

8

KOGI STATE UNIVERSITY BI-ANNUAL JOURNAL OF PUBLIC LAW

ISSN: 2141-4300 Vol. 3 No. 2, 2010

State (1) Nation	Regional Government Reforms of the World Trade Organization: Prospects and Challenges in Developing Members	1
Agwu Chukwu (Chukwu Kano) A	Labour of Love and the Labourer: Principles of International Commercial Law Transactions	14
Patel (Okeoma, Ph.D)	International Technology Transfer: Intellectual Property Rights and Human Rights under International Law	28
C. T. Emejei A J. O. Okpara	Human Rights and State Sovereignty: A Re-examination of Some Controversial Issues	38
Chikwendu (Chikwendu) Nwankwo Chikendu (Chikendu) Chikendu A	An Appraisal of the Legal Framework for Combating Child Labour in Nigeria	47
A. B. Abiodun A A. O. Sanni	An Appraisal of International Human Rights Protection in Nigeria	60
Kadi (O. Kadi) Ismail Adun Murtayin A Ismail Ismail Muhammad Kadi	Gendered Violence against Women and Disproportion in the Rights to Women Rights	72
Abdulkarim (Abdulkarim) Murtayin	Right of Women in the New Nigerian Constitution	82
E. E. Okeke	National Security and Enforcement of Human Rights: An Analysis of Other Policies in Nigeria	94
D. F. Abang A D. Abang (Abang)	An Evaluation of the Human Rights Protection of People Living with HIV/AIDS in Nigeria	102
Chikendu (Chikendu) A Chikendu (Chikendu) A	Enforcement of Human Rights in Nigeria: A Study Under the African Charter on Human and Peoples Rights	110
Kelechi Okoro (Kelechi)	Human Rights Standards: How Far to Enforce? Considerations for Law Enforcement Agents in Nigeria	120
W. O. Lili	Labour Union in Developing Nigeria: The Human Rights Angle	128
O. V. Okeke Ph.D	Reformations for the Abolition of Labour Disputes in Nigeria: A Critical	137
Okoro A. Amadi	Human and State Sovereignty: Considerations in Nigeria (Change Regulations)	146
Muhammad A. Ismail (Murtayin, Ph.D) A Fadiha Aidi	Legal Control of Advertisement and its Enforcement: A Study of International Protection in Nigeria	155

IBRAHIM O. RIDWAN
OLAGUNJU



KOGI STATE UNIVERSITY
BI-ANNUAL JOURNAL OF PUBLIC LAW

E. M. Akpambang,	Legal Framework for Environmental Protection against Petroleum Pollution in Nigeria	175
Shehu Abdullahi Zuru, Ph.D	Legal Status of Transnational Mining Agreements	199
C. A. Omaka, Phd & L.N.A Omaka	Legal And Environmental Health Implications Of Solid Minerals Exploitation in Nigeria	213
T.A. Yusuf	Application of the Doctrine of <i>Stare Decisis</i> under the Nigerian Law: A Revisit to the Theatres of Its Inapplicability	228
Oyelade Olutunji Sunday, Kamal Alhaji Dawud & Magaji Chiroma	Re-Appraising the Nigerian Legal System: Is Islamic Law Customary Law	248
Tajudeen Ibraheem,	An Examination Of Property Inheritance And Succession under the Yoruba Customary Law	260
Abubakar S. Orisankoko	A Survey of Empowerment Benefits and Legal Framework Of An Islamic Co-Operative Society	272
A. A. Owoade	Charges of an Interest Rate on Capital: The Islamic Law Perspective	284
Ojo Aderonke (Mrs.)	A Comparative Analysis of the Legal Consequences of Cohabitation	295
Ridwan Ibrahim Olagunju,	Concept of Maintenance: A Legal Analysis on Tripartite Comparison	308
Ogbonnaya J.O	Application and Dynamics of the Doctrine of <i>Lis Pendens</i> under the Nigerian Law	317
George, R.C. Ibekwe	An Examination of Judicial Attitude to Election Petitions in Nigeria	330
Anthony Obi Okoye	Venue of Annual General Meetings of Companies in Nigeria: The Shareholders' Dilemma	339
Chibueze Okorie	Local Government Administration under the Constitution of Nigeria, 1999: An Examination of Rivers State Local Government Law	354
Akor Linus	The Role of Culture in Nigeria's National Development	369
Ocheja Akoji	Impact of Gender Discrimination and Poverty among Women in Nigeria: Challenges and Strategies for their Elimination	377
Mariam Ujah Abu	Information and Communication Technology (ICT) and Legal Practice and Research: Prospects and Challenges	385

EDITORIAL ADVISORY BOARD

Prof. A.O. Muzan
Dean, Faculty of Law,
Kogi State University, Anyigba.

