# Analysis of the Legality of Gender Specific Provisions under Nigerian Law: A Review of Specific Legislations

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## Abstract

*Section 42 of the Constitution of the Federal Republic of Nigeria 1999 (As amended) prohibits discrimination on various grounds including sex, ethnicity, religion, etc. In Nigeria, some laws and practices disproportionately affect women, while others aim to promote gender equality. Some laws contain provisions violating the prohibition on discrimination as provided for in the Constitution. The Constitution itself is not exempted from this anomaly as some of its provisionsal so violate the express prohibition on discrimination. This has led to a disparity in gender equality as practiced in the workplace in Nigeria. This work aims to examine the legality of some of these gender specific provisions in our laws in light of the very specific provisions of the Constitution.*

## 1. Introduction

Whenever the issue of discrimination is raised in Nigeria, there tends to be a focus on the protection of the female gender. This is understandable as Nigeria is a patriarchal society and often, it appears that prevailing practices, customs and laws point to a heavy imbalance against the female gender. To that effect, several laws have been passed in order to correct this glaring imbalance and to bring Nigerian society up to date with modern laws and trends in the world. Nigeria is also a party to core regional and international human rights instruments including the International Covenant on Civil and Political Rights, the United Nations Convention Against Torture, Cruel, Inhuman and Degrading Treatment and Punishment, Convention on the Elimination of All Forms of Discrimination Against Women, the African Charter on Human and Peoples' Rights and the Maputo Protocol.

Despite being a signatory to some of these instruments and domesticating some of them within the country as existing domestic law, some of ourlaws, owever, still disclose that some form of discrimination still exists within the country. This discrimination is not limited to discrimination against the female gender alone but also against the male gender. This work looks at some of the provisions of these laws which still point to an attitude of gender imbalance.

## 2. The Constitution of the Federal Republic of Nigeria

Section 42 of the Constitution[1] provides as follows:

> *(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person -*
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> *(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the Government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject;*
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> *or*
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> *(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or*

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[1] Constitution of the Federal Republic of Nigeria 1999 (As amended) (CFRN 1999).

> *advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions.*
>
> *(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.*
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> *(3) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or member of the Nigeria Police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria.*

The following points are instructive from the provisions of the Constitution as reproduced above:

a. No law shall be made applicable to a citizen of Nigerian of a particular community, ethnic group, place of origin, sex, religion or political opinion nor shall he be made subject to such law, executive or administrative action or any restrictions or disabilities just because he is a member of that particular community, ethnic group, place of origin, or of a particular sex or adheres to a particular religion or holds a particular political opinion unless such laws, executive or administrative actions, disabilities or restrictions are made applicable to other citizens of Nigeria irrespective of their community, ethnic group, place of origin, sex, religion or political opinion.
b. No law, executive or administrative action shall confer any privilege or advantage on any citizen of Nigeria simply because he is a member of a particular community, ethnic group, place of origin, sex, religion or political opinion unless such laws, executive or administrative actions confer the same privilege or advantage on other citizens of Nigeria irrespective of their community, ethnic group, place of origin, sex, religion or political opinion.
c. A citizen of Nigeria shall not suffer any disability or deprivation because of the circumstances of his birth.
d. The restrictions referred to in Section 42(1)[2] shall not apply to appointments to any office under the State or as a member of the armed forces of the Federation or member of the Nigeria Police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria.
e. While the provisions of Section 42 prohibit discrimination against citizens of Nigeria on the grounds of community, ethnicity, sex, religion or political opinion, such protection does not extend to persons who are not citizens of Nigeria[3].

