Butterworths, London, 1963). 98

[46] R. A. Onuoha, 'Discriminatory Property Inheritance under Customary Law in Nigeria: NGOs to the Rescue' published in *The International Journal of Non-for-profit Law*, Volume 10, Issue 2, April, 2008. Also available at http://www.icnl.org/research/journal/vol10iss2/art_4.htm accessed 31st August, 2015.

[47] C. A. Osezua, 'Changing Status of Women and the Phenomenon Trafficking of Women for Transactional Sex in Nigeria: A Qualitative Analysis' published in Journal of International Women studies, Volume 14 Issue 3 Article 2, July 2013. Available at https://www.google.com.ng/url?sa=t&rct=j&q=&esrc=s&source=web&cd=23&ved=0CD0QFjACOBRqFQoTCJ_K7avL0scCFZMX2wodCkkFCQ&url=http%3A%2F%2Fvc.bridgew.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D1681%26context%3Djiws&ei=FObjVZ_wEpOv7AaKkpVI&usg=AFQjCNFQvMLKik-I3-SxLceAHGBHN3HCnA accessed on 31st August, 2021.

[48] A. Agbaje., 'The female child and family inheritance', available at http://businessdayonline.com/2014/10/the-female-child-and-family-inheritance/#.VZ0dpPnPRSk accessed on 8th July, 2021.

[49] O. O. Ebhohimhen, 'Esan Burial Tradition', available at http://www.edo-nation.net/ebhoh1.htm accessed on 7th August 2021.

[50] E. F. Oghi., 'Conflict Resolution in Pre-Colonial Benin' published in *Global Journal of HUMAN-SOCIAL SCIENCE: D History, Archaeology & Anthropology* Volume 14 Issue 6 Version 1.0 Year 2014 Type: Double -Blind Peer Reviewed International Research Journal Publisher: Global Journals Inc. (USA) Online ISSN: 2249-460x & Prin/t ISSN: 0975-587X accessed on 1st September 2021.

and lands cultivated by his father. Other children of the deceased (the junior sons) moved to other lands to build their own houses on attainment of full age. However, such junior sons could inherit where the eldest son neglected or failed to perform his duties. His work is silent on what happens in the absence of any surviving son.

Ukhun and Inegbedion in their work[51] defined an *Igiogbe* and reiterated the obvious; that it can be inherited only by the eldest surviving son of the deceased Benin man. It is worthy to mention that their work addressed discrimination against women on cultural grounds. However, the concept of discourse was not given much attention to.

In Ogbobine's work,[52] the Learned Justice (of blessed memory) gave the definition of *Igiogbe* and a compendium of cases relating to the concept which is worthy of commendation but did not give an in depth appraisal of the concept.

Babatunde[53] apart from reaffirming the Supreme Court's decision in selected cases that bothered on the concept of *Igiogbe* wherein the right of the eldest surviving son of the deceased Benin man to inherit same was emphasized, his work paid no attention to this concept.

Edo[54] and Osadolor[55] both gave fascinating experiences of Benin historiographies and scrutiny of the Benin kingdom but never mentioned the concept of *Igiogbe* that goes to the very root of the Benins and Benin history.

Isibor[56] mentioned the concept of *Igiogbe* only to the extent that a woman is not entitled to inherit same and no more. Her work did not dig deep into the concept to examine issues arising from and

[51]C. E. Ukhun. and Inegbedion N. A., 'Cultural authoritarianism, Women and human rights issues among the Esan people of Nigeria', available at http://www.ahrlj.up.ac.za/ukhun-c-e-esq-n-a-i accessed 5th August 2021.

[52]R. A. I. Ogbobine., 'Materials and Cases on Benin Land Law', (Bendel Newspaper Corporation, Benin-City, 1978) available on https://books.google.com.ng/books?id=AEByDrvj3qkC&dq=Justice+R+A+I+Ogbobine+Materials++and+cases+on+Benin+Land+Law&q=Justice+R+A+I+Ogbobine+Materials++and+cases+on+Benin+Land+Law#v=snippet&q=Justice%20R%20A%20I%20Ogbobine%20Materials%20%20and%20cases%20on%20Benin%20Land%20Law&f=false accessed on 28th August, 2021.

[53]I. O. Babatunde., 'People perish for lack of knowledge: Revisiting of the role of custom in the development of Nigerian Legal System' available on http://moj.ekitistate.gov.ng/online-journal/people-perish-for-lack-of-knowledge-revisiting-of-the-role-of-custom-in-the-development-f-nigerian-legal-system/ accessed on 29th August, 2021.

[54] V. O. Edo., 'The Changing Phases of Power and Civil Administration in Benin: From Inception to 1987' available at https://www.google.com.ng/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CCwQFjADahUKEwiS2cvmj9XHAhVomtsKHTyCAJE&url=http%3A%2F%2Fwww.nobleworld.biz%2Fimages%2FEdo2.pdf&ei=TDrlVZKDI-i07ga8hIKICQ&usg=AFQjCNHEyz5y7mAd78VIZ08DdpwsRq2S4g accessed on 1st September, 2021.