Hon. Justice Josiah Joe Majebi
Kogi State High Court of Justice,
Idah Judicial Division.

Prof. Joash Amupitan
Dean, Faculty of Law,
University of Jos.

Prof. Y.Y. Bambale
Faculty of Law,
A.B.U., Zaria.

Akin Ibidapo-Obe (Reader)
Faculty of Law,
University of Lagos.

Dr. Ifedayo Akomolede (Reader)
Dean, Faculty of Law,
University of Ado-Ekiti.

Ngozi Alili (Senior Lecturer)
Faculty of Law,
Kogi State University, Anyigba

Prof. 'Yomi Dinakin
Former Dean of Law
Faculty of Law, A.A.U., Akungba-Akoko.

Prof. O.F. Emiri
Dean, Faculty of Law,
Delta State University, Olleh Campus.

Prof. Felicia N. Monye
Dean, Faculty of Law,
University of Nigeria, Enugu Campus

Dr. Sylvester Shikyil, J.P. (Reader)
Faculty of Law,
University of Jos.

Dakas C.J. Dakas (Reader)
Faculty of Law,
University of Jos.

Dr. A.A. Akume (Senior Lecturer)
Faculty of Law,
A.B.U., Zaria.

BOARD OF EDITORS

Editor-in-Chief

Timothy F. Yerima
Senior Lecturer & H.O.D., Public Law,
Faculty of Law
Kogi State University, Anyigba.

Deputy Editors

D.F. Atidoga
Sampson Shaba

Assistant Editors

Marian Ujah Abu
Iyeh Peters
Ekpa Shedrack
Stella Agada

CONCEPT OF MAINTENANCE: A LEGAL ANALYSIS ON TRIPARTITE COMPARISON

INTRODUCTION

I.

In virtually all legal systems all over the world tying the nuptial knot between a man and a woman is a phenomenon which characteristically charges and bestows on each spouse a manifold of duties and corresponding rights.³⁰ For instance, all men are, on marriage, entitled to respectful treatment by their wives and they are to be held in high esteem by them. They equally have the rights to moderately chastise their female partners and to reasonably control their freedom.²

However, for a man to comfortably enjoy the above rights in reality, he must, on the other hand, be ready to pay his own dues as well. This he does by taking care of his soulmate's feeding, shelter, waters, bills of medical treatment and her general up-keep. All these responsibilities feature under the onerous duty of maintenance; a burden on the shoulders of all husbands. Maintenance, therefore, is a must duty for all men towards their wives. It even goes on to encompass maintenance of off springs of marriage that is, children and grandchildren, where circumstances warrant.

The aim of this article is, to, among other things, discuss the concept of maintenance as it is at Common Law, Customary Law and under the Islamic Law. Efforts will be made to identify some problems and necessary suggestions will be proffered.

II. MAINTENANCE AT COMMON LAW

Agency of Necessity

At common law, a husband is under a duty to maintain his wife. This duty emanates from the fact of living together of the couple - cohabitation³ and the management of the household, which the wife handles and oversees in the matrimony. The discussion here shall be narrowed down to a deserted wife or a wife who is driven out of the matrimonial home. In either of these cases, if the wife is not provided with maintenance and does not have adequate means to cater for herself, she then at common law becomes her husband's agent for the purposes of obtaining necessities⁴ for herself and her children in conformity to her status and the position of her husband. Necessaries in these circumstances will accommodate things such as food, drink, clothing, and shelter, medical attention and other basic needs, but will exclude luxury⁵. The implication of this is that goods supplied as necessities to the unmaintained wife shall be paid for by the non-maintaining husband upon being sued by the tradesman/supplier for payment.

¹ Ridwan Ibrahim Olagunju, Lecturer, Department of Islamic Law, Faculty of Law, University of Ilorin Phone No. 08038262823, E-mail: Ibrahimor @ Unilorin edu.ng.