Interestingly, despite the above reproduced explicit provisions of Section 42[4], an analysis of Section 26(2)[5] of the same Constitution shows that the latter provision smacks of discrimination on the grounds of gender. The section reads as follows:

[2]Ibid.
[3] While it may appear that this provision can be a catalyst for xenophobia, it should be noted that various international instruments which Nigeria is a party to frowns against discrimination of anyone, particularly on grounds of race or ethnicity. See also Section 24(c) CFRN 1999.
[4] CFRN 1999
[5] Ibid

> (1) Subject to the provisions of section 28 of this Constitution, a person to whom the provisions of this section apply may be registered as a citizen of Nigeria, if the President is satisfied that –
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> (a) he is a person of good character;
>
> (b) he has shown a clear intention of his desire to be domiciled in Nigeria; and
>
> (c) he has taken the Oath of Allegiance prescribed in the Seventh Schedule to this Constitution.
>
> (2) The provisions of this section shall apply to-
>
> (a) any woman who is or has been married to a citizen of Nigeria;.

It should be noted that the provisions as reproduced above were made subject to Section 28[6]. Section 28 is the prohibition on dual citizenship and is not relevant to this work. A holistic reading of section 26 shows that while a man can apply for citizenship irrespective of whether his spouse is a Nigerian or not, a woman can only apply for citizenship on the above grounds where she is married to a Nigerian citizen. Thus, a woman not married to a Nigerian citizen is prohibited by the number one law in Nigeria from applying for citizenship by registration. As already pointed out above, only a citizen of Nigeria can take advantage of section 42 and thus, a woman who is not married to a citizen of Nigeria and who intends to apply for citizenship by registration cannot invoke constitutional protection to aid her. No reason has been advanced why section 42 should only apply to citizens of Nigeria nor has any explanation been offered as to why only a woman who is married to a citizen of Nigeria can apply for citizenship by registration and other women cannot. The provisions of section 26 effectively means that the government can refuse an application from a man even if he is married to a Nigerian citizen or as was done in the case of Dr Patrick Wilmot, deport such a man despite the fact that he is married to a woman who is a Nigerian citizen[7]. Section 26, as it is, obviously discriminates against both the male and female gender in various ways.

### 3. The Criminal Code Act of Nigeria

Section 357 of the Criminal Code Act[8] of Nigeria defines the offence of Rape as follows:

> *Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of an offence which is called rape.*

Flowing from the definition above, under the Criminal Code Act of Nigeria, the following points are instructive:

a. A man cannot be raped under the Criminal Code Act.[9]

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[6] Ibid

[7] F Falana, 'Women's Day and the Gender Agenda' This day Newspaper, http://www.thisdaylive.com/articles/women-s-day-and-the gender-agenda/141787/ cited in A Anijekwu, 'Examine and Appraise the Discriminatory Laws against Women in Nigeria' https://legalpediaonline.com/examine-and-appraise-the-discriminatory-laws-against-women/Accessed on 10/06/2025.

[8] The Nigerian Criminal Code Act, Cap C38, LFN 2004.

b. A woman cannot be convicted for the offence of rape under the Criminal Code Act.[10]

This is discriminatory in the sense that rape is a heinous crime which leaves the victims traumatized and scarred. There is no evidence that men who are victims of rape are not left as traumatized as women whether the rape was by a woman or by their fellow man and thus casually waving aside the suffering and trauma of a man in such a situation can only be called discrimination against men which is forbidden by section 42 of the Constitution. Thankfully, the Violence against Persons Prohibition Act[11] has gone a long way to curb this anomaly where it provides as follows

> A person commits the offence of rape if-
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> (a) he or she intentionally penetrates the vagina, anus or mouth of another person with any other part of his or her body or anything else;
>
> (b) the other person does not consent to the penetration; or
>
> (c) the consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act or the use of any substance or additive capable of taking away the will of such person or in the case of a married person by impersonating his or her spouse.[12]

This legislation clearly ameliorates the discriminatory provisions of the Criminal Code Act by acknowledging and recognizing that both the male and female gender can be the victims of rape. It should however be emphasized that the Criminal Code Act has not been repealed and thus still remains in force and still remains a discriminatory law in Nigeria.