[55] B. O. Osadolor., 'The Military System of Benin Kingdom C. 1440-1897' available at https://www.google.com.ng/search?newwindow=1&site=&source=hp&q=Osadolor+B.+O.%2C+'The+Military+System+of+Benin+Kingdom+C.+1440-1897&oq=Osadolor+B.+O.%2C+The+Military+System+of+Benin+Kingdom+C.+1440-1897&gs_l=hp.3...2613.4235.0.4756.2.2.0.0.0.0.900.900.6-1.1.0....0...1c.1.64.hp..2.0.0.t8d2SiRSYQ8 accessed on 1st September, 2021.

[56] P. O. Isibor., 'Women's rights and status under Edo native law and custom- myths and realities', available at https://groups.yahoo.com/neo/groups/NBFNA/conversations/topics/3832?var=1 and http://www.google.com.ng/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CCkQFjACahUKEwiC2q

relating to *Igiogbe*. Her Lordship must however be commended for giving a succinct appraisal in determining women's rights and status under Edo native law and custom.

Epiphany[57] and Parry[58] apart from giving the definition of an *Igiogbe,* did not say much about the concept. One must however not fail to commend their works for giving an in depth overview among others on the institutions of inheritance and succession, nature of property under customary law of inheritance and succession, types, nature and ownership of property under customary law.

The Benin traditional Council[59] quickly responded to correct some impressions and restore the age long traditions of the Benin people as it relates to this concept. They introduced some reforms affecting succession to the *Igiogbe* and stated that the eldest surviving son of the deceased now has a choice as to which property he would prefer as *Igiogbe* in a situation where the deceased had more than one house provided the deceased had lived in that house during his lifetime, died in the house and may be buried in it provided the first son had performed the second burial rites of his father according to the burial rites of the Benin custom.

It should be noted that this book[60] is issued on the authority of the *Omo N Oba Erediauwa*, Oba of Benin. The few known works on *Igiogbe* seems to concentrate on judicial pronouncement. None of these works have examined the origin of *Igiogbe,* the traditional concept and modern practices, the evolution of *Igiogbe* over time and the problems associated with *Igiogbe*. Even where one or two aforementioned issues are mentioned they are not examined in details.

What this work seeks to do therefore is to look beyond judicial pronouncements on *Igiogbe* by digging into the origin and concept of *Igiogbe,* examine its inheritance, and look at the problems, changes and the shift in *Igiogbe*. A review of the existing literature on Benin customs and traditions, Benin Customary Laws and *Igiogbe* to be specific shows there was no research done on the origin of *Igiogbe,* the evolution and the shift of *Igiogbe* over time, the changes from traditional concept to modern practices and the discriminatory practice it poses on the women folk.

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[57] Epiphany A., *Restatement of Customary Law in Nigeria,* (Nigerian Institute of Advanced Legal Studies, Lagos 2013). Also available at https://books.google.com.ng/books?id=AEByDrvj3qkC&pg=PA106&lpg=PA106&dq=Materials+on+Igiogbe&source=bl&ots=jrBN_8agh-&sig=LhRrgCwW-UjPgG2vUusUIRmYm28&hl=en&sa=X&ved=0CFEQ6AEwCWoVChMI7ejfqZjMxwIVxiDbCh1Y7QnP#v=onepage&q=Materials%20on%20Igiogbe&f=false accessed on 28th August, 2021.

[58] D. H. Parry., The Law of Succession: Testate and Intestate*,* (Sweet and Maxwell Ltd., London, 1972). 67

[59] Benin Traditional Council, A *Hand Book On Some Benin Customs and Usages*, (First Edition, Soben Printers Limited, Benin –City, 1996), Issued on the authority of the *Omo N Oba Erediauwa*, Oba of Benin.

[60] Benin Traditional Council, A *Hand Book On Some Benin Customs and Usages* (First Edition, Soben Printers Limited, Benin –City, 1996), Issued on the authority of the *Omo N Oba Erediauwa*, Oba of Benin.

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4. **Definition of Terms**

a) *Edaiken N' Uselu* is the Crowned Prince of Benin Kingdom and the heir apparent to the Benin throne.
b) *Okaegbe* or *Okaegbe n' okhua* is the family elder or the oldest male of the family.
c) *Okaegbe irorinmwin* is the personal representative to *Okaegbe* or *Okaegbe n' okhua.*
d) *Omo N' Oba N' Edo Ukuakpolorkpolor* means the present reigning Oba of Benin.
e) *Omo-Odion* is the eldest son of the deceased.
f) *Orere-Okoe* means the completion of the final burial ceremony.
g) *Ovbi Okhuo* literally means the children of a woman usually the deceased sisters' children (nephews) and any other child who is from a woman of the family but born to outsiders.
h) *Ukhure* (sometimes referred to as *Aro-Era*) is a wooden staff, a symbol of worship or authority taken by the eldest son on the conclusion of his deceased father burial ceremonies.
i) *Ukomwen* means the Second burial rites and establishing an altar for the deceased father. In Benin Kingdom and under the Benin Customary Law, the final burial ceremony ends with the establishment of altar for the deceased, this altar is called the ancestral altar or shrine.
**j)** *Urho* literally means doors. Under Benin customary law it means the sharing of deceased properties according to the numbers of wives.