³⁰ This is platitude which hardly requires any evidential proof to be established. All the same, readers, for the sake of emphasis, may wish to see the dictum of Scrutton, L.J., in *Place v. Searle* (1932) 2, K. B. 297 on this fact.

² It would appear that in common law, the man's right to chastise his wife and control her movement was whittled down if not made extinct by the Court of Appeal decision in *R v. Jackson* (1891), 1 qb, 671.

³ Bromley, P.M., *Family Law*, 3rd Edn. (London: Butterworth, 1966), 157.

⁴ Necessaries here refer to the something as defined under the provision of S.2, Sale of Goods Act of 1893.

⁵ Nwogugu, E.I., *Family Law in Nigeria*, Revised Edition, (Enugu: Otusun Nigeria Limited, , 2001) 240.

In ordinary spheres, the word "necessaries" as defined above would not expand to cover money lent to a wife who is living apart from her husband unmaintained⁶. If, however, the loan is lent her in order to enable her purchase necessities and the money is actually spent for that purpose, the husband would be liable for the loan just as in the case of necessary goods actually supplied to her.⁷ It is pertinent to point out that the condition precedent for the husband's liability to arise in the supply of necessities is the presence with the wife of that actual necessity calling for the request by her for the supply. This, therefore, brings us straight to the exceptions to general rule on supply of necessities. For instance, a wife having with her enough money to buy necessities on her own is not embedded with the go-ahead to pledge her husband's credit. This is because the compelling necessity is extinct. Such is also the case where she earns sufficient income for adequate self-sustenance.⁸ Moreover, a man, who is adequately supplied with the particular necessary requested by his wife shall be exculpated from the obligation of paying for the supply. To enliven the husband's liability in respect of all cases of wife's right for supply of necessities, his unmaintained wife must declare to the tradesman/supplier that she is contracting as an agent of her husband, and not as a principal⁹ on her own.

Of all the instance, where an unmaintaining husband will not be held liable to pay for the necessities supplied to his wife, only one exception appears to be lacking in good reasoning and sound justification. This is where it is said that being in sufficient means¹⁰ for self-sustenance by a wife will disentitle her of the go-ahead to pledge her unmaintaining husband's credit for the necessities supplied to her on her request. It is the stand of this writer that there is no plausible justification for inclusion of the foregoing among the list of the exceptions to the general rule of liability of unmaintaining husbands for the necessities supplied to their wives. This is because, since the husband's duty to maintain his wife is an obligatory duty hanging on his neck – whether or not the wife is wealthy and in opulence, it follow, that the husband's credit should be allowed to be pledged by wife even where she is in self regular means of sustenance. To do it this way will help the derelicting man to wake up to his matrimonial responsibilities. It is, therefore, in this respect, serving as a punishment on the husband and, as a result, other husbands like him may be deterred from the inordinate practice of failure to maintain.

With the foregoing, husbands will continue to be liable, where they do not maintain, for necessities bought by their wives on pledge of their credit. This liability will, however, only stop where the wife commits adultery¹¹ or is guilty of desertion.¹² It is without doubt that one of the bases of the husband's obligation of maintenance to his wife is the fullness of his consortium enjoyment of his wife.¹³ The moment the wife allows another man to have carnal knowledge of her, she has reduced the absolute right of her husband to have sexual intercourse with her. This, therefore, will imply that her own right to maintenance should also be reduced by the man. It should be tit for tat, to say the least. It is for the same reason that a wife, who willingly deserts her husband, should be taken to have relieved the husband of the duty to maintain her. All these are clear. What is perhaps not yet

⁶ *Jenner v. Morris* (1861) 3, Dc GF & J45, 45ER, 795.

⁷ *Weingarten v. Angel* (1947) All ER 425.

⁸ *Bibienfield v. Berens* (1952) 2qb 770 (ca).

⁹ *Callot v. Nash* (1923) 39, TLR 292, 294.

¹⁰ *Bibienfield v. Berens* - *Supra*

¹¹ *Govier v. Hancock* (1796) 6, Term Rep. 603, 101 ER 762, *WILSON Vs. GLOSSOP* (1888) 20, QBD 354.

¹² *Jones v. Newton & Llanmidloes Guardians* (1920) 3, KB, 381.