## 4. The Labour Act of Nigeria

The instructive provisions of this law relevant to this discourse are Section 34(1), Section 54 (1) and (4) and Section 55 of the Labour Act[13]. Section 34 (1) provides as follows:

> *Any citizen who is recruited for service in Nigeria may be accompanied to his place of employment and attended during his employment there by such members of his family (not exceeding two wives and such of his children as are under the age of sixteen years) as he wishes to take with him.*

Clearly, going by the provisions of this section, the husband of a woman is not permitted to accompany the woman to her place of employment[14]. Again, no reason for this anomaly has been advanced. Wives need the devotion and support of their husbands as much as husbands also need the support and devotion of their wives, particularly where the parties are being moved into a new community with a different culture and possibly different way of life for purposes of work.

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[9] See *Iko v. The State (2001) 14 NWLR (Pt 732) 221* where rape was defined to mean a forcible sexual intercourse with a girl or a woman without her giving consent to it. That the most important and essential ingredient of the offence is penetration which is deemed complete, upon proof of penetration of the penis into the virgina.

[10] See *Jegede v. The State(2001) 7 S.C. (Pt.l) 122* echoing the then british position that the important and essential of the offence of rape, is penetration

[11] Violence Against Persons Prohibition Act of 2015.

[12] Section 1(1) Violence Against Persons Prohibition Act 2015.

[13] The Labour Act of Nigeria, Cap L1, LFN 2004.

[14] Especially since the Marriage Act and Same Sex Prohibition Act of 2013 both prohibit a woman from marrying a woman in Nigeria.

Sections 54(1) and (4) which provide for the right of maternity leave clearly also overlooks the role and presence of a husband whose wife has recently given birth or is even on sick leave. The section reads as follows:

(1) In any public or private industrial or commercial undertaking or in any branch thereof, or in any agricultural undertaking or any branch thereof, a woman-
  (a) shall have the right to leave her work if she produces a medical certificate given by a registered medical practitioner stating that her confinement will probably take place within six weeks;
  (b) shall not be permitted to work during the six weeks following her confinement;
  (c) if she is absent from her work in pursuance of paragraph (a) or (b) of this subsection and had been continuously employed by her then employer for a period of six months or more immediately prior to her absence, shall be paid not less than fifty per cent of the wages she would have earned if she had not been absent; And
  (d) shall in any case, if she is nursing her child, be allowed half an hour twice a day during her working hours for that purpose.

(4) Where a woman-
  (a) is absent from her work in pursuance of subsection(1) (a) or (b) of this section; Or
  (b) remains absent from her work for a longer period as a result of illness certified by a registered medical practitioner to arise out of her pregnancy or confinement and to render her unfit for work, then, until her absence has exceeded such a period (if any) as may be prescribed, no employer shall give her notice of dismissal during her absence or notice of dismissal expiring during her absence.

While there is no downplaying the pain and trauma experienced by a woman during pregnancy, it should be pointed out that this even amplifies the need for a man to also be by the side of his wife during such a period. The Labour Act does not make any provisions for paternity leave and any employee entitlement in this respect will be subject to the terms and conditions of such employee's contract of employment.[15] The Federal Government of Nigeria in recent years, approved a 14-day paternity leave for male employees in the Federal Civil Service[16] but has failed to pass any legislation to this effect or enact any laws entitling men to be granted permission to be away from work when sick and upon the production of a medical certificate. It is also surprising that despite the struggle for gender equality in Nigeria, the agitation has failed to take the provisions of Sections 54 into perspective nor has the fight for gender equality extended to Section 55 of the Labour Act. Section 55 reads thus:

> (1) Subject to this section, no woman shall be employed on night work in a public or private industrial undertaking or in any branch thereof, or in any agricultural undertaking or any branch thereof.
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> (2) Subsection (1) of this section shall not apply to women employed as nurses in any public or private industrial undertaking or in any agricultural undertaking, nor

[15] https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/nigeria: Accessed on 10/06/2025
[16] Ibid

> to women holding responsible positions of management who are not ordinarily engaged in manual labour…

What this in effect means is that unless the exceptions as contained in Section 55(2) are applicable, a woman who wishes to engage in night work in Nigeria is statutorily forbidden from doing so. This amounts to a restriction placed on a person by reason of the person's sex and if such a person is a citizen of Nigeria, clearly violates section 42 of the Constitution.