## 5. Conclusion

From the above analysis, it is clear that the decision of the Nigeria Supreme Court in *Idehen v. Idehen*[61] created a lot of anxiety as to whether the Supreme Court has expanded the scope and definition of *Igiogbe* under Benin Customary Law of inheritance and succession. The Oba of Benin quickly responded to correct this impression and restore the age long traditions of the Benin people. With the reform he introduced in his book[62] affecting succession to the *Igiogbe*, the eldest surviving son of the deceased now has a choice as to which property he would prefer as *Igiogbe* in a situation where the deceased had more than one house provided the deceased had lived in that house during his lifetime, died in the house, may be buried in it and the fisrt son had performed the second burial rites of his father according to the burial rites of the Benin custom. These reforms[63] which are documented and widely circulated in the state has to a large extent reduced the efficacy of the Supreme Court's decision in *Idehen v. Idehen*[64] concerning the concept of two *Igiogbe* under Benin native law and custom.

Consequently, inheritance to the *Igiogbe* is now done on the bases of the Oba's proclamation rather than in accordance with the principles in *Idehen v. Idehen*[65] thereby reducing if not eliminating completely the conflict introduced by the concept of two *Igiogbes.* In the *Igiogbe* concept under the Benin Customary Law of Inheritance and Succession, the provision of Section 42(1) of the Constitution of the Federal Republic of Nigeria 1999, Cap. C23, LFN, 2004 (as amended 2011) is not strictly followed, in that the *Igiogbe* concept forbids discrimination on grounds of circumstances

[61] (1991) 4 NWLR (pt. 198) 382.
[62] Benin Traditional Council, A *Hand Book On Some Benin Customs and Usages* (First Edition, Soben Printers Limited, Benin – City, 1996).
[63] *Ibid.*
[64] (1991) 4 N.W.L.R. (pt. 198) 382.
[65] Ibid.

of birth being that a legitimated first son can inherit an *Igiogbe* but a child is forbidden from inheriting an *Igiogbe* simply because she is a female. A daughter who is the eldest surviving child of a deceased is not accorded a special status or treatment under the customary laws of inheritance but a son who is the eldest surviving child is generally accorded a special status and treatment as the head of the immediate family of the deceased man.

This work analysed the gender abuse in the *Igiogbe* concept under Benin Customary Law of inheritance**.** It observed that the problems of discrimination against women are both international and national and not peculiar to the Benins alone.

## 6. **Recommendations**

In view of the foregoing, this work recommends the following suggestions as the way forward in achieving a reasonable advancement of women's rights in the contemporary Nigerian society.

a) Customary laws of inheritance that are discriminatory against women on the basis of sex needs to be reformed, so that wives and daughters can be given the right to inherit the property of their deceased husbands and fathers. The enlightenment campaign should be a collective duty of traditional rulers, religious leaders/bodies, community leaders and heads of family who are regarded as the custodians of the culture of their people considering the fact that customary laws are deeply rooted in the culture of the people. It is necessary to involve these categories of people because it is under their auspices that these customary laws which cause a lot of hardships to women operate. Their support is therefore necessary for the reform to be effective.

b) Reform of States' Laws on Inheritance starting from the grassroots should be followed by legislation. Such legislation should abolish the indigenous customary laws of inheritance that are discriminatory against women. Also, it is the recommendation of this work that new Wills Laws should be enacted. States that have not enacted Wills Laws should enact such laws to replace the English Wills Acts of 1837 and 1852 that are still applicable in those states.

c) Free legal aid for matters relating to the rights of inheritance should be provided by the Legal Aid Council for poor women to seek redress in courts in cases of the violation of their rights of inheritance. It is pertinent to state that the Legal Aid Council Act presently empowers the Legal Aid Council to render free legal assistance in respect of civil claims to cover breach of fundamental human rights as guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria 1999, Cap. C23, LFN, 2004 (as amended 2011). This will make women have better access to legal representation when their rights of inheritance are violated or about to be violated.

d) The role of the Judiciary should not be under-emphasized. Our courts should be bold and imaginative in their determination of issues on customary laws affecting inheritance rights of women. Any customary law that is discriminatory against women should be declared invalid on the grounds that it is unconstitutional and repugnant to natural justice, equity and good conscience. In this way, the judiciary will help to develop our customary laws to meet changes in global trends to women's rights and uphold the fundamental human rights of women as guaranteed under our Constitution.

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