¹³ See *Place v. Searle*, (1932) 2, KB 497 *Supra*.

clear at common law is the question of how long will the wives remain unmaintained on account of adultery committed by her. However, where such a wife commits adultery regularly, it would not be out of place for the husband to regularly stop her maintenance. But where the adultery is committed once, one is not too sure of the criterion or criteria which should guide the husband in determining the length of period for which his hold on the wife's maintenance should last.

Apart from the foregoing, other things which will terminate the wives agency of necessity to pledge their unmaintaining husbands' credit are death of the husband and decree of divorce or nullity. If the marriage is void *ab initio*, the husband may escape liability on the ground that the woman has never been his wife, but he may be liable to a third party from whom the woman, in the exercise of her apparent authority, purchases necessities on credit¹⁴. It should be noted here that the husband becoming liable to a third party in the foregoing circumstance should be understood to be occasioned by reason of holding himself out as the wife's husband, and as a result, the tradesman would be justified if he still sues such a husband for payment of the necessities supplied in the circumstance.

Where, however, the marriage is voidable, the position will probably be different. In that case, it may be argued that the parties were husband and wife until the annulment of the marriage. Due to this, the woman could, while still a wife, pledge the husband's credit.

III. MAINTENANCE BY AGREEMENT

At times, parties to a marriage may voluntarily agree between themselves to live apart without anyone of them being in desertion. In such circumstances, the couple is still taken to be cohabiting in a technical sense. The couple may, while they so live apart, conclude a maintenance agreement which obliges the husband to maintain his wife. Such agreement may be oral or written. While spouses are free to enter into these types of agreement providing for maintenance, it would be contrary to public policy if they attempt thereby to oust the jurisdiction of the Court¹⁵. If, normally, the husband performs his duty of maintenance faithfully, the wife cannot pledge his credit. But if he fails to do so, she will be free to do so¹⁶. Where the maintenance provided in the agreement is inadequate, the wife may apply to court for reasonable maintenance.

IV. MAINTENANCE UNDER CUSTOMARY LAW

Having discussed the concept of maintenance at common law, it is now for us to delve into customary law and make comparison, while on the customary law we may sojourn a bit to see what the concept looks like under Islamic law. This is because of the Islamic law being taken to be an aspect of customary law.¹⁷

¹⁴ NWOGUGU E.I. *Supra*, pg. 241.

¹⁵ *Fowkes v. Fowkes* (1938) Ch. 774 (Obiter).

¹⁶ *Hyman v. Hyman* (1929) AC, 601.

¹⁷ Islamic Law became part of customary law by virtue of S.2, High Court Law (Cap. 49), Vol. 2, the Laws of Northern Nigeria, 1963.

Provision of necessities such as food, clothing, shelter and medical care is the wife's right to maintenance by her husband in a customary law marriage. This duty, which is on the husband of a customary law marriage, is even statutory in some parts of Northern Nigeria¹⁸.

Sometime in 1965 a bill was introduced by a female member of the then Eastern Nigerian Legislature. This bill, which was tagged "The married women (maintenance) bill,"¹⁹ was designed to make statutory provisions for the maintenance of wives of customary law marriages in the East. Under the bill, (which unfortunately never became law), a Customary Court was to be authorized to make an order for periodic payment of maintenance to a wife if the husband had deserted her or had been guilty of persistent cruelty or willful neglect to provide her with reasonable maintenance or had ever compelled her to submit herself to prostitution. One would therefore become surprised as to why such a bill could not get passed into law and enjoy statutory flavour. It is, therefore, not surprising that members of the various Eastern States Houses of Assembly in the present day, did not only trace the dead bill in the Eastern archives and study it with a view to re-introducing it in a better way so as to make it very detailed and comprehensive. After all, there is nothing bad in putting old drink in new bottle.

Under customary law, the husband's duty of maintenance is usually limited to the period of cohabitation. It should be understood that periods when the husband and the wives of a customary-law marriage live apart, as a result of the spouses' jobs being at different localities or areas are still considered to be period of cohabitation between them. But if they live apart because the wife is in desertion, there is no general recognized duty of man to provide maintenance for the so-called wife. This, it will be recalled, is in conformity with the common law approach in the same circumstances.²⁰ In customary law, this duty by men to maintain their wives will become terminated and/or determined on the event of the marriage being dissolved between the maintainer and the maintained.