## 5. The Nigerian Police Force Regulations

The current police Act, 2020 is designated as "the Nigeria Police Force (Establishment) Act, 2020" was passed into law by the Senate on the 22nd of July 2020 and assented by President Muhammadu Buhari on September 16, 2020.[17] The Police Regulations were made pursuant to section 138 of the Police Act. Some of the provisions of the said regulations have been in sharp focus in Nigeria and generated heated debate. The Court of Appeal in CA/ABJ/CV/454/2022: *Incorporated Trustees, Nigeria Bar Association v Attorney-General of the Federation and 2 Ors* in its judgment delivered on 03/05/2024, struck down Regulations 126 and 127 of the Police Force Regulations that empowers the Police Force to terminate the services of an unmarried Police woman who gets pregnant while in service. The Court of Appeal declared the provisions null and void and accordingly struck them down on the ground of being unconstitutional.[18] Owing to the provisions of Regulation 127, one Miss Omolola Olajide, a policewoman under the Ekiti State Command of the Nigeria Police Force was dismissed from the force by the 2nd and 3rd Respondents for being pregnant while unmarried. The discrimination which the aforementioned provision created between serving female police officers, necessitated the commencement of an action for the determination of the constitutionality of Regulations 126 and 127 of the Nigeria Police Regulations made pursuant to the Police Act, Cap 19 Laws of the Federation of Nigeria, 2004 as same is in contravention of the fundamental rights of unmarried women police officers.

The Appellant (as Plaintiff at the trial court) filed an originating summons dated 15th February 2021 and sought inter alia, the determination of the constitutionality of Regulation 127 of the Nigeria Police Regulations (which provides that an unmarried woman police officer who becomes pregnant shall be discharged from the force, and shall not be re-enlisted except with the approval of the Inspector – General) and Regulation 126 of the Nigerian Police Regulations (which provides that a married woman police officer who is pregnant may be granted maternity leave in accordance with the provisions of general orders), while taking into consideration the provisions of Articles 2,3,5,18 and 19 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap A9) LFN, 2004. The trial court reserved delivery of its judgment to 21st February 2022. In delivering its judgment, the trial court entered judgment in favour of the Respondents and the action was dismissed as purportedly lacking in merit. Dissatisfied with the reasoning and conclusion of the trial court, the Appellant appealed against the judgment to the Court of Appeal, the Court of Appeal agreed that the provisions of

[17] https://www.partnersnigeria.org/policy-brief-overview-of-the-police-regulations-and-areas-recommended-for-review/Accessed on 10/06/2025.

[18] https://loyalnigerianlawyer.com/breaking-news-nba-wins-at-the-court-of-appeal-as-court-strikes-down-police-regulations-sanctioning-unmarried-policewomen-who-get-pregnant/#:~:text=The%20Nigerian%20Bar%20Association%20(NBA,and%20the%20Nigerian%20Police%20Force.Accessed on 10/06/2025.

Regulations 126 and 127 were unconstitutional and set them aside to the extent of their unconstitutionality with the provisions of the Constitution of the Federal Republic of Nigeria (1999 as amended).[19]

## 6. Conclusion

The laws referred to above are not exhaustive of the laws in Nigeria which promote discrimination contrary to the provisions of the Nigerian Constitution. It must be emphasized that although the discrimination suffered by women tend to be in the spotlight more often and with justifiable cause, discrimination in Nigeria is not exclusively suffered by women. Discrimination cuts across gender and in various cases, no gender can claim to be the exclusive victims. It is hoped that the legislature amends the existing laws in Nigeria in order to bring same in conformity with the provisions of the Nigerian constitution and in line with laws prevalent in civilized society.

[19] Ibid. See also the Judgment of the National Industrial Court in THE Unreported suit Miss Omolola Olajide v The Nigerian Police Force & 2 Ors NICN/AK/14/2021 delivered on 11th January 2023https://www.nicnadr.gov.ng/judgement/details.php?id=7538 Accessed on 10th June 2025.