If, however, the customary law husband dies, then the widows' maintenance will depend on her status in the family after her husband's death. Where, for instance, she later marries a relative or son of the deceased husband, the duty to maintain her will devolve on the new husband. But where she remains in the family without remarrying, as a result of either old age group or that she has grown-up children, the obligation to maintain her will then become partly that of her children and partly that of the extended family. But if she leaves the dead husband's family completely, her right to maintenance by that family is lost. This is because the foundation for her to be maintained, (i.e. staying in the deceased husband's family), is no longer there. From the foregoing analysis, it is gratifying to notice some areas of discrepancies between the concept of maintenance under the common and customary laws.

¹⁸ For instance, under S.8(2) (c) of the Native Authority (Declaration of Borgu Native marriage Law and Custom) order of 1961, a wife has a right to maintenance by the husband, including the provision of food, clothing and housing at a standard commensurate with his means.

¹⁹ Supplement to Eastern Nigeria Gazette No. 73, Vol. 114 November, 1965, Part C. The Bill was introduced by Mrs. J.N. Moku, member from Enugu.

²⁰ When a wife deserts her husband, she has by her action impaired the right of the husband to cohabitation and thus, she may not be maintained. See the case of *Jones v. Newton*, *supra* for the similar position in Common Law.

First, it is alien to common law for a wife, who loses her husband to remarry a relative or son of her deceased husband. The implication of this at common law is that a widow will not be maintained by his deceased husband's family the moment the husband dies. This is not so under customary law where she can get married to either a son or relative of her deceased husband.

Even where she is not disposed to remarrying from her deceased husband's family, the widow can still be maintained by her deceased husband's extended family under customary law. This will be so where she stays and remains within the family. Her children, if already grown up, will equally do their own part of the maintenance in this circumstance. Under common law, there is no duty on the family of a deceased husband to assume the obligation of maintenance. This is because a wife is believed to be married to his husband alone, not to his family members. As a result, the husband's death brings about total termination of the whole marital affairs. No more, no less.

V. ENFORCEMENT OF MAINTENANCE

There does not appear to be any judicial machinery in place for the enforcement of the husband's duty to maintain his wife in customary law marriage. Where, therefore, there is failure of the husband to discharge the obligation, the wife may only resort to extra-marital legal processes. For instance, she may express her grievance to the direct parents or the extended family of her husband. In turn, the husband, or where he still refuses, his family, may be forced to provide for such a wife. Where this is done by the husband family, it is considered as part of their communal responsibility.

Another way by which resort to extra legal processes may take place in this respect is where the parents or family of the destitute wife meet with the family of their daughter's husband over the latter's dereliction of duty. With this, it is expected that redress will be obtained. But if nothing happens, the wife may, in the circumstance, be recalled by her family. Alternatively, she herself may abandon the husband and remarry elsewhere. Where any of these occurs, the family of such a husband may become notoriously known for maltreatment of their wives and unruly behaviour to them. This is a social sanction which, to a certain extent, compels a husband to maintain his wife under customary law. This social sanction may even at times be as effective as to result in parents refusing in future to give their daughters in marriage to other members from the family of the unconcerned husband. This situation was sought to be remedied by the proposed bill.²¹ The bill conferred jurisdiction on Customary Courts and provided that non-compliance with an order for maintenance made by a Customary Court might be enforced in the same manner as a judgment debt. As beautiful as the foregoing provision sounds, it should be remembered that it is not more than mere statement of wish and intention as the bill was never passed into law. Perhaps the only part of Nigeria where maintenance, as a marital duty of husbands, can be enforced by wives is in some parts of the Northern Nigeria where same has been codified and made to enjoy some form of statutory flavour²². The present writer maintained in this article that there is need for the stakeholders in other parts of the country to borrow leaf from the Northern codification style by making wives' enjoyment of their right of maintenance a matter backed by legal and not only social sanction. By so doing, men would be placed in a legal position to discharge their responsibility

²¹ This is the Married Women (Maintenance) Bill, *supra*, S. 5 thereof.

²² See for instance, S. 8 (2) (c) of the Native Authority (Declaration of Borgu, Native Marriage Law and Custom) order of 1961.

effectively. This is necessary because some men would ignore the implication of the social sanction. They would intentionally refuse to maintain and they wouldn't care or bother about the social unpopularity their family is likely to suffer by their act. This is because no man except the heartless will marry a wife and refuse to maintain her without just cause. A man who is heartless lacks mind consciousness. Lack of mind consciousness, therefore, will not allow such a man to see it as a stain or condemnation on him or on his family if, in future, they are disallowed from marrying other daughters from the same family. Picking wives from other families or other communities may even be seen as a convenient solution to this social stigma. It is therefore, re-submitted that maintenance enforcement by means of legal sanction would yield better positive effect than placing reliance on mere social sanction which may or may not deter husbands who are used to dereliction of marital duties.

According to E.I Nwogugu,²³ customary-law wife should be treated as her common law counter-part in terms of having the right to pledge her husband's credit with a tradesman with regards to necessities. The present writer is of the opinion that this suggestion will hardly work successfully. This is because a wall of difference exists between the common law and customary law. Their modes of operation differ, as are their backgrounds and peculiarities. It may be argued, for instance, that, at common law, the right accorded a wife to pledge her husband's credit is predicated on the nature of common law marriage as one where husband and wife are seen and considered as one simple and indissoluble person. This is not so in customary law marriage.

Another area of argument in the same connection is the monogamous nature of common law marriage. It is always a marriage between a man and a woman to the exclusion of all others during the subsistence of the marriage.²⁴ This, also, is not so in a customary law marriage. It is, therefore, the combination of the above differences and others alike that will not pave way for the workability of the credit pledge suggestion of the professor and prolific writer.

V. MAINTENANCE AND ITS DERELICTION UNDER ISLAMIC LAW

The Glorious Quran in so many verses dwells on the onerous duty of husbands to take care of their wives and provide them with maintenance.²⁵ In Islamic jurisprudence, it is obviously stated that the assertive control and benefits a husband enjoys over and from his wife respectively are hinged on the fact that he too carries out his marital duties. The foregoing exposition has been couched in a terse jurisprudential expression by the Muslim jurists of the early classical period of Islam. As a scholar of Islamic law put it: "Benefit follows responsibility"²⁶

Without doubt, the content of this expression is self-revealing and as such, may require no further elucidation. What perhaps may be done now is to explore the various schools of thought of Muslim jurists to see what the implication of lack of maintenance is like in each of the schools. But before then, it is pertinent to state that there is no uniform quantum of maintenance expected of Muslim husbands.

²³ Title of the Book is "Family Law in Nigeria" Revised Edition, 2001 p. 283, last Paragraph.

²⁴ See the Celebrated case of *Obele Inyia v. Obele* (1973) 1 N.M.R. 155.

²⁵ For Instance, Quran Chapter 4, Verse 34.

²⁶ See A.Q. Zubair *An Outline of Islamic Law of Tort* (1990).

The golden rule in this context, which has its root from the ultimate book of Allah, is for one to provide maintenance in line with his capacity.²⁷ If he is affluent, he is expected to magnanimously spend on his wife and vice-versa.

In the Maliki School of Islamic law, a husband is expected to maintain his wife regardless of the state of wealth of the wife. A husband who refuses to maintain his wife will be forced by an Alkali Court²⁸ to do so. If he disregards the Court order to do so, his wife will be entitled to dissolution of marriage. This is so where the husband lives in the same locality with the wife. Where, however, the couple lives in different localities, the husband will be granted a reasonable time to comply, after which the marriage may be dissolved for non-compliance²⁹. The husband's duty to take care of his wife under Maliki School is functional whether or not the parties are cohabiting. The fact of marriage creates the duty.

According to Hanafi School, lack of maintenance on the part of the husband cannot serve as a ground for dissolution. This is because, according to this school, there was never an instance during the life time of Prophet Muhammad (PBUH) when marriage was dissolved on account of lack of maintenance. The Hanafi School also holds that where a husband is wealthy but refuses to provide maintenance, marriage would still not be dissolved. Instead, the Court should give an order imprisoning the husband till he agrees to do the needful. The Court may alternatively sell few of his properties and apply the proceeds towards the settlement of his wife's maintenance.

Apart from the Hanafi School, whose opinion has been explained, other schools Shafihi and Hambali, all pinch their tents with the view held in the Maliki School earlier analyzed. It is their view that a deprived wife has to choose from two options. She either stays behind and endures deprivation, or seeks dissolution of the marriage on the basis of deprivation. This opinion of theirs is rooted in a verse of the holy-Quran.³⁰ In the verse, couple is enjoined to either stay together in harmony or separate equitably. However, it should be noted that where there is separation of marriage because of lack of maintenance, such separation is a revocable one.

In the famous Islamic law case of *Abba Musa v. Jungudum*³¹, the respondent petitioned to a Court for dissolution of her marriage on ground of lack of maintenance, stating in her evidence that, her husband kept her without foods nor clothes for complete six months. After an inquiry, the Court held that the husband should give her 5 shillings and 10 measures of corn weekly. The appellant refused to abide by the Court order stating that he was only ready to give 2 shillings and 5 measures of corn every week as his practice with his other three wives. The Court decided to dissolve the marriage as, according to the judge, what the husband was ready to give by way of maintenance was inadequate. The husband went on appeal to Shariah Court of Appeal arguing as followings:

- (i) That he did not understand why his marriage was dissolved on the ground of lack of maintenance when there was food in his house sufficient to feed his wives for six years;

²⁷ Quran Chapter 2, Verses 233 and 236.

²⁸ Anderson, J.N.D., *Islamic Law in Africa*, Colonial Research Publication, No. 16, (London: HMSO, 1954) 210-211, 370-371.

³⁰ Quran Chapter 2, Verse 229.

³¹ (1961).

- (ii) That he was actually the first to file a case against the respondent (his wife) because she left his house without permission and the right of maintenance only goes to her who is not recalcitrant or disobedient; and
- (iii) That he acted in accordance to the custom because he used to give two shillings and five measures of corn to each of his wives every week.

The Court found from the record that the trial Court did not inquire into the financial position of the husband but simply declared the marriage dissolved. The Court, therefore, held that before a marriage is dissolved on ground of lack of maintenance, the financial condition at the house must be properly investigated. The Court further said that when a wife leaves her matrimonial home, it is not the duty of the husband to feed her during the period. Apparently, the Court, in deciding the case, went in line with the Maliki School.

VII. CONCLUSION AND RECOMMENDATIONS

This article took an excursion of the concept of maintenance at Common Law, Customary Law and under the Shariah. Generally, one thing is made clear; the duty of all men to maintain their wives is one which stems from the fact of marriage. This is so at common law and under the customary and Islamic laws. Another common feature to the three laws considered is the grave outcome of desertion when resorted to by a married woman. This will disentitle her of her right to maintenance. However, in the event of death of a husband, the consequence differs between the customary and the common law. At common law, death of a husband terminates his surviving wife's right to maintenance, under customary law, such a woman's fate would be determined by her status after her husband's death. Where she marries another relative of the deceased husband, her maintenance becomes a burden on the new husband. Where she merely stays within the extended family members of her late husband, she would be taken care of. This is to be done in collaboration with her own children if they are already grown up. Where, however, the widow abandons the extended family completely and goes elsewhere to be staying on her own without remarrying any of her deceased husband's family, she will not again expect any form of maintenance from the family. In this circumstance, her foundation to be so maintained is pulled down. She cannot, therefore, put something on nothing and expect it to stay.

Under common law, there is no problem of enforcing wives' right to maintenance. It should, however, be noted that the situation is different under customary law. Here, except in some northern states where the maintenance has been codified and made to enjoy statutory backing, there is hardly any hope of solace for an unmaintained wife than to rely on extra legal process for enforcement. This, without mincing words, may not always do the expected magic, as heartless men abound who may not bother about the societal condemnation they or their family may be exposed to if they become notoriously known for wife's maltreatment. It is against the backdrop of this that this writer urges other states in the country to borrow leaf from the codification practice in the north.

On recommendations per se, much has been said already in the body of the paper. The writer's approach, as it may have been realized, is to pulse and recommend or suggest a working solution immediately a problem is identified. Readers are thus humbly expected to refer to those portions of the write-up where the problems and their suggested solutions have featured. They are thrilling and refreshing. For instance, while discussing on the exception to the authority of an unmaintained wife to pledge her credit, it was observed that one of the mentioned exceptions appears to be lacking in

extension, be indirectly deterred from the common but inordinate pro-
In the whole, maintenance is virtuous and laudable. It is the bedro-
sustained. Marital unions, though, are expected to bear fruits of
maintenance and mutual show of love, care and affection, marriages m-
where there is no child. Though, this is never a desire of most couples,
blessing in the procreating but maintenance free marital relationship wh-
end in shambles. The negative effect of such is going to be on the offs-
the larger society. Therefore, let everybody wake up to his marital duty.
legal, it is divine as well.